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# Presidential Documents

**Title 3—**

**The President**

## Executive Order 14030 of May 20, 2021

## Climate-Related Financial Risk

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

**Section 1**. *Policy*. The intensifying impacts of climate change present physical risk to assets, publicly traded securities, private investments, and companies—such as increased extreme weather risk leading to supply chain disruptions. In addition, the global shift away from carbon-intensive energy sources and industrial processes presents transition risk to many companies, communities, and workers. At the same time, this global shift presents generational opportunities to enhance U.S. competitiveness and economic growth, while also creating well-paying job opportunities for workers. The failure of financial institutions to appropriately and adequately account for and measure these physical and transition risks threatens the competitiveness of U.S. companies and markets, the life savings and pensions of U.S. workers and families, and the ability of U.S. financial institutions to serve communities. In this effort, the Federal Government should lead by example by appropriately prioritizing Federal investments and conducting prudent fiscal management.

It is therefore the policy of my Administration to advance consistent, clear, intelligible, comparable, and accurate disclosure of climate-related financial risk (consistent with Executive Order 13707 of September 15, 2015 (Using Behavioral Science Insights to Better Serve the American People)), including both physical and transition risks; act to mitigate that risk and its drivers, while accounting for and addressing disparate impacts on disadvantaged communities and communities of color (consistent with Executive Order 13985 of January 20, 2021 (Advancing Racial Equity and Support for Underserved Communities Through the Federal Government)) and spurring the creation of well-paying jobs; and achieve our target of a net-zero emissions economy by no later than 2050. This policy will marshal the creativity, courage, and capital of the United States necessary to bolster the resilience of our rural and urban communities, States, Tribes, territories, and financial institutions in the face of the climate crisis, rather than exacerbate its causes, and position the United States to lead the global economy to a more prosperous and sustainable future.

**Sec. 2**. *Climate-Related Financial Risk Strategy*. The Assistant to the President for Economic Policy and Director of the National Economic Council (Director of the National Economic Council) and the Assistant to the President and National Climate Advisor (National Climate Advisor), in coordination with the Secretary of the Treasury and the Director of the Office of Management and Budget (OMB), shall develop, within 120 days of the date of this order, a comprehensive, Government-wide strategy regarding:

(a) the measurement, assessment, mitigation, and disclosure of climate-related financial risk to Federal Government programs, assets, and liabilities in order to increase the long-term stability of Federal operations;

(b) financing needs associated with achieving net-zero greenhouse gas emissions for the U.S. economy by no later than 2050, limiting global average temperature rise to 1.5 degrees Celsius, and adapting to the acute and chronic impacts of climate change; and

(c) areas in which private and public investments can play complementary roles in meeting these financing needs—while advancing economic opportunity, worker empowerment, and environmental mitigation, especially in disadvantaged communities and communities of color.

**Sec. 3**. *Assessment of Climate-Related Financial Risk by Financial Regulators*. In furtherance of the policy set forth in section 1 of this order and consistent with applicable law and subject to the availability of appropriations:

(a) The Secretary of the Treasury, as the Chair of the Financial Stability Oversight Council (FSOC), shall engage with FSOC members to consider the following actions by the FSOC:

(i) assessing, in a detailed and comprehensive manner, the climate-related financial risk, including both physical and transition risks, to the financial stability of the Federal Government and the stability of the U.S. financial system;

(ii) facilitating the sharing of climate-related financial risk data and information among FSOC member agencies and other executive departments and agencies (agencies) as appropriate;

(iii) issuing a report to the President within 180 days of the date of this order on any efforts by FSOC member agencies to integrate consideration of climate-related financial risk in their policies and programs, including a discussion of:

(A) the necessity of any actions to enhance climate-related disclosures by regulated entities to mitigate climate-related financial risk to the financial system or assets and a recommended implementation plan for taking those actions;

(B) any current approaches to incorporating the consideration of climate-related financial risk into their respective regulatory and supervisory activities and any impediments they faced in adopting those approaches;

(C) recommended processes to identify climate-related financial risk to the financial stability of the United States; and

(D) any other recommendations on how identified climate-related financial risk can be mitigated, including through new or revised regulatory standards as appropriate; and

(iv) including an assessment of climate-related financial risk in the FSOC's annual report to the Congress.

(b) The Secretary of the Treasury shall:

(i) direct the Federal Insurance Office to assess climate-related issues or gaps in the supervision and regulation of insurers, including as part of the FSOC's analysis of financial stability, and to further assess, in consultation with States, the potential for major disruptions of private insurance coverage in regions of the country particularly vulnerable to climate change impacts; and

(ii) direct the Office of Financial Research to assist the Secretary of the Treasury and the FSOC in assessing and identifying climate-related financial risk to financial stability, including the collection of data, as appropriate, and the development of research on climate-related financial risk to the U.S. financial system.

**Sec. 4**. *Resilience of Life Savings and Pensions*. In furtherance of the policy set forth in section 1 of this order and consistent with applicable law and subject to the availability of appropriations, the Secretary of Labor shall:

(a) identify agency actions that can be taken under the Employee Retirement Income Security Act of 1974 (Public Law 93–406), the Federal Employees' Retirement System Act of 1986 (Public Law 99–335), and any other relevant laws to protect the life savings and pensions of United States workers and families from the threats of climate-related financial risk;

(b) consider publishing, by September 2021, for notice and comment a proposed rule to suspend, revise, or rescind ''Financial Factors in Selecting

Plan Investments,'' 85 Fed. Reg. 72846 (November 13, 2020), and ''Fiduciary Duties Regarding Proxy Voting and Shareholder Rights,'' 85 Fed. Reg. 81658 (December 16, 2020);

(c) assess—consistent with the Secretary of Labor's oversight responsibilities under the Federal Employees' Retirement System Act of 1986 and in consultation with the Director of the National Economic Council and the National Climate Advisor—how the Federal Retirement Thrift Investment Board has taken environmental, social, and governance factors, including climate-related financial risk, into account; and

(d) within 180 days of the date of this order, submit to the President, through the Director of the National Economic Council and the National Climate Advisor, a report on the actions taken pursuant to subsections (a), (b), and (c) of this section.

**Sec. 5**. *Federal Lending, Underwriting, and Procurement*. In furtherance of the policy set forth in section 1 of this order and consistent with applicable law and subject to the availability of appropriations:

(a) The Director of OMB and the Director of the National Economic Council, in consultation with the Secretary of the Treasury, shall develop recommendations for the National Climate Task Force on approaches related to the integration of climate-related financial risk into Federal financial management and financial reporting, especially as that risk relates to Federal lending programs. The recommendations should evaluate options to enhance accounting standards for Federal financial reporting where appropriate and should identify any opportunities to further encourage market adoption of such standards.

(b) The Federal Acquisition Regulatory Council, in consultation with the Chair of the Council on Environmental Quality and the heads of other agencies as appropriate, shall consider amending the Federal Acquisition Regulation (FAR) to:

(i) require major Federal suppliers to publicly disclose greenhouse gas emissions and climate-related financial risk and to set science-based reduction targets; and

(ii) ensure that major Federal agency procurements minimize the risk of climate change, including requiring the social cost of greenhouse gas emissions to be considered in procurement decisions and, where appropriate and feasible, give preference to bids and proposals from suppliers with a lower social cost of greenhouse gas emissions.

(c) The Secretary of Agriculture, the Secretary of Housing and Urban Development, and the Secretary of Veterans Affairs shall consider approaches to better integrate climate-related financial risk into underwriting standards, loan terms and conditions, and asset management and servicing procedures, as related to their Federal lending policies and programs.

(d) As part of the agency Climate Action Plans required by section 211 of Executive Order 14008 of January 27, 2021 (Tackling the Climate Crisis at Home and Abroad), and consistent with the interim instructions for the Climate Action Plans issued by the Federal Chief Sustainability Officer, heads of agencies must submit to the Director of OMB, the National Climate Task Force, and the Federal Chief Sustainability Officer actions to integrate climate-related financial risk into their respective agency's procurement process (subject to any changes to the FAR arising out of the Federal Acquisition Regulatory Council's review pursuant to subsection (b) of this section). The Director of OMB and the Federal Chief Sustainability Officer shall provide guidance to agencies on existing voluntary standards for use in agencies' plans.

(e) In Executive Order 13690 of January 30, 2015 (Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input), a Federal Flood Risk Management Standard (FFRMS) was established to address current and future flood risk and ensure

that projects funded with taxpayer dollars last as long as intended. Subsequently, the order was revoked by Executive Order 13807 of August 15, 2017 (Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects). Executive Order 13690 is hereby reinstated, thereby reestablishing the FFRMS. The ''Guidelines for Implementing Executive Order 11988, Floodplain Management, and Executive Order 13690, Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input'' of October 8, 2015, were never revoked and thus remain in effect.

**Sec. 6**. *Long-Term Budget Outlook*. The Federal Government has broad exposure to increased costs and lost revenue as a result of the impacts of unmitigated climate change. In furtherance of the policy set forth in section 1 of this order and consistent with applicable law and subject to the availability of appropriations:

(a) The Director of OMB, in consultation with the Secretary of the Treasury, the Chair of the Council of Economic Advisers, the Director of the National Economic Council, and the National Climate Advisor, shall identify the primary sources of Federal climate-related financial risk exposure and develop methodologies to quantify climate risk within the economic assumptions and the long-term budget projections of the President's Budget;

(b) The Director of OMB and the Chair of the Council of Economic Advisers, in consultation with the Director of the National Economic Council, the National Climate Advisor, and the heads of other agencies as appropriate, shall develop and publish annually, within the President's Budget, an assessment of the Federal Government's climate risk exposure; and

(c) The Director of OMB shall improve the accounting of climate-related Federal expenditures, where appropriate, and reduce the Federal Government's long-term fiscal exposure to climate-related financial risk through formulation of the President's Budget and oversight of budget execution.

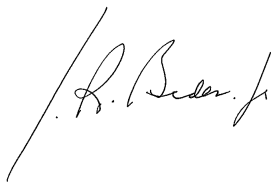
**Sec. 7**. *General Provisions*. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
*May 20, 2021.*

[FR Doc. 2021–11168
Filed 5–24–21; 11:15 am]
Billing code 3295–F1–P

# Rules and Regulations

Federal Register
Vol. 86, No. 99
Tuesday, May 25, 2021

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 TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2020–0823; Airspace Docket No. 20–AAL–49]**

**RIN 2120–AA66**

## Amendment To Separate Terminal Airspace Areas From Norton Sound Low, Woody Island Low, Control 1234L, and Control 1487L Offshore Airspace Areas; Alaska

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule, withdrawal.

**SUMMARY:** This action withdraws the final rule published in the **Federal Register** on April 12, 2021 amending the following Offshore Airspace Areas in Alaska: Norton Sound Low, Woody Island Low, Control 1234L, and Control 1487L. The FAA has determined that withdrawal of the final rule is warranted since there are actions taking place to correct the terminal airspace contained in the Offshore airspace that may cause an overlap and further confuse general aviation and air traffic control.

**DATES:** Effective date 0901 UTC, May 25, 2021, the final rule published in the **Federal Register** (86 FR 18890; April 12, 2021), is withdrawn.

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

**SUPPLEMENTARY INFORMATION:**

### History

The FAA published a final rule for Docket No. FAA–2020–0823 in the **Federal Register** (86 FR 18890; April 12, 2021) to reverse the final rule for Docket No. FAA–2006–25852 in the **Federal Register** (72 FR 31714; June 8, 2007; as corrected 72 FR 37430, July 10, 2007) that amended the offshore airspace areas, including: Norton Sound Low, Woody Island Low, Control 1234L, and Control 1487L Offshore Airspace Areas; Alaska, to include terminal airspace previously thought to be excluded in the Code of Federal Regulations. Additionally, the final rule corrected the final rule for Docket No. FAA–2006–26164 in the **Federal Register** (72 FR 5611; February 7, 2007) that revoked Class E Airspace for Adak, ATKA, Cold Bay, Nelson Lagoon, Saint George Island, Sand Point, Shemya, St. Paul Island, and Unalaska, AK. Subsequent to the NPRM being posted, the FAA identified 15 facilities and navigation aids that contained language in the legal descriptions excluding airspace beyond 12 nautical miles (NM) from the coastline. If the exclusionary language were allowed to take effect, these areas would be without controlled airspace in violation of FAA directives. As a result, the additional corrections were included in the final rule.

The FAA is in the process of reviewing and correcting the terminal airspace in and around Alaska. Continuing with this final rule may cause some confusion with all the changes taking place. Therefore, the final rule is being withdrawn.

### Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### The Withdrawal

■ Accordingly, pursuant to the authority delegated to me, the final rule, Airspace Docket 20–AAL–49, as published in the **Federal Register** (86 FR 18890; April 12, 2021), FR Doc. 2021–07432 is hereby withdrawn.

**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.

Issued in Washington, DC, on May 10, 2021.

**George Gonzalez,**

*Acting Manager, Rules and Regulations Group.*

[FR Doc. 2021–10443 Filed 5–24–21; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### 19 CFR Parts 4, 122, 123, 145 and 149

**[Docket No. USCBP–2021–0009; CBP Dec. 21–04]**

**RIN 1651–AB33**

## Mandatory Advance Electronic Information for International Mail Shipments; Re-Opening of Comment Period

**AGENCY:** U.S. Customs and Border Protection, DHS.

**ACTION:** Interim final rule; reopening of comment period.

**SUMMARY:** On March 15, 2021, U.S. Customs and Border Protection (CBP) published in the **Federal Register** an Interim Final Rule (IFR), which amends the CBP regulations to provide for mandatory advance electronic data (AED) for international mail shipments. Although the comment period for this IFR closed on May 14, 2021, CBP has decided to reopen the comment period for an additional 30 days.

**DATES:** *Effective date:* The interim final rule published on March 15, 2021 (86 FR 14245), was effective March 15, 2021.

*Comment date:* The comment period for the interim final rulemaking published on is reopened for an additional 30 days. Comments must be received on or before June 24, 2021.

**FOR FURTHER INFORMATION CONTACT:** For policy questions related to mandatory AED for international mail shipments, contact Quintin Clarke, Cargo and Conveyance Security, Office of Field Operations, U.S. Customs & Border Protection, by telephone at (202) 344–2524, or email at *quintin.g.clarke@cbp.dhs.gov.*

**ADDRESSES:** Please submit any comments, identified by docket number [Docket No. USCBP–2021–0009; CBP Dec. 21–04] by the following method:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Due to COVID–19-related restrictions, CBP has temporarily suspended its ability to receive public comments by mail.

*Instructions:* All submissions received must include the agency name, docket

number for this rulemaking and must reference docket number [Docket No. USCBP–2021–0009; CBP Dec. 21–04]. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* For access to the docket to read background documents or comments received, go to *https://www.regulations.gov.* Due to relevant COVID–19-related restrictions, CBP has temporarily suspended its on-site public inspection of submitted comments.

**SUPPLEMENTARY INFORMATION:**

**Public Participation**

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on the IFR. Comments that will provide the most assistance to CBP will reference a specific portion of the IFR, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

**Background**

To address the threat of synthetic opioids and other dangerous items entering the United States through international mail shipments and to implement the requirements of the Synthetics Trafficking and Overdose Prevention Act of 2018 (STOP Act), Public Law 115–271, CBP amended its regulations on March 15, 2021 through publication in the **Federal Register** (86 FR 14245) of an IFR entitled ''Mandatory Advance Electronic Information for International Mail Shipments.'' These amended regulations require the United States Postal Service (USPS) to transmit certain electronic information in advance to CBP. Specifically, these regulations provide that, for certain international mail shipments, CBP must electronically receive from USPS certain mandatory advance electronic data (AED) within specified time frames. These regulations describe the new mandatory AED requirements, including the inbound international mail shipments for which AED is required, the time frame for which USPS must provide the required AED to CBP, and the criteria for exclusion from AED requirements. Further, the regulations address compliance dates and the necessary remedial actions required for shipments in which USPS has not complied with AED requirements.

To increase public participation and in the interest of good governance, CBP is reopening the comment period for an additional 30 days to allow for further comments to be submitted on the IFR. Comments must be received on or before June 24, 2021.

Dated: May 20, 2021,

**Joanne R. Stump,**

*Acting Executive Director, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection.*

[FR Doc. 2021–10998 Filed 5–24–21; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### 32 CFR Part 68

**[Docket ID: DOD–2019–OS–0076]**

**RIN 0790–AJ95**

## Voluntary Education Programs

**AGENCY:** Office of the Under Secretary of Defense for Personnel and Readiness, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** To ensure equity of student counseling options available to educational institutions, the DoD is amending its Voluntary Education Programs regulation to cite current law and to remove the requirement that an educational institution must have a DoD installation student population of at least 20 military students before it qualifies to be authorized access on a DoD installation that is not overseas.

**DATES:** This rule is effective on June 24, 2021.

**FOR FURTHER INFORMATION CONTACT:** Gary Schaub, 703–614–6414.

**SUPPLEMENTARY INFORMATION:**

**Discussion of Public Comments Received**

On April 15, 2020, the Department of Defense published a proposed rule titled ''Voluntary Education Programs'' (85 FR 20893–20895) for a 30-day public comment period. Thirteen public comments were received. Ten comments were within the scope of the rule and were supportive, one comment was a duplicate within this subset, and two comments were outside the scope of this rule.

Ten comments within the scope of the rule articulated the respective submitters' agreement to the rule amendment. The comments collectively support DoD's willingness to ensure equitable access be given to all educational institutions to provide academic and student support services to students, regardless of military student population size. The duplicative comment was identical to one of these ten.

Two comments addressed DoD policy beyond the scope of the rule. The first requested that DoD amend policy to ensure that educational institutions are granted one day a week on military installations to provide face-to-face counseling. The second requested that DoD change its policy to remove any fees currently being charged to schools for office space on military installations. These requests are beyond the scope of the proposed rule change. Therefore, DoD will not change the rule to incorporate them.

**Executive Summary**

**Purpose of the Rule**

The Office of the Under Secretary of Defense for Personnel and Readiness provides policy and oversight of DoD's Voluntary Education (VolEd) Program, including the Tuition Assistance (TA) program. The VolEd program is authorized in 10 U.S.C. 2006a and 2007, and DoD policy is in DoD Instruction 1322.25, ''Voluntary Education Programs'' (last updated on July 7, 2014 and available at *https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/132225p.pdf*). The requirements for educational institutions, that each institution must sign, are provided in the companion DoD VolEd Partnership Memorandum of Understanding (MOU) (available in DoD Instruction 1322.25, Appendix to Enclosure 3; further information available at *https://www.dodmou.com/*). For the purposes of this part, an educational institution is defined as ''a college, university, or other institution of higher education.''

In accordance with the current regulation and DoD MOU, educational institutions must have a domestic DoD installation student population of at least 20 military students to request permission for access to a DoD installation that is not overseas. The policy does not apply to overseas DoD installations. Numerous institutions, using both private and public forums, have contacted the Office of the Deputy Assistant Secretary of Defense for Force Education and Training to communicate their concern over this policy inequity. The specific inequity is that currently all participating educational institutions do not have face-to-face counseling access. DoD determined that action was

needed to rectify this policy inequity so that DoD policy is consistent and equitable, regardless of the type of educational institution or student population size.

Currently, 1,339 institutions of the approximately 2,700 DoD MOU educational institutions have between 1 and 19 students, meaning that they have no options for face-to-face counseling on military installations. Most institutions operating under this MOU manage their student counseling by virtual means. Removal of the 20-student requirement will ensure equity of student counseling options for all DoD MOU educational institutions. Adding a face-to-face option could change institutional processes to reflect travel or setting up local offices. However, any such process change would be entirely optional on the part of the educational institution.

Acknowledging that the size of the military installation may directly impact the number of students enrolled with a given educational institution, this change will also ensure that educational institutions have the opportunity to provide equal services to all Service members, including those assigned to smaller or more remote military installations.

Accordingly, this rule amends 32 CFR part 68 (last updated on May 15, 2014 at 79 FR 27737) to remove the 20 student requirement and allow educational institutions to provide academic services at DoD installations, regardless of the number of military students enrolled at that installation.

The number of additional schools availing themselves of on-base access as a result of the proposed change is predicted to be small, as more than 80 percent of Service members receiving TA attend the 25 largest DoD MOU schools, many of which are already afforded access to military installations under the current rule. This policy change ensures that every DoD MOU educational institution is treated equally. Installation Commanders will still retain access authority for their installation based on capacity and their available resources.

**Summary of Major Provisions**

DoD determined that the requirement of having a student population of at least 20 military students before an educational institution can be authorized access on a DoD installation that is not overseas should be removed in order to provide consistent treatment of educational institutions, increased availability to students, convenience and fairness to Service members, and mission tempo of the servicing DoD installation and/or education office. Each educational institution must sign a DoD VolEd Partnership MOU. Eliminating the 20-student base access requirement will afford each of these educational institutions the same opportunity to provide academic counseling and student support services, regardless of the number of military students enrolled in their programs.

Additionally, this rule finalizes amendments to the Authority citations for the part to include 10 U.S.C. 2006a, as section 2006a became effective as law on August 1, 2014, after the May 2014 publication of the current version of this rule.

**Legal Authority for This Program**

The current rule implements the legal requirements of 10 U.S.C. 2005 and 2007 for DoD's VolEd Programs. The citation of 10 U.S.C. 2006a is also incorporated with this amendment. Below, we summarize each legal authority.

10 U.S.C. 2005—Authorizes the Secretary concerned to associate a service agreement with the provision of advanced education assistance to a Service member and to subject a Service member to repayment if the service agreement is not satisfied.

10 U.S.C. 2007—Authorizes the Secretary of Defense to provide advanced education assistance and pay tuition for off-duty training or education of eligible members of the Armed Forces.

**Regulatory History**

The current rule was published in the **Federal Register** (FR) (79 FR 27732) on May 15, 2014, after a proposed rule was published in the FR (78 FR 49382) on August 14, 2013, for a 45-day public comment period. The rule implements DoD's VolEd Programs to provide Service members with opportunities to enhance their academic achievement (*i.e.,* earn a degree or certificate) during their off-duty time, which in turn, improves job performance and promotion potential. The rule also addresses uniform TA, counseling, and support services policy. Funding for VolEd Programs, including the DoD TA program, is authorized by law (10 U.S.C. 2007) and is subject to the availability of funds from each Military Department.

The original rule for DoD's VolEd Program was published in the FR (77 FR 72941) on December 6, 2012, after a proposed rule was published in the FR (75 FR 47504) August 6, 2010, for a 45-day public comment period. Executive Order (E.O.) 13607, ''Establishing Principles of Excellence for Educational Institutions Servicing Service Members, Veterans, Spouses, and Other Family Members'', signed April 27, 2012 (available at *https://www.govinfo.gov/content/pkg/FR-2012-05-02/pdf/2012-10715.pdf*), directs the Departments of Defense, Veterans Affairs, and Education to establish Principles of Excellence to apply to educational institutions receiving funding from Federal military and veterans educational benefits programs, including benefits programs provided by the Post-9/11 GI Bill and the TA Program. A March 2011 Government Accountability Office report on the DoD TA program recommended DoD take steps to enhance its oversight of schools receiving TA funds. (available at *http://www.gao.gov/new.items/d11300.pdf*). As a result, a DoD standardized MOU requirement was included in the rule. A MOU between DoD and an educational institution is required before participating in DoD VolEd Programs, including TA. The MOU outlines the Department's relationship with education providers to ensure that interactions with Service members are consistent with statute and applicable EOs. Additionally, the rule incorporates principles consistent with E.O. 13607.

**Regulatory Analysis**

We developed this rule amendment after considering numerous statutes and EOs related to rulemaking. Below, we summarize our analyses based on these statutes or EOs.

**Regulatory Planning and Review**

*Executive Orders 12866 and 13563*

EOs 12866 (''Regulatory Planning and Review'') and 13563 (''Improving Regulation and Regulatory Review'') direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule amendment has been designated a ''non-significant action,'' and, accordingly, has not been reviewed by the Office of Management and Budget (OMB).

**Costs**

Although the current rule had costs of $100 million or more, this final rule amendment does not incur any additional cost, as this final rule is removing the minimum student requirement at domestic military bases

of 20 military students and eliminating the possible disadvantage to military students for not receiving face-to-face academic counseling, certain educational courses, and other support services on the military installations. Neither action will increase or create a cost burden to the public.

**Benefits**

The rule benefits educational institutions with a population of fewer than 20 military students as it allows them to provide face-to-face academic counseling and administrative support to its students at a DoD installation, regardless of the number of its military students enrolled at that installation. This is a convenience to both educational institution and military students. Students will not have the added cost of having to leave their military installation, spending money for gas and travel to meet with their academic advisors. Additionally, there may be cost savings to the educational institutions, as the use of military facilities will preclude the need to secure and potentially pay for adequate facilities off the military installation.

**Alternatives**

We have identified two alternatives:

1. No action—The current rule would stand and only schools with 20 or more military students would be permitted to access the DoD installation to counsel their military students, thus sustaining an identified policy inequity. This action would not benefit the public because educational institutions would be denied access to meet with their military students if they have less than 20 students enrolled in their institutions. Military students will have the added cost of having to leave their installation, spend money for gas, and travel to meet with their academic advisors. Educational institutions will need to secure, and potentially pay for, adequate facilities off the military installation for counseling and administrative support.

2. Next best alternative—The next best alternative is to incorporate this rule amendment into the ''full'' revision of the rule to occur at a later date. The rule has been identified as a priority for modification to increase effectiveness and improve efficiencies. The ''full'' revision is currently in the development stage. However, it will be a significant amount of time (approximately 18 months) to complete internal processes that will culminate in development of the rule. This would put military students, as well as educational institutions, at a disadvantage to not be able to meet for counseling and academic support on the military installation simply because the number of military students enrolled at the educational institution is not 20 or more.

*Congressional Review Act, 5 U.S.C. 804(2)*

Under the Congressional Review Act, a major rule may not take effect until at least 60 days after submission to Congress of a report regarding the rule. A major rule is one that would have an annual effect on the economy of $100M or more or have certain other impacts. This rule amendment is not a major rule under the Congressional Review Act.

*Public Law 96–354, ''Regulatory Flexibility Act'' (RFA), (5 U.S.C. 601)*

The RFA requires that each Federal agency analyze options for regulatory relief of small businesses if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. This rule is not an economically significant regulatory action, and it will not have a significant impact on a substantial number of small entities. Therefore, this rule is not subject to the requirements of the RFA.

*Public Law 104–4, Sec. 202, ''Unfunded Mandates Reform Act''*

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any one year of $100M in 1995 dollars, updated annually for inflation. That threshold level is currently approximately $140M. This rule amendment will not mandate any requirements for State, local, or tribal governments or the private sector.

*Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)*

This rule amendment does not contain a ''collection of information'' requirement, and will not impose additional information collection requirements on the public under Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. chapter 35).

*Executive Order 13132, ''Federalism''*

This rule amendment has been examined for its impact under E.O. 13132, and it does not contain policies that have federalism implications that would have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of powers and responsibilities among the various levels of Government. Therefore, consultation with State and local officials is not required.

**List of Subjects in 32 CFR Part 68**

Adult education, Armed forces, Colleges and universities, Education, Educational study programs, Government contracts, Military personnel, Student aid.

For the reasons stated in the preamble, DoD amends 32 CFR part 68 as follows:

## PART 68—VOLUNTARY EDUCATION PROGRAMS

■ 1. The authority citation for part 68 is revised to read as follows:

**Authority:** 10 U.S.C. 2005, 2006a, 2007.

**§ 68.6 [Amended]**

■ 2. Section 68.6 is amended by removing paragraph (d)(2) and redesignating paragraphs (d)(3) through (6) as paragraphs (d)(2) through (5), respectively.

Dated: May 19, 2021.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2021–10969 Filed 5–24–21; 8:45 am]

**BILLING CODE 5001–06–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R10–OAR–2019–0599, FRL–10022–46–Region 10]**

## Air Plan Approval; OR; Smoke Management Revision

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving Oregon State Implementation Plan (SIP) revisions submitted on November 3, 2014, and September 27, 2019. The submitted revisions incorporate by reference the most recent updates to Oregon's Smoke Management Plan. EPA is acting only on the most recent version of such regulations as the previous versions are no longer in effect as a matter of state law. EPA is also making technical corrections related to previous approvals of components of Oregon's SIP. EPA has determined that the changes are consistent with Clean Air Act requirements.

**DATES:** This final rule is effective June 24, 2021.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA–R10–OAR–2019–0599. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information may not be publicly available, *e.g.,* CBI or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and is publicly available only in hard copy form. Publicly available docket materials are available at *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Randall Ruddick, EPA Region 10, 1200 Sixth Avenue, Suite 155, Seattle, WA 98101, at (206) 553–1999, or *ruddick.randall@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, it is intended to refer to the EPA.

I. Background Information
II. Response to Comments
III. Final Action
IV. Technical Correction
V. Incorporation by Reference
VI. Statutory and Executive Order Reviews

## I. Background Information

On February 19, 2021, EPA proposed to approve Oregon's November 3, 2014, and September 27, 2019, SIP submissions revising the Oregon Smoke Management Plan (86 FR 10220). The reasons for our approval are included in the proposal and will not be restated here. The public comment period for our proposed approval closed on March 22, 2021. EPA received multiple comments on the proposal.

## II. Response to Comments

EPA received a total of 19 comments during the public comment period. Fourteen comments expressed support for the proposed action, five comments were adverse including two comments that raised concerns EPA believes are outside the scope of the proposed action. The full text of all comments received may be found in the docket for this action. We have summarized and responded to the adverse comments.

*Comments:* EPA received three comments opposing EPA's proposed action. All three comments suggested that non-burning approaches to forest management, such as chipping and recycling wood waste, should be used instead of prescribed fire to avoid the generation of smoke that can impact human health.

*Response:* Oregon's SIP submission, which EPA is taking final action to approve, includes a provision that encourages the use of alternatives to burning to reduce the volume of prescribed burning necessary to meet Oregon's management objectives. See Oregon Administrative Rule (OAR) 629–048–0200. Due to the fact that prescribed fire produces smoke that impacts air quality, Oregon's SIP submission deals centrally with the use of prescribed fire and safeguards to ensure that such burning does not impermissibly compromise air quality. EPA has reviewed the Oregon SIP revisions and we proposed to approve the submissions as consistent with Clean Air Act (CAA) requirements.

As explained in EPA's February 19, 2021, notice of proposed rulemaking, Oregon's 2019 SIP submittal includes additional controls and contingencies to protect against impacts on air quality from prescribed burning. The submittal establishes sub-National Ambient Air Quality Standard (NAAQS) intrusion thresholds and a burn approval target not to exceed approximately 75% of the 24-hour $PM_{2.5}$ NAAQS. The 2019 SIP submittal also establishes a NAAQS protective criterion for burn approvals through use of a one-hour threshold even though there is no NAAQS one-hour limit. Considered as a whole, the revisions contained in the 2019 submittal strengthen the currently SIP-approved smoke management requirements.

In reviewing SIP submissions, EPA's role is to approve state choices, provided those choices meet the criteria of the CAA. EPA makes a determination regarding whether the state has adequately demonstrated that its chosen control measures will not interfere with attainment and maintenance of the NAAQS and otherwise satisfy the requirements of the CAA. Here, as explained in EPA's notice of proposed rulemaking, EPA finds that Oregon has adequately demonstrated that the SIP revision related to the forest management tool of prescribed fire will continue to protect the NAAQS. Even if non-burning alternatives may accomplish the same results as burning, EPA cannot substitute non-burning alternatives that were not included in Oregon's lawfully submitted SIP revisions.

*Comment:* One commenter appears to support the use of prescribed fire to ''limit the scope of the wildfires'' but also urges EPA to work towards lowering Federal air quality standards.

*Response:* This comment appears to relate to the adequacy of the NAAQS and is therefore outside the scope of this action, which relates only to the approval of amendments to Oregon's SIP. The CAA contains provisions that specifically address the review and promulgation of the NAAQS. Taking into consideration the information in the Integrated Science Assessment (ISA), Risk/Exposure Assessment (REA), Policy Assessment (PA), and the advice of Clean Air Scientific Advisory Committee (CASAC), EPA develops and publishes a notice of proposed rulemaking that communicates the Administrator's proposed decisions regarding the review of each NAAQS. A public comment period, during which public hearings are generally held, follows publication of the notice of proposed rulemaking. Taking into account comments received on the proposed rulemaking, EPA issues a final rule promulgating a new or revised NAAQS or retaining a NAAQS. EPA encourages the commenter to participate in future rulemakings when the NAAQS standards are reviewed. EPA does not revisit the adequacy of the NAAQS when taking action on a proposed SIP revision related to NAAQS pollutants and the comment is outside of the scope of this action. Rather, EPA's role in reviewing and approving a SIP revision is to ensure attainment and maintenance with the NAAQS as the relevant and applicable standard for approvals of SIP revisions under CAA section 110.

*Comment:* One commenter appears to support Oregon's use of prescribed fire but states ''I still have a problem that is the standard of the license to be obtained before burning, how to control it more accurately and prevent the masses from abusing it?''

*Response:* The commenter's concerns seem to address Oregon's permitting requirements and the related implementation and possible abuse of the prescribed fire permits. The comment is vague, lacks supporting evidence or documentation, and does not identify any portions of Oregon's submittals or EPA's proposed approval that are inconsistent with CAA requirements. In approving SIPs under section 110 of the CAA, Congress gave states the lead in developing SIPs. In reviewing state plans, EPA's role is to approve state choices, provided those choices meet the criteria of the CAA. See 42 U.S.C. 7410(k) and 40 CFR 52.02(a).

Oregon submitted permitting and general air quality rules for the purpose of managing smoke from prescribed fires to EPA and requested that EPA approve the rules into the Oregon SIP. Oregon Revised Statute (ORS) 477.515 states that it is unlawful to set or cause to be set an open fire inside or within one-

eighth of one mile of a forest protection district without first securing a written permit for burning from the forester and complying with the conditions of the permit. EPA approved ORS 477.515 into the SIP on November 1, 2001, (66 FR 55105) and it is still in effect as a matter of state and Federal law.

OAR 629–047 establishes Oregon's enforcement policy regarding burning permits, including civil penalties and injunctive relief. Further, ORS 477.515(2) states that any permit obtained through willful misrepresentation is void. In the event that burn permits are not properly obtained, or are abused in some other way, Oregon's laws, rules, and enforcement authorities are sufficient to implement and enforce the SIP-approved regulations, consistent with CAA section 110(a)(2)(C). EPA separately approved Oregon's SIP as meeting the enforcement requirements of section 110 on June 6, 2019 (84 FR 26347). When we approve the State's revisions into the SIP, the provisions are considered federally enforceable.

For the aforementioned reasons, EPA is finalizing the action as proposed.

## III. Final Action

Under CAA section 110(k), EPA is approving and incorporating by reference, where appropriate, Oregon's 2014 and 2019 submitted revisions into the Oregon SIP at 40 CFR part 52, subpart MM as discussed in our February 19, 2021, proposed approval (86 FR 10220). Once this approval becomes effective, the Oregon SIP will include the following regulations:

- OAR 629–048–0001, Title, Scope and Effective Dates (state effective 3/1/2019);
- OAR 629–048–0005, Definitions (state effective 3/1/2019);
- OAR 629–048–0010, Purpose (state effective 3/1/2019);
- OAR 629–048–0020, Necessity of Prescribed Burning (state effective 3/1/2019);
- OAR 629–048–0021, Necessity of Safeguarding Public Health (state effective 3/1/2019);
- OAR 629–048–0100, Regulated Areas (state effective 1/1/2008);
- OAR 629–048–0110, Characterization and Response to Smoke Incidents, Smoke Intrusions, and National Ambient Air Quality Standards (NAAQS) Exceedances (state effective 3/1/2019);
- OAR 629–048–0120, Air Quality Maintenance Objectives (state effective 3/1/2019);
- OAR 629–048–0130, Visibility Objectives (state effective 7/11/2014);
- OAR 629–048–0135, Special Protection Zone Requirements (state effective 3/1/2019);
- OAR 629–048–0137, SPZ Contingency Plan Requirements (state effective 3/1/2019);
- OAR 629–048–0140, Smoke Sensitive Receptor Areas (state effective 3/1/2019);
- OAR 629–048–0150, Criteria for Future Listing of Smoke Sensitive Receptor Areas (state effective 3/1/2019);
- OAR 629–048–0160, Bear Creek/Rogue River Valley SSRA (state effective 1/1/2008);
- OAR 629–048–0180, Communication, Community Response Plans, and Exemption Requests (state effective 3/1/2019);
- OAR 629–048–0200, Regulated Areas (state effective 3/1/2019);
- OAR 629–048–0210, Best Burn Practices; Emission Reduction Techniques (state effective 3/1/2019);
- OAR 629–048–0220, Forecast Procedures (state effective 3/1/2019);
- OAR 629–048–0230, Burn Procedures (state effective 3/1/2019);
- OAR 629–048–0300, Registration of Intent to Burn (state effective 1/1/2008);
- OAR 629–048–0310, Fees for Prescribed burning (state effective 3/1/2019);
- OAR 629–048–0320, Reporting of Accomplishments (state effective 3/1/2019);
- OAR 629–048–0330, Emission Inventories (state effective 1/1/2008);
- OAR 629–048–0400, Coordination with Other Regulating Jurisdictions and for Other Pollutants (state effective 1/1/2008);
- OAR 629–048–0450, Periodic Evaluation and Adaptive Management (state effective 3/1/2019);
- OAR 629–048–0500, Enforcement (state effective 3/1/2019);
- ORS 477.013, Smoke Management Plan; rules (state effective 3/1/2019); and
- Oregon Department of Forestry Directive 1–4–1–601, Operational Guidance for the Oregon Smoke Management Program (state effective 3/1/2019).

## IV. Technical Correction

EPA is making technical corrections as discussed in our February 19, 2021, proposed approval (86 FR 10220). We are correcting the identification of the Oregon SIP at 40 CFR 52.1970(c), Table 2 by removing OAR 629–043–0043, Smoke Management Plan (state effective 4/13/1987) to reflect EPA's August 22, 2012, approval (77 FR 50611) of OAR 629–048; and by adding:

- OAR 629–048–0100, Regulated Areas (state effective 1/1/2008);
- OAR 629–048–0160, Bear Creek/Rogue River Valley SSRA (state effective 1/1/2008);
- OAR 629–048–0300, Registration of Intent to Burn (state effective 1/1/2008);
- OAR 629–048–0330, Emission Inventories (state effective 1/1/2008);
- OAR 629–048–0400, Coordination with Other Regulating Jurisdictions and for Other Pollutants (state effective 1/1/2008).

We are also making technical corrections to the Oregon SIP at 40 CFR 52.1970(e), Table 5, Section 3, by revising the reference to Oregon's Smoke Management Plan Administrative Rule to reflect EPA's August 22, 2012, approval (77 FR 50611) of OAR 629–048 and by removing the reference to OAR 629–43–043.

## V. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, we are finalizing the incorporation by reference of Oregon Administrative Rules as discussed in sections III and IV of this document and described in the amendments to 40 CFR part 52 set forth below. These materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rule of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[1]

Also, in this rule, we are removing the incorporation by reference of Oregon Administrative Rules as discussed in section IV of this document and described in the amendments to 40 CFR part 52 set forth below.

EPA has made, and will continue to make, these materials generally available through *https://www.regulations.gov* and at the EPA Region 10 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

## VI. Statutory and Executive Order Reviews

Under the 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 those choices meet the criteria

[1] 62 FR 27968 (May 22, 1997).

of the CAA. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive 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 the requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 26, 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, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter.

Dated: May 19, 2021.

**Michelle L. Pirzadeh,**

*Acting Regional Administrator, Region 10.*

For the reasons set forth in the preamble, 40 CFR part 52 is 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 MM—Oregon

■ 2. Amend § 52.1970:

■ a. In paragraph (c), amend table 2 by revising the section entitled ''Chapter 629—Oregon Department of Forestry''; and

■ b. In paragraph (e):

■ i. Amend table 1 by adding an entry for ''ORS Chapter 477.013'' at the end of the table; and

■ ii. Amend table 5:

■ A.. Under the heading ''Section 3—Statewide Regulatory Provisions'', by revising the entry for ''Smoke Management Plan Administrative Rule''; and

■ B. Under the heading ''EPA-Approved Oregon State Directives'', by removing the entry for ''Directive 1–4–1–601'', and adding an entry for ''Oregon Department of Forestry Directive 1–4–1–601'' in its place.

The revisions and additions read as follows:

**§ 52.1970 Identification of plan.**

* * * * *

(c) * * *

TABLE 2—EPA-APPROVED OREGON ADMINISTRATIVE RULES (OAR) [1]

| State citation | Title/subject | State effective date | EPA approval date | Explanations |
|---|---|---|---|---|
| * | * | * | * | * |
| **Chapter 629—Oregon Department of Forestry** | | | | |
| 629–24–301 ..... | Maintenance of Productivity and Related Values. | 8/1/1987 | 11/1/2001, 66 FR 55105 ..... | Statewide Visibility Plan. |
| 629–048–0001 ..... | Title, Scope and Effective Dates ..... | 3/1/2019 | 5/25/2021, [Insert **Federal Register** citation]. | |
| 629–048–0005 ..... | Definitions ..... | 3/1/2019 | 5/25/2021, [Insert **Federal Register** citation]. | |
| 629–048–0010 ..... | Purpose ..... | 3/1/2019 | 5/25/2021, [Insert **Federal Register** citation]. | |
| 629–048–0020 ..... | Necessity of Prescribed Burning ..... | 3/1/2019 | 5/25/2021, [Insert **Federal Register** citation]. | |
| 629–048–0021 ..... | Necessity of Safeguarding Public Health ..... | 3/1/2019 | 5/25/2021, [Insert **Federal Register** citation]. | |

TABLE 2—EPA-APPROVED OREGON ADMINISTRATIVE RULES (OAR) [1]—Continued

| State citation | Title/subject | State effective date | EPA approval date | Explanations |
|---|---|---|---|---|
| 629–048–0100 ..... | Regulated Areas ..... | 1/1/2008 | 8/22/2012, 77 FR 50611. | |
| 629–048–0110 ..... | Characterization and Response to Smoke Incidents, Smoke Intrusions, and National Ambient Air Quality Standards (NAAQS) Exceedances. | 3/1/2019 | 5/25/2021, [Insert **Federal Register** citation]. | |
| 629–048–0120 ..... | Air Quality Maintenance Objectives ..... | 3/1/2019 | 5/25/2021, [Insert **Federal Register** citation]. | |
| 629–048–0130 ..... | Visibility Objectives ..... | 7/11/2014 | 5/25/2021, [Insert **Federal Register** citation]. | |
| 629–048–0135 ..... | Special Protection Zone Requirements ..... | 3/1/2019 | 5/25/2021, [Insert **Federal Register** citation]. | |
| 629–048–0137 ..... | SPZ Contingency Plan Requirements ..... | 3/1/2019 | 5/25/2021, [Insert **Federal Register** citation]. | |
| 629–048–0140 ..... | Smoke Sensitive Receptor Areas ..... | 3/1/2019 | 5/25/2021, [Insert **Federal Register** citation]. | |
| 629–048–0150 ..... | Criteria for Future Listing of Smoke Sensitive Receptor Areas. | 3/1/2019 | 5/25/2021, [Insert **Federal Register** citation]. | |
| 629–048–0160 ..... | Bear Creek/Rogue River Valley SSRA ..... | 1/1/2008 | 8/22/2012, 77 FR 50611. | |
| 629–048–0180 ..... | Communication, Community Response Plans, and Exemption Requests. | 3/1/2019 | 5/25/2021, [Insert **Federal Register** citation]. | |
| 629–048–0200 ..... | Regulated Areas ..... | 3/1/2019 | 5/25/2021, [Insert **Federal Register** citation]. | |
| 629–048–0210 ..... | Best Burn Practices; Emission Reduction Techniques. | 3/1/2019 | 5/25/2021, [Insert **Federal Register** citation]. | |
| 629–048–0220 ..... | Forecast Procedures ..... | 3/1/2019 | 5/25/2021, [Insert **Federal Register** citation]. | |
| 629–048–0230 ..... | Burn Procedures ..... | 3/1/2019 | 5/25/2021, [Insert **Federal Register** citation]. | |
| 629–048–0300 ..... | Registration of Intent to Burn ..... | 1/1/2008 | 8/22/2012, 77 FR 50611. | |
| 629–048–0310 ..... | Fees for Prescribed burning ..... | 3/1/2019 | 5/25/2021, [Insert **Federal Register** citation]. | |
| 629–048–0320 ..... | Reporting of Accomplishments ..... | 3/1/2019 | 5/25/2021, [Insert **Federal Register** citation]. | |
| 629–048–0330 ..... | Emission Inventories ..... | 1/1/2008 | 8/22/2012, 77 FR 50611. | |
| 629–048–0400 ..... | Coordination with Other Regulating Jurisdictions and for Other Pollutants. | 1/1/2008 | 8/22/2012, 77 FR 50611. | |
| 629–048–0450 ..... | Periodic Evaluation and Adaptive Management | 3/1/2019 | 5/25/2021, [Insert **Federal Register** citation]. | |
| 629–048–0500 ..... | Enforcement ..... | 3/1/2019 | 5/25/2021, [Insert **Federal Register** citation]. | |

* * * * * * *

[1] The EPA approves the requirements in Table 2 of this paragraph (c) only to the extent they apply to (1) pollutants for which NAAQS have been established (criteria pollutants) and precursors to those criteria pollutants as determined by EPA for the applicable geographic area; and (2) any additional pollutants that are required to be regulated under Part C of Title I of the CAA, but only for the purposes of meeting or avoiding the requirements of Part C of Title I of the CAA.

* * * * * (e) * * *

TABLE 1—OREGON STATE STATUTES APPROVED BUT NOT INCORPORATED BY REFERENCE

| State citation | Title/subject | State effective date | EPA approval date | Explanations |
|---|---|---|---|---|
| * | * * * | * | * * | * |
| ORS Chapter 477.013 ..... | Smoke Management Plan; rules ..... | 3/1/2019 | 5/25/2021, [Insert **Federal Register** citation]. | |

* * * * *

TABLE 5—STATE OF OREGON AIR QUALITY CONTROL PROGRAM APPROVED BUT NOT INCORPORATED BY REFERENCE

| Name of SIP provision | Applicable geographic or nonattainment area | State submittal date | EPA approval date | Explanations |
|---|---|---|---|---|
| * | * * * | * | * * | * |
| **Section 3—Statewide Regulatory Provisions** | | | | |
| * | * * * | * | * * | * |
| Smoke Management Plan Administrative Rule. | Statewide ..... | 1/1/2008, 11/3/2014, 9/27/2019. | 8/22/2012, 77 FR 50611 5/25/2021, [Insert **Federal Register** citation]. | Refer to section (c) for approved regulations incorporated by reference. |

TABLE 5—STATE OF OREGON AIR QUALITY CONTROL PROGRAM APPROVED BUT NOT INCORPORATED BY REFERENCE—Continued

| Name of SIP provision | Applicable geographic or nonattainment area | State submittal date | EPA approval date | Explanations |
|---|---|---|---|---|
| * | * | * | * | * |
| **EPA-Approved Oregon State Directives** | | | | |
| Oregon Department of Forestry Directive 1–4–1–601. | Operational Guidance for the Oregon Smoke Management Program. | 9/27/2019 | 5/25/2021, [Insert **Federal Register** citation]. | |
| * | * | * | * | * |

[FR Doc. 2021–11038 Filed 5–24–21; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

### Approval and Promulgation of Implementation Plans

*CFR Correction*

■ In Title 40 of the Code of Federal Regulations, Protection of Environment, Part 52 (§ 52.2020 to end of part 52), revised as of July 1, 2020, on page 15, the entry for 127.702 is reinstated to read as follows:

**§ 52.2020 Identification of plan.**

* * * * *

(c) * * *

(1) * * *

| State citation | Title/subject | State effective date | EPA approval date | Additional explanation/ § 52.2063 citation |
|---|---|---|---|---|
| **Title 25—Environmental Protection Article III—Air Resources** | | | | |
| * | * | * | * | * |
| **Chapter 127—Construction, Modification, Reactivation, and Operation of Sources** | | | | |
| * | * | * | * | * |
| **Subchapter I—Plan Approval and Operating Permit Fees** | | | | |
| Section 127.702 | Plan approval fees | 11/26/94 | 7/30/96, 61 FR 39597 | (c)(110)(i)(C). |
| * | * | * | * | * |

[FR Doc. 2021–11116 Filed 5–24–21; 8:45 am]

**BILLING CODE 0099–10–D**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 81

**[EPA–R04–OAR–2020–0482; FRL–10024–20–Region 4]**

### Air Quality Designation; TN: Redesignation of the Sumner County 2010 Sulfur Dioxide Unclassifiable Area

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a submission by the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), on September 29, 2020, to redesignate the Sumner County, Tennessee, unclassifiable area (hereinafter referred to as the ''Sumner County Area'' or ''Area'') to attainment/unclassifiable for the 2010 1-hour primary sulfur dioxide ($SO_2$) national ambient air quality standard (hereinafter referred to as the 2010 $SO_2$ 1-hour NAAQS). EPA now has sufficient information to determine that the Sumner County Area is attaining the 2010 1-hour $SO_2$ NAAQS and is approving the State's request and redesignating the Area to attainment/unclassifiable for the 2010 1-hour $SO_2$ NAAQS.

**DATES:** This rule is effective June 24, 2021.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2020–0482. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information may not be publicly available, *i.e.,* Confidential Business Information 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 either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION**

**CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Evan Adams, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Mr. Adams can be reached by telephone at (404) 562–9009 or via electronic mail at *adams.evan@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Clean Air Act (CAA or Act) establishes a process for air quality management through the establishment and implementation of the national ambient air quality standards (NAAQS). On June 2, 2010, EPA revised the primary $SO_2$ NAAQS, establishing a new 1-hour $SO_2$ standard of 75 parts per billion (ppb). *See* 75 FR 35520 (June 22, 2010).[1] After the promulgation of a new or revised NAAQS, EPA is required to designate all areas of the country, pursuant to section 107(d)(1)–(2) of the CAA. For the 2010 1-hour $SO_2$ NAAQS, designations were based on EPA's application of the nationwide analytical approach to, and technical assessment of, the weight of evidence for each area, including but not limited to available air quality monitoring data and air quality modeling results. In advance of designating the Sumner County Area, EPA issued updated designations guidance through a March 20, 2015, memorandum from Stephen D. Page, Director, U.S. EPA, Office of Air Quality Planning and Standards, to Air Division Directors, U.S. EPA Regions 1–10, titled ''Updated Guidance for Area Designations for the 2010 Primary Sulfur Dioxide National Ambient Air Quality Standard,'' which contains the factors that EPA evaluated in determining the appropriate designations and associated boundaries when designating the Sumner County Area, including: (1) Air quality characterization via ambient monitoring or dispersion modeling results; (2) emissions-related data; (3) meteorology; (4) geography and topography; and (5) jurisdictional boundaries.[2] [3] The guidance also references EPA's non-binding Monitoring Technical Assistance Document (Monitoring TAD) and Modeling Technical Assistance Document (Modeling TAD),[4] which contain scientifically sound recommendations on how air agencies should conduct such monitoring or modeling.

EPA completed the first set of initial area designations for the 2010 1-hour $SO_2$ NAAQS in 2013 (Round 1). Pursuant to a March 2, 2015, consent decree and court-ordered schedule,[5] EPA finalized a second set of initial area designations for the 2010 1-hour $SO_2$ NAAQS in 2016 (Round 2). The March 2, 2015, consent decree identified the following emissions criteria such that EPA must designate, in Round 2, an area surrounding any stationary source which had: (a) Annual emissions in 2012 exceeding 16,000 tons of $SO_2$, or (b) both an annual average emissions rate of at least 0.45 pounds of $SO_2$ per one million British thermal units, according to EPA's Clean Air Markets Division Database, and annual emissions of at least 2,600 tons of $SO_2$ in 2012. Sumner County, Tennessee, contained one source, Tennessee Valley Authority (TVA) Gallatin Fossil Plant (TVA Gallatin), that met these Round 2 criteria. EPA evaluated the Area, using the five factors identified previously, during the Round 2 designations. TVA Gallatin is a large Electric Generating Unit located in north central Tennessee in the southern portion of Sumner County, approximately five kilometers (km) southeast of the center of Gallatin, Tennessee. The facility was included in the list of facilities to be designated pursuant to the March 2, 2015, Consent Decree.[6] [7]

EPA's March 20, 2015, guidance specified the designation category definitions to be used in the Round 2 designations.[8] EPA was unable to determine whether the Sumner County Area met the definition of a nonattainment area or the definition of an attainment area based on the available information at the time of the Round 2 designations. As a result, EPA designated the Sumner County Area as unclassifiable in the Round 2 designations published on July 12, 2016.[9] The boundary for this designation was the jurisdictional boundary of Sumner County.[10]

In support of this final redesignation action, EPA evaluated new modeling for the Sumner County Area provided by Tennessee and developed a new technical support document (TSD).[11] On September 29, 2020, Tennessee submitted a request for EPA to redesignate the Sumner County Area to attainment/unclassifiable for the 2010 1-hour primary $SO_2$ NAAQS based on air quality dispersion modeling showing that the Area is in compliance with the 2010 1-hour primary $SO_2$ NAAQS.[12] [13] [14]

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[1] On February 25, 2019 (effective April 17, 2019), based on a review of the full body of currently available scientific evidence and exposure/risk information, EPA issued a decision to retain the existing NAAQS for $SO_2$. *See* 84 FR 9866.

[2] The 2015 memorandum is available at *https://www.epa.gov/sites/production/files/2016-04/documents/20150320so2designations.pdf*.

[3] This designation guidance has since been superseded by a July 22, 2016, designation guidance memorandum from Stephen D. Page, Director, U.S. EPA, Office of Air Quality Planning and Standards, to Regional Air Division Directors, U.S. EPA Regions 1–10. The 2016 memorandum is available at *https://www.epa.gov/sites/production/files/2016-07/documents/areadesign.pdf*.

[4] ''Sulfur Dioxide ($SO_2$) National Ambient Air Quality Standards Designations Modeling Technical Assistance Document,'' August 2016 draft, available at *https://www.epa.gov/sites/production/files/2016-06/documents/so2modelingtad.pdf*. Note, EPA released earlier drafts of this document in May 2013 and February 2016.

[5] *See Sierra Club et. al.* v. *McCarthy,* Civil Action No. 3:13–cv–3953–SI (N.D. Cal.), and 79 FR 31325 (June 2, 2014).

[6] TVA Gallatin was also subject to EPA's 2015 Data Requirements Rule (DRR) for the 2010 $SO_2$ 1-hour NAAQS. See *https://www.epa.gov/sites/production/files/2016-06/documents/tn.pdf* for Tennessee's letter dated January 15, 2016, with the Data Requirements Rule (DRR) source list.

[7] In accordance with the DRR, 40 CFR part 51, subpart BB, through a letter dated June 7, 2016, Tennessee notified EPA that the State chose to characterize peak 1-hour $SO_2$ concentrations for TVA Gallatin using air quality dispersion modeling.

[8] Specifically, EPA defined a ''nonattainment'' area as an area that EPA has determined violates the 2010 1-hour $SO_2$ NAAQS based on the most recent three years of ambient air quality monitoring data or an appropriate modeling analysis, or that EPA has determined contributes to a violation in a nearby area; and defined an ''attainment'' area as an area that EPA has determined meets the 2010 1-hour $SO_2$ NAAQS and does not contribute to a violation of the NAAQS in a nearby area based on either: (a) The most recent 3 years of ambient air quality monitoring data from a monitoring network in an area that is sufficient to be compared to the NAAQS per EPA interpretations in the Monitoring TAD, or (b) an appropriate modeling analysis.

[9] *See* 81 FR 45039 (July 12, 2016), codified at 40 CFR 81.343.

[10] Detailed rationale, analyses, and other information supporting EPA's original Round 2 designation for this Area can be found in the intended and final Round 2 designation's TSD for Tennessee. This document, along with all other supporting materials for the original 2010 1-hour $SO_2$ NAAQS designation for Sumner County, can be found on EPA's $SO_2$ designations website. EPA $SO_2$ designations website can be found at *https://www.epa.gov/sulfur-dioxide-designations*.

[11] The TSD for this proposed action is included in the docket.

[12] The demonstration of attainment through air quality dispersion modeling requires an area to review and report annual $SO_2$ emissions pursuant to DRR ongoing verification at 40 CFR 51.1205(b). In its September 29, 2020, redesignation request letter, Tennessee also requested to terminate the section 51.1205(b) annual reporting requirement because the modeling analyses demonstrated a value of at least 50 percent below the 2010 1-hour $SO_2$ NAAQS at all receptors. EPA will address the annual reporting termination request in a separate action which has no bearing on the final approval of the redesignation.

[13] *See* letter signed by Michelle Owenby, Director of TDEC's Division of Air Pollution Control, September 29, 2020, requesting that EPA

The updated modeling was performed using the current version of EPA's recommended dispersion model, AERMOD version 19191, with the most recent three years of actual $SO_2$ emissions (2017–2019) from the TVA Gallatin facility and concurrent meteorology data.[15]

After reviewing Tennessee's request under CAA section 107(d)(3)(D) and all available information, EPA has determined that the modeling provided by the State comports with EPA's current Modeling TAD and EPA's Guideline on Air Quality Models (40 CFR part 51 Appendix W) and is acceptable for assessing the attainment status of the Sumner County Area. The State's modeling indicates that the predicted maximum design value at any receptor in the modeling domain is 60.5 micrograms per cubic meter ($\mu g/m^3$), or 23.1 ppb. EPA's review confirms that the modeling results appropriately characterize the air quality in the Sumner County Area and that predicted ambient $SO_2$ concentrations are below the 2010 1-hour $SO_2$ NAAQS of 196.4 $\mu g/m^3$, or 75 ppb. Additionally, there is no evidence of monitored or modeled violations in the surrounding counties such that the source is contributing to any nearby area that does not meet the NAAQS.

EPA is taking final action to approve Tennessee's redesignation request and is redesignating the entirety of Sumner County that was designated as unclassifiable in July 2016 to attainment/unclassifiable based on the currently available information that demonstrates attainment of the 2010 1-hour $SO_2$ NAAQS.[16] In a notice of proposed rulemaking (NPRM) published on March 5, 2021 (86 FR 12892), EPA proposed to approve the State's redesignation request. The details of Tennessee's submittal and the rationale for EPA's actions are further explained in the NPRM. Comments on the NPRM were due on or before April 5, 2021. EPA did not receive any adverse comments on the action.

## III. Final Action

EPA is approving Tennessee's September 29, 2020, request to redesignate the Sumner County Area from unclassifiable to attainment/unclassifiable for the 2010 1-hour $SO_2$ NAAQS. EPA has reviewed the modeling provided by the State with its redesignation request and finds that it complies with EPA's current Modeling TAD and EPA's Guideline on Air Quality Models (40 CFR part 51 Appendix W) and is acceptable for assessing the attainment status of the Sumner County Area. This approval of the redesignation request changes the legal designation, found at 40 CFR part 81, of Sumner County from unclassifiable to attainment/unclassifiable for the 2010 1-hour $SO_2$ NAAQS.

## IV. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment/unclassifiable is an action that affects the status of a geographical area and does not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment/unclassifiable does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Accordingly, this action merely redesignates an area to attainment/unclassifiable and does not impose additional requirements. 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
- Will not have disproportionate human health or environmental effects under Executive Order 12898 (59 FR 7629, February 16, 1994).

This final redesignation does not apply to 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 as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 26, 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

redesignate Sumner County, Tennessee, to attainment/unclassifiable for the 2010 1-hour $SO_2$ NAAQS.

[14] EPA is redesignating the area to ''attainment/unclassifiable'' because, as noted in the proposal, EPA reserves the ''attainment'' category for when EPA redesignates a nonattainment area that has attained the relevant NAAQS and has an approved maintenance plan.

[15] The TSD included in the docket for this proposed redesignation action provides a detailed summary of Tennessee's modeling analysis and EPA's evaluation of the modeling. The modeling files are not included in the electronic docket for this action due to their nature, size, and incompatibility with the Federal Docket Management System. These files are available at the EPA Region 4 office for review. To request these files, please contact the person listed in the notice under the section titled **FOR FURTHER INFORMATION CONTACT**.

[16] For redesignations of unclassifiable areas, the necessary analysis is equivalent to what would be required in a designation in the first instance since EPA has not found the area to be attainment or nonattainment. In this first instance, the goal is to characterize existing ambient air quality. As such, it is appropriate to use actual emissions for estimating existing air quality. EPA's acceptance of modeling using actual emissions in this instance should not be construed to define what would be needed for a demonstration of attainment and maintenance for purposes of a redesignation of a nonattainment area to attainment.

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 81**

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: May 17, 2021.

**John Blevins,**

*Acting Regional Administrator, Region 4.*

For the reasons stated in the preamble, EPA amends 40 CFR part 81 as follows:

## PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 1. The authority citation for part 81 continues to read as follows:

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

■ 2. In § 81.343, the table titled ''Tennessee–2010 Sulfur Dioxide NAAQS (Primary)'' is amended by revising the entry for ''Sumner County, TN'' to read as follows:

**§ 81.343 Tennessee.**

* * * * *

TENNESSEE—2010 SULFUR DIOXIDE NAAQS

[Primary]

| Designated area | Designation | |
|---|---|---|
| | Date [1] | Type |
| * * | * * * | * * |
| Sumner County, TN [2]<br>Sumner County | June 24, 2021 | Attainment/Unclassifiable. |
| * * | * * * | * * |

[1] This date is April 9, 2018, unless otherwise noted.
[2] Excludes Indian country located in each area, if any, unless otherwise specified.

* * * * *

[FR Doc. 2021–10983 Filed 5–24–21; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 112

### Definitions

*CFR Correction*

■ In Title 40 of the Code of Federal Regulations, Protection of Environment, Parts 100 to 135, revised as of July 1, 2020, on page 26, in section 112.2, reinstate the definition of ''worst case discharge,'' in alphabetical order, to read as follows:

* * * * *

*Worst case discharge* for an on-shore non-transportation related facility means the largest foreseeable discharge in adverse weather conditions as determined using the worksheets in Appendix D to this part.

[FR Doc. 2021–11115 Filed 5–24–21; 8:45 am]

**BILLING CODE 0099–10–D**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### 45 CFR Parts 86 and 92

### Notification of Interpretation and Enforcement of Section 1557 of the Affordable Care Act and Title IX of the Education Amendments of 1972

**AGENCY:** Office of the Secretary, Department of Health and Human Services (HHS).

**ACTION:** Notification of interpretation and enforcement.

**SUMMARY:** This Notification is to inform the public that, consistent with the Supreme Court's decision in *Bostock* and Title IX, beginning May 10, 2021, the Department of Health and Human Services (HHS) will interpret and enforce section 1557 of the Affordable Care Act prohibition on discrimination on the basis of sex to include: Discrimination on the basis of sexual orientation; and discrimination on the basis of gender identity. This interpretation will guide the Office for Civil Rights (OCR) in processing complaints and conducting investigations, but does not itself determine the outcome in any particular case or set of facts.

**DATES:** This notification of interpretation became effective May 10, 2021.

**FOR FURTHER INFORMATION CONTACT:** Rachel Seeger at (202) 619–0403 or (800) 537–7697 (TDD).

**SUPPLEMENTARY INFORMATION:** HHS is informing the public that, consistent with the Supreme Court's decision in *Bostock* [1] and Title IX,[2] beginning May 10, 2021, the Department of Health and Human Services (HHS) will interpret and enforce Section 1557's [3] prohibition on discrimination on the basis of sex to include: (1) Discrimination on the basis of sexual orientation; and (2) discrimination on the basis of gender identity.

### I. Background

The Office for Civil Rights (OCR) at the U.S. Department of Health and Human Services (the Department) is responsible for enforcing Section 1557 of the Affordable Care Act (Section 1557) and regulations issued under Section 1557, protecting the civil rights of individuals who access or seek to access covered health programs or activities. Section 1557 prohibits discrimination on the bases of race, color, national origin, sex, age, and

[1] *Bostock* v. *Clayton County,* 140 S. Ct. 1731 (2020). *https://www.supremecourt.gov/opinions/19pdf/17-1618_hfci.pdf.*

[2] Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq. https://www.govinfo.gov/content/pkg/CFR-2011-title45-vol1/pdf/CFR-2011-title45-vol1-part86.pdf.*

[3] Section 1557 of the Patient Protection and Affordable Care Act. *https://www.govinfo.gov/content/pkg/USCODE-2010-title42/pdf/USCODE-2010-title42-chap157-subchapVI-sec18116.pdf.*

disability in covered health programs or activities. 42 U.S.C. 18116(a).

On June 15, 2020, the U.S. Supreme Court held that Title VII of the Civil Rights Act of 1964 (Pub. L. 88–352) (Title VII)'s [4] prohibition on employment discrimination based on sex encompasses discrimination based on sexual orientation and gender identity. *Bostock* v. *Clayton County, GA,* 140 S. Ct. 1731 (2020). The *Bostock* majority concluded that the plain meaning of ''because of sex'' in Title VII necessarily included discrimination because of sexual orientation and gender identity. *Id.* at 1753–54.

Since *Bostock,* two federal circuits have concluded that the plain language of Title IX of the Education Amendments of 1972's (Title IX) prohibition on sex discrimination must be read similarly. See *Grimm* v. *Gloucester Cnty. Sch. Bd.,* 972 F.3d 586, 616 (4th Cir. 2020), *as amended* (Aug. 28, 2020),[5] *reh'g en banc denied,* 976 F.3d 399 (4th Cir. 2020), *petition for cert. filed,* No. 20–1163 (Feb. 24, 2021); *Adams* v. *Sch. Bd. of St. Johns Cnty.,* 968 F.3d 1286, 1305 (11th Cir. 2020), *petition for reh'g en banc pending,* No. 18–13592 (Aug. 28, 2020).[6] In addition, on March 26, 2021, the Civil Rights Division of the U.S. Department of Justice issued a memorandum to Federal Agency Civil Rights Directors and General Counsel [7] concluding that the Supreme Court's reasoning in *Bostock* applies to Title IX of the Education Amendments of 1972. As made clear by the Affordable Care Act, Section 1557 prohibits discrimination ''on the grounds prohibited under . . . Title IX.'' 42 U.S.C. 18116(a).

Consistent with the Supreme Court's decision in *Bostock* and Title IX, beginning today, OCR will interpret and enforce Section 1557's prohibition on discrimination on the basis of sex to include: (1) Discrimination on the basis of sexual orientation; and (2) discrimination on the basis of gender identity. This interpretation will guide OCR in processing complaints and conducting investigations, but does not itself determine the outcome in any particular case or set of facts.

In enforcing Section 1557, as stated above, OCR will comply with the Religious Freedom Restoration Act, 42 U.S.C. 2000bb *et seq.,*[8] and all other legal requirements. Additionally, OCR will comply with any applicable court orders that have been issued in litigation involving the Section 1557 regulations, including *Franciscan Alliance, Inc.* v. *Azar,* 414 F. Supp. 3d 928 (N.D. Tex. 2019); [9] *Whitman-Walker Clinic, Inc.* v. *U.S. Dep't of Health & Hum. Servs.,* 485 F. Supp. 3d 1 (D.D.C. 2020); [10] *Asapansa-Johnson Walker* v. *Azar,* No. 20–CV–2834, 2020 WL 6363970 (E.D.N.Y. Oct. 29, 2020); [11] and *Religious Sisters of Mercy* v. *Azar,* No. 3:16–CV–00386, 2021 WL 191009 (D.N.D. Jan. 19, 2021).[12]

OCR applies the enforcement mechanisms provided for and available under Title IX when enforcing Section 1557's prohibition on sex discrimination. 45 CFR 92.5(a). Title IX's enforcement procedures can be found at 45 CFR 86.71 (adopting the procedures at 45 CFR 80.6 through 80.11 and 45 CFR part 81).

If you believe that a covered entity violated your civil rights, you may file a complaint at *https://www/hhs.gov/ocr/complaints.*

Dated: May 13, 2021.

**Xavier Becerra,**

*Secretary, Department of Health and Human Services.*

[FR Doc. 2021–10477 Filed 5–24–21; 8:45 am]

**BILLING CODE 4153–01–P**

[4] Title VII of the Civil Rights Act of 1964 (Pub. L. 88–352) (41 CFR part 60–20). *https://www.govinfo.gov/content/pkg/FR-2015-01-30/pdf/2015-01422.pdf.*

[5] *Grimm* v. *Gloucester Cnty. Sch. Bd.,* 972 F.3d 586, 616 (4th Cir. 2020). *https://www.ca4.uscourts.gov/opinions/191952.P.pdf.*

[6] *Adams* v. *Sch. Bd. of St. Johns Cnty.,* 968 F.3d 1286, 1305 (11th Cir. 2020). *https://media.ca11.uscourts.gov/opinions/pub/files/201813592.pdf.*

[7] March 26, 2021, the Civil Rights Division of the U.S. Department of Justice memorandum to Federal Agency Civil Rights Directors and General Counsel re: Application *of Bostock* v. *Clayton County* to Title IX of the Education Amendments of 1972. *https://www.justice.gov/crt/page/file/1383026/download.*

[8] Religious Freedom Restoration Act, 42 U.S.C. 2000bb *et seq. https://www.govinfo.gov/content/pkg/USCODE-2010-title42/pdf/USCODE-2010-title42-chap21B-sec2000bb-1.pdf.*

[9] *Franciscan Alliance, Inc.* v. *Azar,* 414 F. Supp. 3d 928 (N.D. Tex. 2019). *https://www.govinfo.gov/content/pkg/USCOURTS-nyed-1_20-cv-02834/pdf/USCOURTS-nyed-1_20-cv-02834-0.pdf.*

[10] *Whitman-Walker Clinic, Inc.* v. *U.S. Dep't of Health & Hum. Servs.,* 485 F. Supp. 3d 1 (D.D.C. 2020). *http://www.ca5.uscourts.gov/opinions/unpub/20/20-10093.0.pdf.*

[11] *Asapansa-Johnson Walker* v. *Azar,* No. 20–CV–2834, 2020 WL 6363970 (E.D.N.Y. Oct. 29, 2020). *https://www.govinfo.gov/content/pkg/USCOURTS-nyed-1_20-cv-02834/pdf/USCOURTS-nyed-1_20-cv-02834-0.pdf.*

[12] *Religious Sisters of Mercy* v. *Azar,* No. 3:16–CV–00386, 2021 WL 191009 (D.N.D. Jan. 19, 2021). *https://www.hhs.gov/sites/default/files/document-124-memorandum-opinion-and-order.pdf.*

## NATIONAL SCIENCE FOUNDATION

### 45 CFR Part 670

**RIN 3145–AA59**

### Conservation of Antarctic Animals and Plants

**AGENCY:** National Science Foundation.

**ACTION:** Final rule.

**SUMMARY:** Pursuant to the Antarctic Conservation Act of 1978, as amended, the National Science Foundation (NSF) is amending its regulations to reflect changes to Annex II to the Protocol on Environmental Protection to the Antarctic Treaty (Protocol) agreed to by the Antarctic Treaty Consultative Parties. These changes reflect the outcomes of a legally binding Measure already adopted by the Parties at the Thirty-Second Antarctic Treaty Consultative Meeting (ATCM) in Baltimore, MD (2009).

**DATES:** Effective May 25, 2021.

**FOR FURTHER INFORMATION CONTACT:** Bijan Gilanshah, Assistant General Counsel, Office of the General Counsel, at 703–292–8060, National Science Foundation, 2415 Eisenhower Avenue, W 18200, Alexandria, VA 22314.

**SUPPLEMENTARY INFORMATION:** Measure 16 (2009) was adopted at the Thirty-Second ATCM at Baltimore, MD, on April 17, 2009 and amends Annex II to the Protocol. The revisions were composed primarily of minor clarifying, editorial and technical updates which would result in generally insignificant changes in current practice or legal requirements. For example, Antarctic terrestrial and freshwater invertebrates (generally microscopic or miniscule) are already protected by statute and regulation from ''harmful interference'' and related permitting requirements. These Annex II changes brought such protections in line with other Antarctic species for purposes of ''takes'' of such organisms. Other changes would also result in no significant change in U.S. practice, including changes to language in Annex II regarding criteria for taking zoo specimens, criteria for introduction of non-native species, and criteria for lethal takings of specially protected species, etc. Finally, one change removes an erroneous reference to ''marine algae'' in the current regulation and a new section is added specifically designating Antarctic native invertebrates.

The Antarctic Conservation Act of 1978, as amended (''ACA'') (16 U.S.C. 2401, *et seq.*) implements the Protocol. Section 2405 of title 16 of the ACA directs the Director of the National

Science Foundation to issue such regulations as are necessary and appropriate to implement Annex II to the Protocol. Accordingly, these revisions reflect the changes to Annex II as formally adopted by the ATCM.

**Public Participation**

The changes merely reflect decisions already made by the Antarctic Treaty Parties. Because these amendments involve a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553), requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Further, because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

**Environmental Impact**

This final rule makes conforming changes to the National Science Foundation's regulations to reflect the outcomes of the Antarctic Treaty Consultative Meeting in 2009. No assessment is required under Executive Order 12114 of January 4, 1979.

**No Takings Implications**

The Foundation has determined that the final rule will not involve the taking of private property pursuant to Executive Order 12630.

**Civil Justice Reform**

The Foundation has considered this final rule under Executive Order 12988 on civil justice reform and determined the principles underlying and requirements of Executive Order 12988 are not implicated.

**Federalism and Consultation and Coordination With Indian Tribal Governments**

The Foundation has considered this final rule under the requirements of Executive Order 13132 on federalism and has determined that the final rule conforms with the federalism principles set out in this Executive Order; will not impose any compliance costs on the States; and will not have substantial direct effects on the States, the relationship between the Federal government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the Foundation has determined that no further assessment of federalism implications is necessary. Moreover, the Foundation has determined that promulgation of this final rule does not require advance consultation with Indian Tribal officials as set forth in Executive Order 13175, Consultation and Coordination with Indian Tribal Governments.

**Energy Effects**

The Foundation has reviewed this final rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Foundation has determined that this final rule does not constitute a significant energy action as defined in the Executive Order.

**Unfunded Mandates**

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the Foundation has assessed the effects of this final rule on State, local, and Tribal governments and the private sector. This final rule will not compel the expenditure of $100 million or more by any State, local, or Tribal government or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

**Controlling Paperwork Burdens on the Public**

This final rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

**Congressional Review Act**

The Office of Information and Regulatory Affairs in the Office of Management and Budget has determined that this action is not a major rule as defined by Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (known as the Congressional Review Act or CRA)), 5 U.S.C. 804(2). This action will not result in: ''an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.'' However, pursuant to the CRA, NSF will submit a copy of this final rule to both Houses of Congress and to the Comptroller General.

**List of Subjects in 45 CFR Part 670**

Administrative practice and procedure, Antarctica, Exports, Imports, Plants, Wildlife.

Pursuant to the authority granted by 16 U.S.C. 2405(a)(1), NSF hereby amends 45 CFR part 670 as set forth below:

## PART 670—[AMENDED]

■ 1. The authority citation for part 670 continues to read as follows:

**Authority:** 16 U.S.C. 2405, as amended.

■ 2. Amend § 670.2 by revising paragraphs (a) and (d) to read as follows:

**§ 670.2 Scope.**

* * * * *

(a) Taking mammals, birds, plants, or invertebrates native to Antarctica.

* * * * *

(d) Receiving, acquiring, transporting, offering for sale, selling, purchasing, importing, exporting or having custody, control, or possession of any mammal, bird, plant or invertebrate, native to Antarctica that was taken in violation of the Act.

* * * * *

■ 3. Revise § 670.3 to read as follows:

**§ 670.3 Definitions.**

In this part:

*Act* means the Antarctic Conservation Act of 1978, Public Law 95–541 (16 U.S.C. 2401 *et seq.*) as amended by the Antarctic Science, Tourism, and Conservation Act of 1996, Public Law 104–227.

*Antarctic Specially Protected Area* means an area designated by the Antarctic Treaty Parties to protect outstanding environmental, scientific, historic, aesthetic, or wilderness values or to protect ongoing or planned scientific research, designated in subpart F of this part.

*Antarctica* means the area south of 60 degrees south latitude.

*Director* means the Director of the National Science Foundation, or an officer or employee of the Foundation designated by the Director.

*Harmful interference* means—

(1) Flying or landing helicopters or other aircraft in a manner that disturbs concentrations of native birds or seals;

(2) Using vehicles or vessels, including hovercraft and small boats, in a manner that disturbs concentrations of native birds or seals;

(3) Using explosives or firearms in a manner that disturbs concentrations of native birds or seals;

(4) Willfully disturbing breeding or molting birds or concentrations of native birds or seals by persons on foot;

(5) Significantly damaging concentrations of native terrestrial plants by landing aircraft, driving vehicles, or walking on them, or by other means; and

(6) Any activity that results in the significant adverse modification of habitats of any species or population of native mammal, native bird, native plant, or native invertebrate.

*Import* means to land on, bring into, or introduce into, or attempt to land on, bring into or introduce into, any place subject to the jurisdiction of the United States, including the 12-mile territorial sea of the United States, whether or not such act constitutes an importation within the meaning of the customs laws of the United States.

*Management plan* means a plan to manage the activities and protect the special value or values in an Antarctic Specially Protected Area designated by the United States as such a site consistent with plans adopted by the Antarctic Treaty Consultative Parties.

*Native bird* means any member, at any stage of its life cycle, of any species of the class Aves which is indigenous to Antarctica or occurs there seasonally through natural migrations, that is designated in subpart D of this part. It includes any part, product, egg, or offspring of or the dead body or parts thereof excluding fossils.

*Native invertebrate* means any member of any species of terrestrial or freshwater invertebrate, at any stage of its life cycle, which is indigenous to Antarctica. It includes any part thereof, but excludes fossils.

*Native mammal* means any member, at any stage of its life cycle, of any species of the class Mammalia, which is indigenous to Antarctica or occurs there naturally through migrations, that is designated in subpart D of this part. It includes any part, product, offspring of or the dead body or parts thereof but excludes fossils.

*Native plant* means any member of any species of terrestrial or freshwater vegetation, including bryophytes, lichens, fungi, and algae, at any stage of its life cycle which is indigenous to Antarctica that is designated in subpart D of this part. It includes seeds and other propagules, or parts of such vegetation, but excludes fossils.

*Person* has the meaning given that term in section 1 of title 1, United States Code, and includes any person subject to the jurisdiction of the United States and any department, agency, or other instrumentality of the Federal Government or of any State or local government.

*Protocol* means the Protocol on Environmental Protection to the Antarctic Treaty, signed October 4, 1991, in Madrid, and all annexes thereto, including any future amendments to which the United States is a Party.

*Specially Protected Species* means any native species designated as a Specially Protected Species that is designated in subpart E of this part.

*Take* or *taking* means to kill, injure, capture, handle, or molest a native mammal or bird, or to remove or damage such quantities of native plants or invertebrates that their local distribution or abundance would be significantly affected or to attempt to engage in such conduct.

*Treaty* means the Antarctic Treaty signed in Washington, DC on December 1, 1959.

*United States* means the several states of the Union, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and other commonwealth, territory, or possession of the United States.

■ 4. Amend § 670.4 by revising paragraphs (a), (d), and (e) to read as follows:

**§ 670.4 Prohibited acts.**

* * * * *

(a) Taking of native mammal, bird, plants or invertebrates. It is unlawful for any person to take within Antarctica a native mammal, a native bird, native plants or native invertebrates.

* * * * *

(d) Possession, sale, export, and import of native mammals, birds, plants and invertebrates. It is unlawful for any person to receive, acquire, transport, offer for sale, sell, purchase, export, import, or have custody, control, or possession of, any native bird, native mammal, native plant or native invertebrate which the person knows, or in the exercise of due care should have known, was taken in violation of the Act.

(e) Introduction of non-indigenous species into Antarctica. It is unlawful for any person to introduce into Antarctica any species which is not indigenous to Antarctica or which does not occur there naturally through migrations, as specified in subpart H of this part, except as provided in §§ 670.7 and 670.8.

* * * * *

■ 5. Revise § 670.6 to read as follows:

**§ 670.6 Prior possession exception.**

(a) *Exception.* Section 670.4 shall not apply to:

(1) Any native mammal, bird, plant or invertebrate which is held in captivity on or before October 28, 1978; or

(2) Any offspring of such mammal, bird, plant or invertebrate.

(b) *Presumption.* With respect to any prohibited act set forth in § 670.4 which occurs after April 29, 1979, the Act creates a rebuttable presumption that the native mammal, bird, plant or invertebrate involved in such act was not held in captivity on or before October 28, 1978, or was not an offspring referred to in paragraph (a) of this section.

■ 6. Revise § 670.8 to read as follows:

**§ 670.8 Foreign permit exception.**

Section 670.4(d) and (e) shall not apply to transporting, carrying, receiving, or possessing native mammals, native plants, native invertebrates or native birds or to the introduction of non-indigenous species when conducted by an agency of the United States Government on behalf of a foreign national operating under a permit issued by a foreign government to give effect to the Protocol.

■ 7. Amend § 670.11 by revising paragraphs (a)(2) and (5) to read as follows:

**§ 670.11 Applications for permits.**

(a) * * *

(2) Where the applicant seeks to engage in a taking:

(i) The scientific names, numbers, and description of native mammals, native birds, native plants or native invertebrates to be taken; and

(ii) Whether the native mammals, birds, plants, invertebrates or part of them are to be imported into the United States, and if so, their ultimate disposition.

* * * * *

(5) Where the application is for the introduction of non-indigenous living organisms, the scientific name and number to be introduced;

* * * * *

■ 8. Revise § 670.17 to read as follows:

**§ 670.17 Specific issuance criteria.**

With the exception of specially protected species of mammals, birds, plants and invertebrates designated in subpart E of this part, permits to engage in a taking or harmful interference:

(a) May be issued only for the purpose of providing—

(1) Specimens for scientific study or scientific information; or

(2) Specimens for museums, or other educational uses; or

(3) Specimens for zoological gardens, but with respect to native mammals or

birds, only if such specimens cannot be obtained from existing captive collections elsewhere, or if there is a compelling conservation requirement; and

(4) For unavoidable consequences of scientific activities or the construction and operation of scientific support facilities; and

(b) Shall ensure, as far as possible, that—

(1) No more native mammals, birds, plants or invertebrates are taken than are necessary to meet the purposes set forth in paragraph (a) of this section;

(2) No more native mammals or native birds are taken in any year than can normally be replaced by net natural reproduction in the following breeding season;

(3) The variety of species and the balance of the natural ecological systems within Antarctica are maintained; and

(4) The authorized taking, transporting, carrying, or shipping of any native mammal or bird is carried out in a humane manner.

**§ 670.21 [Amended]**

■ 8. Amend § 670.21 by removing the term ''Marine algae''.

■ 9. Add § 670.22 to read as follows:

**§ 670.22 Designation of native invertebrates.**

The following are designated native invertebrates:

Mites
Nematodes
Rotifers
Springtails
Tardigrades

■ 10. Amend § 670.23 by revising the introductory text and paragraph (c) to read as follows:

**§ 670.23 Specific issuance criteria.**

Permits authorizing the taking of mammals, birds, plants, or invertebrates designated as a Specially Protected Species of mammals, birds, and plants in § 670.25 may only be issued if:

* * * * *

(c) The taking involves non-lethal techniques, where appropriate. Lethal techniques may only be used on Specially Protected Species where there is no suitable alternative technique; and

* * * * *

■ 11. Amend § 670.25 by revising the section heading to read as follows:

**§ 670.25 Designation of specially protected species of native mammals, birds, plants, and invertebrates.**

* * * * *

■ 12. Revise § 670.31 to read as follows:

**§ 670.31 Specific issuance criteria for imports.**

Subject to compliance with other applicable law, any person who takes a native mammal, bird, plant or invertebrate under a permit issued under the regulations in this part may import it into the United States unless the Director finds that the importation would not further the purpose for which it was taken. If the importation is for a purpose other than that for which the native mammal, bird, plant or invertebrate was taken, the Director may permit importation upon a finding that importation would be consistent with the purposes of the Act, the regulations in this part, or the permit under which they were taken.

■ 13. Revise § 670.32 to read as follows:

**§ 670.32 Specific issuance criteria for exports.**

The Director may permit export from the United States of any native mammal, bird, plant or invertebrate taken within Antarctica upon a finding that exportation would be consistent with the purposes of the Act, the regulations in this part, or the permit under which they were taken.

■ 13. Amend § 670.33 by revising the introductory text to read as follows:

**§ 670.33 Content of permit applications.**

In addition to the information required in subpart C of this part, an applicant seeking a permit to import into or export from the United States a native mammal, a native bird, native plants or native invertebrates taken within Antarctica shall include the following in the application:

* * * * *

■ 14. Amend § 670.34 by revising paragraph (a) introductory text to read as follows:

**§ 670.34 Entry and exit ports.**

(a) Any native mammal, native bird, native invertebrates or native plants taken within Antarctica that are imported into or exported from the United States must enter or leave the United States at ports designated by the Secretary of Interior in 50 CFR part 14. The ports currently designated are:

* * * * *

■ 15. Revise § 670.36 to read as follows:

**§ 670.36 Specific issuance criteria.**

(a) For purposes consistent with the Act, only the following species may be considered for a permit allowing their introduction into Antarctica:

(1) Cultivated plants and their reproductive propagules for controlled use; and

(2) Species of living organisms including viruses, bacteria, yeasts, and fungi, for controlled experimental use.

(b) Living non-indigenous species of birds shall not be introduced into Antarctica.

■ 16. Revise § 670.37 to read as follows:

**§ 670.37 Content of permit application.**

Applications for the introduction of non-indigenous species into Antarctica must describe:

(a) The species, numbers, and if appropriate, the age and sex, of the species to be introduced into Antarctica;

(b) The need for the species;

(c) What precautions the applicant will take to prevent escape or contact with native fauna and flora; and

(d) How the species will be removed from Antarctica or destroyed after they have served their purpose.

■ 17. Revise § 670.38 to read as follows:

**§ 670.38 Conditions of permits.**

All permits allowing the introduction of non-indigenous species will require that the species be kept under controlled conditions to prevent its escape or contact with native fauna and flora and that after serving its purpose the species shall be removed from Antarctica or be destroyed in manner that protects the natural system of Antarctica.

■ 18. Add § 670.39 to read as follows:

**§ 670.39 Other introductions of non-indigenous species.**

(a) Reasonable precautions shall be taken to prevent the accidental introduction of microorganisms not present naturally in the Antarctic Treaty area.

(b) Any species, including progeny, not native to the Antarctic Treaty area, that is introduced without a permit, shall be removed or disposed of, whenever feasible, unless the removal or disposal would result in a greater adverse environmental impact. Reasonable steps shall be taken to control the consequences of an introduction to avoid harm to native fauna or flora.

Dated: May 18, 2021.

**Suzanne H. Plimpton,**

*Reports Clearance Officer, National Sciee Foundation.*

[FR Doc. 2021–10807 Filed 5–24–21; 8:45 am]

**BILLING CODE 7555–01–P**

## NATIONAL SCIENCE FOUNDATION

### 45 CFR Part 670

**RIN 3145–AA59**

## Conservation of Antarctic Animals and Plants

**AGENCY:** National Science Foundation.

**ACTION:** Final rule.

**SUMMARY:** Pursuant to the Antarctic Conservation Act of 1978, as amended, the National Science Foundation (NSF) is amending its regulations to reflect changes to the list of designated historic sites or monuments (HSM) in Antarctica. These changes reflect decisions adopted by the Antarctic Treaty Parties at the XLII Antarctic Treaty Consultative Meeting, held in Prague, Czech Republic in 2019. The United States Department of State heads the United States delegation to these annual Antarctic Treaty meetings.

**DATES:** Effective May 25, 2021.

**FOR FURTHER INFORMATION CONTACT:** Bijan Gilanshah, Assistant General Counsel, Office of the General Counsel, at 703–292–8060, National Science Foundation, 2415 Eisenhower Avenue, Suite W 18200, Alexandria, VA 22314.

**SUPPLEMENTARY INFORMATION:** The Antarctic Conservation Act of 1978, as amended (''ACA'') (16 U.S.C. 2401, *et seq.*) implements the Protocol on Environmental Protection to the Antarctic Treaty (''the Protocol'').

Annex V contains provisions for the protection of specially designated areas specially managed areas and historic sites and monuments. Section 2405 of title 16 of the ACA directs the Director of the National Science Foundation to issue such regulations as are necessary and appropriate to implement Annex V to the Protocol.

The Antarctic Treaty Parties, which includes the United States, periodically adopt measures to establish, consolidate or revoke specially protected areas, specially managed areas and historical sites or monuments in Antarctica. The regulation is being revised to reflect two newly added historical sites and monuments (HSM) in Antarctica, HSMs 93 and 94.

### Public Participation

The changes to these areas and sites reflect decisions already made by the Antarctic Treaty Parties at recent international ATCM meetings. Because these amendments directly involve a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553), requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Further, because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

### Environmental Impact

This final rule makes technical conforming changes to the National Science Foundation's regulations to reflect the substantive outcomes of recent Antarctic Treaty Consultative Meetings. The actions taken by the Antarctic Treaty Parties protect additional historic resources.

### Reducing Regulation and Controlling Regulatory Costs

In implementing these international ATCM agreed to changes, this direct final rule relates to a foreign affairs function of the United States. Accordingly, NSF has determined that this document is not a regulation or rule subject to Executive Order 12866. *Furthermore, this direct final rule is not a significant regulatory action as defined in Executive Order 12866.*

### No Takings Implications

The Foundation has determined that the final rule will not involve the taking of private property pursuant to E.O. 12630.

### Civil Justice Reform

The Foundation has considered this final rule under E.O. 12988 on civil justice reform and determined the principles underlying and requirements of E.O. 12988 are not implicated.

### Federalism and Consultation and Coordination With Indian Tribal Governments

The Foundation has considered this final rule under the requirements of E.O. 13132 on federalism and has determined that the final rule conforms with the federalism principles set out in this E.O.; will not impose any compliance costs on the States; and will not have substantial direct effects on the States, the relationship between the Federal government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the Foundation has determined that no further assessment of federalism implications is necessary.

Moreover, the Foundation has determined that promulgation of this final rule does not require advance consultation with Indian Tribal officials as set forth in E.O. 13175, Consultation and Coordination with Indian Tribal Governments.

### Energy Effects

The Foundation has reviewed this final rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Foundation has determined that this final rule does not constitute a significant energy action as defined in the E.O.

### Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the Foundation has assessed the effects of this final rule on State, local, and Tribal governments and the private sector. This final rule will not compel the expenditure of $100 million or more by any State, local, or Tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

### Controlling Paperwork Burdens on the Public

This final rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

### Congressional Review Act

The Office of Information and Regulatory Affairs in the Office of Management and Budget has determined that this action is not a major rule as defined by Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act or CRA), 5 U.S.C. 804(2). This action will not result in: ''an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.'' Pursuant to the CRA, however, NSF will submit a copy of this final rule to both Houses of Congress and to the Comptroller General.

**List of Subjects in 45 CFR Part 670**

Administrative practice and procedure, Antarctica, Exports, Imports, Plants, Reporting and recordkeeping requirements, Wildlife.

Pursuant to the authority granted by 16 U.S.C. 2405(a)(1), NSF hereby amends 45 CFR part 670 as set forth below:

## PART 670—[AMENDED]

■ 1. The authority citation for part 670 continues to read as follows:

**Authority:** 16 U.S.C. 2405, as amended.

■ 2. Amend § 670.29 in paragraph (c) by adding entries for ''HSM 93'' and ''HSM 94'' in alphanumeric order to read as follows:

**§ 670.29 Designation of Antarctic specially protected areas, specially managed areas, and historic sites and monuments.**

* * * * *

(c) * * *

HSM 93 Endurance, Wreck of the vessel owned and used by Sir Ernest Shackleton during his 1914–15 Trans-Antarctic Expedition.

HSM 94 C.A. Larsen Multiexpedition cairn.

Dated: May 18, 2021.

**Suzanne H. Plimpton,**

*Reports Clearance Officer, National Science Foundation.*

[FR Doc. 2021–10808 Filed 5–24–21; 8:45 am]

**BILLING CODE 7555–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MB Docket No. 21–72; RM–11888; DA 21–581; FR ID 28090]**

### Television Broadcasting Services Green Bay, Wisconsin

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** On March 4, 2021, the Media Bureau, Video Division (Bureau) issued a *Notice of Proposed Rulemaking* in response to a petition for rulemaking filed by WLUK Licensee, LLC (Licensee), the licensee of WLUK–TV, channel 12 (FOX), Green Bay, Wisconsin, requesting the substitution of channel 18 for channel 12 at Green Bay in the DTV Table of Allotments. As a result of the Commission's Incentive Auction and repacking process, WLUK–TV was repacked from channel 11 to channel 12. For the reasons set forth in the *Report and Order* referenced below, the Bureau amends FCC regulations to substitute channel 18 for channel 12 at Green Bay.

**DATES:** Effective May 25, 2021.

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

**SUPPLEMENTARY INFORMATION:** The proposed rule was published at 86 FR 15885 on March 25, 2021. The Licensee filed comments in support of the petition reaffirming its commitment to applying for channel 18. No other comments were received. In support, the Licensee states that the Commission has recognized that VHF channels have certain propagation characteristics which may cause reception issues for some viewers, that the reception of VHF signals requires larger antennas relative to UHF channels, and that many of the WLUK–TV viewers experience difficulty receiving its signal. In addition, operation on channel 18 will not result in any predicted loss of service.

This is a synopsis of the Commission's *Report and Order,* MB Docket No. 21–72; RM–11888; DA 21–581, adopted May 17, 2021, and released May 17, 2021. The full text of this document is available for download at *https://www.fcc.gov/edocs.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

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

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

**List of Subjects in 47 CFR Part 73**

Television.

Federal Communications Commission.

**Thomas Horan,**

*Chief of Staff, Media Bureau.*

**Final Rule**

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

## PART 73—RADIO BROADCAST SERVICE

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

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

■ 2. In § 73.622, in paragraph (i), amend the table entitled ''Post-Transition Table of DTV Allotments,'' under Wisconsin, by revising the entry for ''Green Bay'' to read as follows:

**§ 73.622 Digital television table of allotments.**

* * * * *

(i) * * *

| Community | Channel no. |
|---|---|
| * * * | * * |
| **WISCONSIN** | |
| * * * | * * |
| Green Bay ..... | 18, 23, 39, 41, *42 |
| * * * | * * |

[FR Doc. 2021–11049 Filed 5–24–21; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MB Docket No. 21–51; RM–11876; DA 21–584; FR ID 28092]**

### Television Broadcasting Services Cedar Rapids, Iowa

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** On February 12, 2021, the Media Bureau, Video Division (Bureau) issued a *Notice of Proposed Rulemaking* in response to a petition for rulemaking filed by Gray Television Licensee, LLC (Petitioner), the licensee of KCRG–TV, channel 9 (ABC), Cedar Rapids, Iowa, requesting the substitution of channel 32 for channel 9 at Cedar Rapids in the DTV Table of Allotments. For the reasons set forth in the *Report and Order* referenced below, the Bureau

amends FCC regulations to substitute channel 32 for channel 9 at Cedar Rapids.

**DATES:** Effective May 25, 2021.

**FOR FURTHER INFORMATION CONTACT:** Andrew Manley, Media Bureau, at (202) 418–0596 or *Andrew Manley@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** The proposed rule was published at 86 FR 15451 on March 23, 2021. The Petitioner filed comments in support of the petition reaffirming its commitment to apply for channel 32. No other comments were received. According to the Petitioner, many of its viewers experience significant difficulty receiving KCRG–TV's signal. In addition, Gray demonstrated that the proposed channel change will result in no loss of service; while the traditional analysis of noise limited service contours show a de minimis population loss, analysis of the terrain limited service contours results in no loss.

This is a synopsis of the Commission's *Report and Order,* MB Docket No. 21–51; RM–11876; DA 21–584, adopted May 17, 2021, and released May 17, 2021. The full text of this document is available for download at *https://www.fcc.gov/edocs.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

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

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

**List of Subjects in 47 CFR Part 73**

Television.

Federal Communications Commission.

**Thomas Horan,**

*Chief of Staff, Media Bureau.*

**Final Rule**

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

## PART 73—RADIO BROADCAST SERVICE

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

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

■ 2. In § 73.622, in paragraph (i), amend the table entitled ''Post-Transition Table of DTV Allotments,'' under Iowa, by revising the entry for ''Cedar Rapids'' to read as follows:

**§ 73.622 Digital television table of allotments.**

* * * * *

(i) * * *

| Community | Channel no. |
|---|---|
| * * * * * | |
| **Iowa** | |
| * * * * * | |
| Cedar Rapids ..... | 27, 29, 32, 47 |
| * * * * * | |

[FR Doc. 2021–11050 Filed 5–24–21; 8:45 am]

**BILLING CODE 6712–01–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 217

**[Docket No. 210519–0111]**

**RIN 0648–BJ47**

## Take of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Seabird Research Activities in Central California

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

**ACTION:** Final rule; notification of issuance.

**SUMMARY:** NMFS Office of Protected Resources, upon request from Point Blue Conservation Science (Point Blue), NMFS hereby issues regulations and a Letter of Authorization (LOA) to govern the unintentional taking of marine mammals incidental to seabird research activities in central California over the course of five years. These regulations, which allow for the issuance of Letters of Authorization (LOA) for the incidental take of marine mammals during the described activities and specified timeframes, prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat, as well as requirements pertaining to the monitoring and reporting of such taking.

**DATES:** Effective from July 1, 2021, through June 30, 2026.

**ADDRESSES:** Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed below.

**FOR FURTHER INFORMATION CONTACT:** Amy Fowler, Office of Protected Resources, NMFS, (301) 427–8401.

**SUPPLEMENTARY INFORMATION:**

### Purpose and Need for Regulatory Action

NMFS received an application from Point Blue requesting five-year regulations and authorization to take multiple species of marine mammals. Take would occur by Level B harassment incidental to visual disturbance of pinnipeds during research activities and use of research equipment. Please see Background below for definitions of harassment. These regulations establish a framework under the authority of the MMPA (16 U.S.C. 1361 *et seq.*) to allow for the issuance of a LOA for the take of marine mammals incidental to Point Blue's seabird research activities in central California.

*Legal Authority for the Proposed Action*

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1371(a)(5)(A)) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region for up to five years if, after notice and public comment, the agency makes certain findings and issues regulations that set forth permissible methods of taking pursuant to that activity and other means of effecting the ''least practicable adverse impact'' on the affected species or stocks and their habitat (see the discussion below in the *Mitigation* section), as well as monitoring and reporting requirements. Section

101(a)(5)(A) of the MMPA and the implementing regulations at 50 CFR part 216, subpart I provide the legal basis for issuing this rule containing five-year regulations, and for any subsequent Letters of Authorization (LOAs). As directed by this legal authority, this final rule contains mitigation, monitoring, and reporting requirements.

*Summary of Major Provisions Within the Regulations*

Following is a summary of the major provisions of these regulations regarding Point Blue's seabird research activities. These measures include:

- Required implementation of mitigation to minimize impact to pinnipeds including several measures to approach haulouts cautiously to minimize disturbance, and avoiding surveying when pups are present.
- Required monitoring of the research areas to detect the presence of marine mammals before initiating surveys.

**Background**

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made, regulations are issued, and notice is provided to the public.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to, in shorthand, as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth.

The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

**Summary of Request**

On September 17, 2019, NMFS received a request from Point Blue for a proposed rule and LOA to take marine mammals incidental to seabird research activities on the central California coast. We determined the application was adequate and complete on November 26, 2019. Point Blue's request is for take of a small number of California sea lions (*Zalophus californianus*), harbor seals (*Phoca vitulina richardii*), northern elephant seals (*Mirounga angustirostris*), northern fur seals (*Callorhinus ursinus*), Guadalupe fur seals (*Arctocephalus philippii townsendi*), and Steller sea lions (*Eumetopias jubatus*), by Level B harassment only. Neither Point Blue nor NMFS expects serious injury or mortality, or Level A harassment, to result from this activity. On July 24, 2020, NMFS issued a proposed rule in the **Federal Register** (85 FR 44835) soliciting public comments for 30 days. All public comments were considered in developing this final rule.

NMFS previously issued ten Incidental Harassment Authorizations (IHAs) to Point Blue for similar work from 2006 through 2020 (72 FR 71121, December 14, 2007; 73 FR 77011, December 18, 2008; 75 FR 8677, February 19, 2010; 77 FR 73989, December 7, 2012; 78 FR 66686, November 6, 2013; 80 FR 80321, December 24, 2015; 81 FR 34978, June 1, 2016; 82 FR 31759, July 7, 2017; 83 FR 31372, July 5, 2018; 85 FR 9740, February 20, 2020). In addition, NMFS issued an IHA for work from October 1, 2020, through September 30, 2021, during the development of this final rule (85 FR 63258; October 7, 2020). Point Blue complied with all the requirements (*e.g.,* mitigation, monitoring, and reporting) of the previous IHAs and information regarding their monitoring results may be found in the *Potential Effects of the Specified Activity on Marine Mammals and their Habitat* and *Estimated Take* sections.

**Description of Proposed Activity**

*Overview*

Point Blue, along with their research partners Oikonos Ecosystem Knowledge and Point Reyes National Seashore, have been conducting seabird research in central California for over 30 years. This research is conducted under cooperative agreements with the U.S. Fish and Wildlife Service (USFWS) in consultation with the Gulf of the Farallones National Marine Sanctuary. Point Blue conducts research activities on Southeast Farallon Island (SEFI), Año Nuevo Island (ANI), and Point Reyes National Seashore (PRNS). Research activities include monitoring and censusing seabird colonies, observing seabird nesting habitat, restoring nesting burrows, and resupplying a field station at SEFI. Research is conducted throughout the year at each of the research sites. Researchers accessing and conducting research activities on the sites may occasionally cause behavioral disturbance (or Level B harassment) of six pinniped species. Point Blue expects that the disturbance to pinnipeds from the research activities will be minimal and will be limited to Level B harassment.

*Dates and Duration*

Point Blue's research is conducted throughout the year. At SEFI, seabird monitoring sites are visited 1–3 times per day for a maximum of 500 visits per year. Boat landings to re-supply the field station, lasting 1–3 hours, are conducted once every two weeks. At ANI, research is conducted approximately once a week from April–August, with occasional intermittent visits made during the rest of the year. The maximum number of visits per year would be 20. Research at PRNS is conducted year round, with an emphasis during the seabird nesting season, and with occasional intermittent visits the rest of the year. The maximum number of visits per year is 20. A component of the seabird research involves habitat restoration and monitoring which requires sporadic visits from September–November, the time period between the seabird breeding season and the elephant seal pupping season.

*Specific Geographic Region*

Point Blue will conduct their research activities within the vicinity of pinniped haul-out sites in the following locations:

- *South Farallon Islands:* The South Farallon Islands consist of SEFI, located at 37°41′54.32″ N; 123°0′8.33″ W, and West End Island. The South Farallon Islands have a land area of approximately 120 acres (0.49 square kilometers ($km^2$)) and are part of the Farallon National Wildlife Refuge. The islands are located near the edge of the continental shelf 28 miles (mi) (45.1 km) west of San Francisco, California, and lie within the waters of the Gulf of the Farallones National Marine Sanctuary;
- *Año Nuevo Island:* ANI is located at 37°6′29.25″ N; 122°20′12.20″ W, one-quarter mile (402 meters m) offshore of Año Nuevo Point in San Mateo County, California. The island lies within the Monterey Bay National Marine Sanctuary and the Año Nuevo State Marine Conservation Area; and

• *Point Reyes National Seashore:* PRNS is approximately 40 miles (64.3 km) north of San Francisco Bay and also lies within the Gulf of the Farallones National Marine Sanctuary.

*Detailed Description of Specific Activity*

A detailed description of Point Blue's planned activities was provided in our proposed rule (85 FR 44835; July 24, 2020) and is not repeated here. No changes have been made to the specified activities described therein.

**Comments and Responses**

We published a proposed rule on July 24, 2020 (85 FR 44835) and requested comments and information from the public. During the 30-day public comment period, we received a comment letter from the Marine Mammal Commission (Commission). The Commission's comments and our responses are described below. For full detail of the comments and recommendations, please see the comment letter, which is available online at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-point-blue-conservation-science-seabird-and-pinniped-1.*

*Comment 1:* Due to an increasing number of Steller sea lions reported at the SEFI research site, the Commission recommended NMFS increase the annual authorized take of Steller sea lions from 65 to 72 per year.

*Response:* NMFS concurs with the Commission's recommendation and has increased the authorized take of Steller sea lions accordingly in this final rule.

*Comment 2:* The Commission recommended that NMFS require Point Blue to include raw sightings data with each annual monitoring report and ensure that the reporting requirements align with the required monitoring information to be collected. Additionally, the Commission recommended that NMFS require Point Blue to avoid visits to research sites if the number of takes that has been authorized for a given species is met.

*Response:* NMFS concurs with the Commission's recommendations and has revised the LOA and regulations accordingly in this final rule.

**Changes From Proposed Rule to Final Rule**

As described above in response to comments from the Commission, in this final rule NMFS has increased the authorized take of Steller sea lions from 65 to 72 sea lions per year by Level B harassment (see response to *Comment 1*), and has added additional monitoring, reporting, and mitigation requirements (see response to *Comment 2*).

**Description of Marine Mammals in the Area of Specified Activities**

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*), and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*https://www.fisheries.noaa.gov/find-species*).

Table 1 lists all species with expected potential for occurrence at survey sites in California, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. For taxonomy, we follow the Committee on Taxonomy (2019). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS's U.S. 2019 Pacific and Alaska Marine Mammal SARs (Carretta *et al.* 2020a; Muto *et al.,* 2020a) and draft U.S. 2020 Pacific and Alaska Marine Mammal SARs (Caretta *et al.,* 2020b; Muto *et al.,* 2020b). All values presented in Table 1 are the most recent available at the time of publication and are available in the 2019 and draft 2020 SARs (available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*).

TABLE 1—MARINE MAMMALS POTENTIALLY PRESENT IN THE VICINITY OF THE STUDY AREAS

| Common name | Scientific name | Stock | ESA/ MMPA status; Strategic (Y/N) [1] | Stock abundance (CV, $N_{min}$, most recent abundance survey) [2] | PBR | Annual M/ SI [3] |
|---|---|---|---|---|---|---|
| **Order Carnivora—Superfamily Pinnipedia** | | | | | | |
| Family Otariidae (eared seals and sea lions): | | | | | | |
| California sea lion | *Zalophus californianus* | U.S. | -/-; N | 257,606 (n/a; 233,515; 2014) | 14,011 | >320 |
| Steller sea lion | *Eumetopias jubatus* | Eastern U.S. | -/-; N | 43,201 (n/a; 43,201; 2017) | 2,592 | 113 |
| Northern fur seal | *Callorhinus ursinus* | California | -/-; N | 14,050 (n/a; 7,524; 2013) | 451 | >0.8 |
| | | Eastern Pacific | -/D; Y | 620,660 (0.2, 525,333, 2016) | 11,295 | 399 |
| Guadalupe fur seal | *Arctocephalus philippii townsendi.* | Mexico to California | T/D; Y | 34,187 (n/a; 31,019; 2013) | 1,062 | >1.2 |
| Family Phocidae (earless seals): | | | | | | |
| Harbor seal | *Phoca vitulina richardii* | California | -/-; N | 30,968 (n/a; 27,348; 2012) | 1,641 | 43 |
| Northern elephant seal | *Mirounga angustirostris* | California | -/-; N | 179,000 (n/a; 81,368; 2010) | 4,882 | 8.8 |

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.* CV is coefficient of variation; $N_{min}$ is the minimum estimate of stock abundance. In some cases, CV is not applicable.

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strikes). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

All species that could potentially occur in the survey areas are included in Table 1. All six species temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur and has been authorized. Detailed descriptions of these species were provided in our proposed rule (85 FR 44835; July 24, 2020) and are not repeated here. No new information is available. The southern sea otter (*Enhydra lutris nereis*) may be found at SEFI and ANI. However, they are managed by the USFWS and are not considered further in this document.

## Potential Effects of Specified Activities on Marine Mammals and Their Habitat

We provided discussion of the potential effects of the specified activity on marine mammals and their habitat in our **Federal Register** proposed rule (85 FR 44835; July 24, 2020) and it is not repeated here. The proposed rule included a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The Estimated Take section later in this final rule includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content and material referenced therein, as well as the content and material referenced in the Estimated Take section and the Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

## Estimated Take

This section provides an estimate of the number of incidental takes authorized by this final rule, and this estimate informs both NMFS' consideration of ''small numbers'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to researchers. Based on the nature of the activity and required mitigation, no Level A harassment, serious injury, or mortality is anticipated or authorized. As described previously, no mortality is anticipated or authorized for this activity. Below we describe how the take is estimated.

### *Marine Mammal Occurrence and Take Calculation and Estimation*

Take estimates are based on take reported by Point Blue in the last five years (Table 2). With the exception of Steller sea lions, Point Blue's requested annual take was calculated as the maximum annual recorded take for each species over the last five years with a 10 percent increase (to account for potential population growth over the course of the five-year authorization), or the authorized take from the most recent IHA, whichever was greater. As stated above, due to the increased presence and reported takes of Steller sea lions at SEFI, the Marine Mammal Commission recommended that in this final rule NMFS increase the authorized take of Steller sea lions from 65 in the proposed rule to 72 takes by Level B harassment per year, and this change has been included in this final rule.

Take of northern fur seals and Guadalupe fur seals has not been authorized in Point Blue's past IHAs. However, the northern fur seal colony in the Farallon Islands is expanding, and northern fur seals are beginning to haul out in areas that are regularly visited by researchers and in areas that are critical for access to the island. There is also some potential for Guadalupe fur seals to be present at the Farallon Islands, though they are not expected to occur as frequently as northern fur seals. Therefore, Point Blue has requested, and NMFS has authorized, 20 annual takes by Level B harassment of northern fur seals and 5 annual takes by Level B harassment of Guadalupe fur seals.

TABLE 2—REPORTED TAKE OBSERVATIONS FROM PREVIOUS IHAS, AND REQUESTED ANNUAL TAKES BY LEVEL B HARASSMENT

| Species | Reported take observations for all activities | | | | | Authorized takes from most recent IHA | Total requested annual takes by Level B harassment |
|---|---|---|---|---|---|---|---|
| | 2014 | 2015 | 2016 | 2017 | 2018 | | |
| California sea lion | 10,048 | 36,417 | 23,173 | 22,752 | 17,487 | 32,623 | 40,059 |
| Northern elephant seal | 145 | 175 | 119 | 202 | 85 | 239 | 239 |
| Pacific harbor seal | 284 | 292 | 175 | 234 | 229 | 304 | 321 |
| Steller sea lion | 59 | 31 | 32 | 35 | 5 | 43 | 65 |
| Northern fur seal | 0 | 0 | 0 | 0 | 0 | 0 | 20 |
| Guadalupe fur seal | 0 | 0 | 0 | 0 | 0 | 0 | 5 |

TABLE 3—AUTHORIZED TAKE BY LEVEL B HARASSMENT AND PERCENT OF MMPA STOCK TAKEN

| Species | Stock | Authorized annual take by Level B harassment | Authorized total take by Level B harassment | Percent of Stock [1] |
|---|---|---|---|---|
| California sea lion | U.S | 40,059 | 200,295 | 15.55 |
| Northern elephant seal | California breeding | 239 | 1,195 | 0.13 |
| Pacific harbor seal | California | 321 | 1,605 | 1.04 |
| Steller sea lion | Eastern U.S. | 72 | 360 | 0.83 |
| Northern fur seal [2] | California | 20 | 100 | 0.14 |
| | Eastern Pacific | | | < 0.01 |
| Guadalupe fur seal | Mexico to California | 5 | 25 | 0.01 |

[1] Reflects annual take number.
[2] As either stock may occur in the project area, for the purposes of calculating the percentage of the stock impacted, the take is being analyzed as if all authorized takes occurred within each stock.

**Mitigation**

In order to issue regulations and an LOA under Section 101(a)(5)(A) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost and impact on operations.

To reduce the potential for disturbance from acoustic and visual stimuli associated with survey activities, Point Blue will implement the following mitigation measures:

- Slow approach to beaches for boat landings to avoid stampede, provide animals opportunity to enter water, and avoid vessel strikes;
- Observe a site from a distance, using binoculars if necessary, to detect any marine mammals prior to approach to determine if mitigation is required (*i.e.,* if pinnipeds are present, researchers will approach with caution, walking slowly, quietly, and close to the ground to avoid surprising any hauled-out individuals and to reduce flushing/stampeding of individuals);
- Avoid pinnipeds along access ways to sites by locating and taking a different access way. Researchers will keep a safe distance from and not approach any marine mammal while conducting research, unless it is absolutely necessary to flush a marine mammal in order to continue conducting research (*i.e.,* if a site cannot be accessed or sampled due to the presence of pinnipeds);
- Avoid visits to sites when pups are present, if the number of takes that have been authorized are met, or if species for which authorization has not been granted are present;
- Monitor for offshore predators and do not approach hauled out pinnipeds if great white sharks (*Carcharodon carcharias*) or killer whales (*Orcinus orca*) are present. If Point Blue and/or its designees see pinniped predators in the area, they must not disturb the pinnipeds until the area is free of predators;
- Keep voices hushed and bodies low to the ground in the visual presence of pinnipeds;
- Conduct seabird observations at North Landing on SEFI in an observation blind, shielded from the view of hauled out pinnipeds;
- Crawl slowly to access seabird nest boxes on ANI if pinnipeds are within view; and
- Coordinate research visits to intertidal areas of SEFI (to reduce potential take) and coordinate research activities for ANI to minimize the number of trips to the island.

Based on our evaluation of the applicant's proposed measures, and the proven efficacy and practicability of

these mitigation measures in previous Point Blue incidental take authorizations, NMFS has determined that the required mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

**Monitoring and Reporting**

In order to issue regulations and an LOA for an activity, Section 101(a)(5)(A) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

Point Blue will contribute to the knowledge of pinnipeds in California by noting observations of: (1) Unusual behaviors, numbers, or distributions of pinnipeds, such that any potential follow-up research can be conducted by the appropriate personnel; (2) tag-bearing pinnipeds or carcasses, allowing transmittal of the information to appropriate agencies and personnel; and (3) rare or unusual species of marine mammals for agency follow-up.

Required monitoring protocols for Point Blue will include the following:

(1) Record of date, time, and location (or closest point of ingress) of each visit to the research site;

(2) Composition of the marine mammals sighted, such as species, gender, and life history stage (*e.g.,* adult, sub-adult, pup);

(3) Information on the numbers (by species) of marine mammals observed during the activities;

(4) Estimated number of marine mammals (by species) that may have been harassed during the activities;

(5) Behavioral responses or modifications of behaviors that may be attributed to the specific activities and a description of the specific activities occurring during that time (*e.g.,* pedestrian approach, vessel approach); and

(6) Information on the weather, including the tidal state and horizontal visibility.

The lead biologist will serve as an observer to record incidental take. For consistency, any reactions by pinnipeds to researchers will be recorded according to a three-point scale shown in Table 4. Note that only observations of disturbance noted in Levels 2 and 3 should be recorded as takes.

TABLE 4—LEVELS OF PINNIPED BEHAVIORAL DISTURBANCE

| Level | Type of response | Definition |
|---|---|---|
| 1 | Alert | Seal head orientation or brief movement in response to disturbance, which may include turning head towards the disturbance, craning head and neck while holding the body rigid in a u-shaped position, changing from a lying to a sitting position, or brief movement of less than twice the animal's body length. |
| 2* | Movement | Movements in response to the source of disturbance, ranging from short withdrawals at least twice the animal's body length to longer retreats over the beach, or if already moving a change of direction of greater than 90 degrees. |
| 3* | Flush | All retreats (flushes) to the water. |

*Only observations of disturbance Levels 2 and 3 are recorded as takes.

This information will be incorporated into a monitoring report for NMFS. The monitoring report will cover the period from January 1 through December 31 of each year of the authorization. Point Blue will submit annual report data on a calendar year schedule, regardless of the LOA's initiation or expiration dates. This ensures that data from all consecutive months will be collected and, therefore, can be analyzed to estimate authorized take for future incidental take authorizations regardless of the existing authorization's issuance date. Point Blue will submit a draft monitoring report for the activities to NMFS Office of Protected Resources by April 1 of each year. A final report will be prepared and submitted within 30 days following resolution of any comments on the draft report from NMFS. If no comments are received from NMFS, the draft monitoring report will be considered to be the final report. The final annual report after year five may be included as part of the final report (see below).

Point Blue must also report observations of unusual pinniped behaviors, numbers, or distributions and tag-bearing carcasses to the NMFS West Coast Regional Office.

In the event that personnel discovers an injured or dead marine mammal, Point Blue shall report the incident to the NMFS Office of Protected Resources, and the NMFS West Coast Regional Stranding Coordinator as soon as feasible. If the death or injury was clearly caused by Point Blue's activities, Point Blue must immediately cease the

specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the LOA. Point Blue must not resume their activities until notified by NMFS. The report must include the following information:

(1) Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);

(2) Species identification (if known) or description of the animal(s) involved;

(3) Condition of the animal(s) (including carcass condition if the animal is dead);

(4) Observed behaviors of the animal(s), if alive;

(5) If available, photographs or video footage of the animal(s); and

(6) General circumstances under which the animal was discovered.

A draft final report shall be submitted to the NMFS Office of Protected Resources within 60 days after the conclusion of the fifth year. A final report shall be submitted to the Director of the NMFS Office of Protected Resources within 30 days after receiving comments from NMFS on the draft final report. If no comments are received from NMFS, the draft final report will be considered the final report.

**Negligible Impact Analysis and Determination**

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be taken through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the discussion of our analyses applies to all the species listed in Table 3, given that the anticipated effects of this activity on these different marine mammal stocks are expected to be similar. For reasons stated previously in this document and based on the following factors, NMFS does not expect Point Blue's specified activities to cause long-term behavioral disturbance that would negatively impact an individual animal's fitness, or result in injury, serious injury, or mortality. Although Point Blue's survey activities may disturb marine mammals, NMFS expects those impacts to occur to localized groups of animals at or near survey sites. Behavioral disturbance would be limited to short-term startle responses and localized behavioral changes due to the short duration (ranging from <15 minutes for visits at most locations up to 2–5 hours from April–August at SEFI) of the research activities. At some locations, where resupply activities occur, visits will occur once every two weeks. Minor and brief responses including short-duration startle reactions, are not likely to constitute disruption of behavioral patterns, such as migration, nursing, breeding, feeding, or sheltering. These short duration disturbances (in many cases animals will return in 30 minutes or less) will generally allow marine mammals to reoccupy haulouts relatively quickly; therefore, these disturbances would not be anticipated to result in long-term disruption of important behaviors. No surveys will occur at or near rookeries as researchers will have limited access to SEFI, ANI, and PRNS during the pupping season and will not approach sites should pups be observed. Furthermore, breeding animals tend to be concentrated in areas that researchers are not scheduled to visit. Therefore, NMFS does not expect mother and pup separation or crushing of pups during stampedes.

Level B behavioral harassment of pinnipeds may occur during the operation of small motorboats. However, exposure to boats and associated engine noise would be brief and would not occur on a frequent basis. Results from studies demonstrate that pinnipeds generally return to their sites and do not permanently abandon haul-out sites after exposure to motorboats (Henry and Hammil 2001; Johnson and Acevedo-Gutierrez 2007). The chance of a vessel strike is very low due to small boat size and slow transit speeds. Researchers will delay ingress into the landing areas until after the pinnipeds enter the water and will cautiously operate vessels at slow speeds.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No serious injury or mortality, or Level A harassment, is anticipated or authorized;
- There is no activity near rookeries and researchers will avoid areas where pups are present;
- There is likely to be limited impact from boats due to their small size, maneuverability and the requirement to delay ingress until after hauled out pinnipeds have entered the water;
- No impacts to pinniped habitat are anticipated; and
- Only limited behavioral disturbance in the form of short-duration startle reactions is expected, and mitigation requirements employed by researchers (*e.g.* move slowly, use hushed voices) should further decrease disturbance levels.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the required monitoring and mitigation measures, NMFS finds that the total marine mammal take from Point Blue's planned activity will have a negligible impact on all affected marine mammal species or stocks.

**Small Numbers**

As noted above, only small numbers of incidental take may be authorized under Sections 101(a)(5)(A) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The annual amount of take NMFS has authorized is less than one-third of any stock's best population estimate (Table

3), which NMFS considers to be small relative to stock abundance. In fact, for all species but California sea lions, the annual take by Level B harassment is less than 2 percent of stock abundance. Additionally, these are all likely conservative estimates because we assume all takes are of different individual animals which is likely not the case considering haulout site fidelity in pinnipeds.

Based on the analysis contained herein of Point Blue's planned activity (including the required mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

**Unmitigable Adverse Impact Analysis and Determination**

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

**Adaptive Management**

The regulations governing the take of marine mammals incidental to Point Blue's seabird research activities would contain an adaptive management component.

The reporting requirements associated with this rule are designed to provide NMFS with monitoring data from the previous year to allow consideration of whether any changes are appropriate. The use of adaptive management allows NMFS to consider new information from different sources to determine (with input from Point Blue regarding practicability) on an annual basis if mitigation or monitoring measures should be modified (including additions or deletions). Mitigation measures could be modified if new data suggests that such modifications would have a reasonable likelihood of reducing adverse effects to marine mammals and if the measures are practicable.

The following are some of the possible sources of applicable data to be considered through the adaptive management process: (1) Results from Point Blue's monitoring from the previous year(s); (2) results from other marine mammal research or studies; and (3) any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent LOAs.

**National Environmental Policy Act**

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of a final rule (and subsequent LOAs)) with respect to potential impacts on the human environment. This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental harassment authorizations (IHAs) with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the final rule qualifies to be categorically excluded from further NEPA review.

**Endangered Species Act (ESA)**

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat.

The NMFS Office of Protected Resources is authorizing the incidental take of Guadalupe fur seals which are listed under the ESA. We requested initiation of consultation under section 7 of the ESA with NMFS West Coast Region (WCR) on August 26, 2020, for the issuance of this LOA. On September 2, 2020, NMFS WCR determined our issuance of the LOA to Point Blue was not likely to adversely affect the Guadalupe fur seal or the critical habitat of any ESA-listed species or result in the take of any marine mammals in violation of the ESA.

**Classification**

Pursuant to the procedures established to implement Executive Order 12866, the Office of Management and Budget has determined that this final rule is not significant.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this action would not have a significant economic impact on a substantial number of small entities. Point Blue is the sole entity that would be subject to the requirements in these regulations, and Point Blue is not a small governmental jurisdiction, small organization, or small business, as defined by the RFA. Because of this certification, a regulatory flexibility analysis is not required and none has been prepared.

This final rule contains a collection-of-information requirement subject to the provisions of the Paperwork Reduction Act (PRA). Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number. These requirements have been approved by OMB under control number 0648–0151 and include applications for regulations, subsequent LOAs, and reports.

**List of Subjects in 50 CFR Part 217**

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: May 20, 2021

**Samuel D. Rauch III,**

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

For reasons set forth in the preamble, NOAA amends 50 CFR part 217 as follows:

## PART 217—REGULATIONS GOVERNING THE TAKE OF MARINE MAMMALS INCIDENTAL TO SPECIFIED ACTIVITES

■ 1. The authority citation for part 217 continues to read as follows:

**Authority:** 16 U.S.C. 1361 *et seq.*

■ 2. Add subpart M to read as follows:

**Subpart M—Taking Marine Mammals Incidental to Seabird Research Activities in Central California**

Sec.

217.120 Specified activity and specified geographical region.
217.121 Effective dates.
217.122 Permissible methods of taking.
217.123 Prohibitions.
217.124 Mitigation requirements.
217.125 Requirements for monitoring and reporting.
217.126 Letters of Authorization.
217.127 Renewals and modifications of Letters of Authorization.
217.128–217.129 [Reserved]

## Subpart M—Taking Marine Mammals Incidental to Seabird Research Activities in Central California

### § 217.120 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the incidental taking of marine mammals during seabird research activities by Point Blue Conservation Science (Point Blue) and those persons it authorizes or funds to conduct activities on its behalf in the areas outlined in paragraph (b) of this section.

(b) The incidental taking of marine mammals by Point Blue may only occur in California on Southeast Farallon Island, Año Nuevo Island, and Point Reyes National Seashore in accordance with a Letter of Authorization (LOA) issued under §§ 216.106 of this chapter and 217.126.

### § 217.121 Effective dates.

Regulations in this subpart are effective from July 1, 2021, through June 30, 2026.

### § 217.122 Permissible methods of taking.

Under LOAs issued pursuant to §§ 216.106 of this chapter and 217.126, the Holder of the LOA (hereinafter ''Point Blue'') may incidentally, but not intentionally, take marine mammals within the area described in § 217.120(b) by Level B harassment associated with seabird research activities, provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate LOA.

### § 217.123 Prohibitions.

Except for the takings contemplated in § 217.120 and authorized by a LOA issued under §§ 216.106 of this chapter and 217.126, it is unlawful for any person to do any of the following in connection with the activities described in § 217.120 may:

(a) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or a LOA issued under §§ 216.106 of this chapter and 217.126;

(b) Take any marine mammal not specified in such LOA;

(c) Take any marine mammal specified in such LOA in any manner other than as specified in § 217.122;

(d) Take a marine mammal specified in such LOA if NMFS determines such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(e) Take a marine mammal specified in such LOA if NMFS determines such taking results in an unmitigable adverse impact on the species or stock of such marine mammal for taking for subsistence uses.

### § 217.124 Mitigation requirements.

When conducting the activities identified in § 217.120(a), the mitigation measures contained in any LOA issued under §§ 216.106 of this chapter and 217.126 must be implemented. These mitigation measures shall include but are not limited to the following general conditions:

(a) All persons must slowly approach beaches for boat landings. Boat landings must avoid causing stampede and provide marine mammals with an opportunity to safely enter the water. Vessel strikes are prohibited.

(b) All persons must observe a site from a distance, using binoculars if necessary, to detect any marine mammals prior to approach to determine if mitigation is required (*i.e.,* if pinnipeds are present, researchers must approach with caution, walking slowly, quietly, and close to the ground to avoid surprising any hauled-out marine mammals and to reduce flushing/stampeding of individuals).

(c) All persons must avoid pinnipeds along access ways to sites by locating and taking a different access way. Researchers must keep a safe distance from and not approach any marine mammal while conducting research, unless it is absolutely necessary to flush a marine mammal in order to continue conducting research (*i.e.,* if a site cannot be accessed or sampled due to the presence of pinnipeds).

(d) All persons must avoid visits to sites when pups are present, if the number of takes that have been authorized are met, or if species for which authorization has not been granted are present.

(e) All persons must monitor for offshore predators and must not approach hauled out pinnipeds if great white sharks (*Carcharodon carcharias*) or killer whales (*Orcinus orca*) are observed to be present. If Point Blue and/or its designees see pinniped predators in the area, they must not disturb the pinnipeds until the lead biologist determines the area is free of predators based on best professional judgment.

(f) All persons must keep voices hushed and bodies low to the ground in the visual presence of pinnipeds.

(g) All persons must conduct seabird observations at North Landing on Southeast Farallon Island in an observation blind, shielded from the view of hauled out pinnipeds.

(h) All persons must crawl slowly to access seabird nest boxes on Año Nuevo Island if pinnipeds are within view.

(i) Researchers must coordinate research visits to intertidal areas of Southeast Farallon Island and coordinate research activities for Año Nuevo Island to minimize the number of trips to these areas.

### § 217.125 Requirements for monitoring and reporting.

(a) *Visual monitoring.* When conducting activities under an LOA, Point Blue must conduct a visual monitoring program and record information as required by the LOA and this subpart.

(1) Standard information recorded must include species counts (with age/sex classes noted when possible) of animals present before approaching, numbers of observed disturbances, and descriptions of the disturbance behaviors during the monitoring surveys, including location, date, and time of the event.

(2) The lead biologist must serve as an observer to record incidental take.

(3) The lead biologist must record the following:

(i) The date, time, and location (or closest point of ingress) of each visit to the research site;

(ii) Composition of the marine mammals sighted, such as species, sex, and life history stage (*e.g.,* adult, sub-adult, pup);

(iii) The number (by species) of marine mammals observed during the activities;

(iv) Estimated number of marine mammals (by species) that may have been disturbed during the activities, using a three-point scale of disturbance contained in an LOA issued under §§ 216.106 of this chapter and 217.126. Disturbance Levels 2 and 3 must be recorded as takes;

(v) Behavioral responses or modifications in behaviors that may be attributed to the specific activities and a description of the specific activities occurring during that time (*e.g.,* pedestrian approach, vessel approach);

(vi) Information on the weather, including the tidal state and horizontal visibility; and

(vii) If applicable, note the presence of any offshore predators (date, time, number, and species).

(4) Point Blue must report observations of unusual behaviors, numbers, or distributions of pinnipeds, or of tag-bearing carcasses, to the NMFS West Coast Regional Office.

(b) *Prohibited take.* (1) In the event that personnel discovers an injured or dead marine mammal, Point Blue shall report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, NMFS as soon as feasible. If the death or injury was caused by Point Blue's activities, Point Blue must

immediately cease activities conducted under its LOA until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the LOA. Point Blue must not resume their activities until notified by NMFS. The report must include the following information:

(i) Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);

(ii) Species identification (if known) or description of the animal(s) involved;

(iii) Condition of the animal(s) (including carcass condition if the animal is dead);

(iv) Observed behaviors of the animal(s), if alive;

(v) If available, photographs or video footage of the animal(s); and

(vi) General circumstances under which the animal was discovered.

(c) *Annual report.* (1) A draft annual report covering the period of January 1 through December 31 of each year must be submitted to NMFS Office of Protected Resources by April 1 of each year. The final annual report after year five may be included as part of the final report (see below). The report must include the information gathered pursuant to the monitoring requirements set forth above and in the LOA at minimum, and must also include raw sightings data.

(2) A final annual report must be submitted to the Director of the NMFS Office of Protected Resources within 30 days after receiving comments from NMFS on the draft annual report. If no comments are received from NMFS, the draft annual report will be considered the final report.

(d) *Final report.* A draft final report must be submitted to NMFS Office of Protected Resources within 60 days after the conclusion of the fifth year. A final report must be submitted to the Director of the NMFS Office of Protected Resources within 30 days after receiving comments from NMFS on the draft final report. If no comments are received from NMFS, the draft final report will be considered the final report.

### § 217.126 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, Point Blue must apply for and obtain an LOA.

(b) An LOA, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of these regulations.

(c) If an LOA expires prior to the expiration date of these regulations, Point Blue may apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, Point Blue must apply for and obtain a modification of the LOA as described in § 217.127.

(e) The LOA shall set forth:

(1) Permissible methods and numbers of incidental taking;

(2) Means of effecting the least practicable adverse impact (*i.e.,* mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(f) Issuance of the LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(g) Notice of issuance or denial of an LOA shall be published in the **Federal Register** within thirty days of a determination.

### § 217.127 Renewals and modifications of Letters of Authorization.

(a) An LOA issued under §§ 216.106 of this chapter and 217.126 for the activity identified in § 217.120(a) shall be renewed or modified upon request by the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for these regulations (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section), and

(2) NMFS' Office of Protected Resources determines that the mitigation, monitoring, and reporting measures required by the previous LOA under these regulations were implemented.

(b) For an LOA modification or renewal requests by the applicant that includes changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), NMFS' Office of Protected Resources may publish a notice of proposed LOA in the **Federal Register**, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) An LOA issued under §§ 216.106 of this chapter and 217.126 for the activity identified in § 217.120(a) may be modified by NMFS' Office of Protected Resources under the following circumstances:

(1) *Adaptive management*—NMFS' Office of Protected Resources may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with Point Blue regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in the preamble for these regulations.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA include:

(A) Results from Point Blue's monitoring from the previous year(s);

(B) Results from other marine mammal and/or sound research or studies; and

(C) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS' Office of Protected Resources will publish a notice of proposed LOA in the **Federal Register** and solicit public comment.

(2) *Emergencies.* If NMFS' Office of Protected Resources determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in LOAs issued pursuant to §§ 216.106 of this chapter and 217.126, an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the **Federal Register** within thirty days of the action.

### §§ 217.128–217.129 [Reserved]

[FR Doc. 2021–11029 Filed 5–24–21; 8:45 am]

**BILLING CODE 3510–22–P**

# Proposed Rules

Federal Register
Vol. 86, No. 99
Tuesday, May 25, 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 ENERGY

## 10 CFR Part 430

**[EERE–2021–BT–STD–0005]**

**RIN 1904–AF09**

## Energy Conservation Program: Backstop Requirement for General Service Lamps

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Request for information.

**SUMMARY:** The U.S. Department of Energy (''DOE'') is re-evaluating its prior determination that the Secretary of Energy (''Secretary'') was not required to implement the statutory backstop requirement for general service lamps (''GSLs''). Under the Energy Policy and Conservation Act, as amended, if DOE fails to complete a rulemaking in accordance with certain statutory criteria, or if a final rule for GSLs does not produce savings that are greater than or equal to the savings from a minimum efficacy standard of 45 lumens per watt (''lm/W''), the Secretary must prohibit the sale of any GSL that does not meet a minimum efficacy standard of 45 lm/W. This request for information (''RFI'') solicits information from the public regarding the availability of lamps that would satisfy a minimum efficacy standard of 45 lm/W, as well other information that may be relevant to a possible implementation of the statutory backstop.

**DATES:** Written comments and information are requested and will be accepted on or before June 24, 2021.

**ADDRESSES:** Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *https://www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–20X21–BT–STD–0005, by any of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.

2. *Email:* to *GSL2021STD0005@ee.doe.gov.* Include docket number EERE–20X21–BT–STD–0005 in the subject line of the message.

No telefacsimiles (''faxes'') will be accepted. For detailed instructions on submitting comments and additional information on this process, see section III of this document.

Although DOE has routinely accepted public comment submissions through a variety of mechanisms, including postal mail and hand delivery/courier, the Department has found it necessary to make temporary modifications to the comment submission process in light of the ongoing Covid–19 pandemic. DOE is accepting only electronic submissions at this time. If a commenter finds that this change poses an undue hardship, please contact Appliance Standards Program staff at (202) 586–1445 to discuss the need for alternative arrangements. Once the Covid–19 pandemic health emergency is resolved, DOE anticipates resuming all of its regular options for public comment submission, including postal mail and hand delivery/courier.

*Docket:* The docket for this activity, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *https://www.regulations.gov.* All documents in the docket are listed in the *https://www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at *https://www.regulations.gov/#!docketDetail;D=EERE-2021-BT-STD-0005.* The docket web page contains instructions on how to access all documents, including public comments, in the docket.

**FOR FURTHER INFORMATION CONTACT:** Dr. Stephanie Johnson, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–1943. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Ms. Celia Sher, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–6122. Email: *Celia.Sher@hq.doe.gov.*

For further information on how to submit a comment, or review other public comments and the docket, contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

**SUPPLEMENTARY INFORMATION:**

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## I. Introduction

### *A. Authority*

The Energy Policy and Conservation Act, as amended (''EPCA''),[1] authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B [2] of the EPCA, established the Energy Conservation Program for Consumer Products Other Than Automobiles. (42 U.S.C. 6291–6309) These products include GSLs.

EPCA directs DOE to conduct two rulemaking cycles to evaluate energy conservation standards for GSLs. (42 U.S.C. 6295(i)(6)(A)–(B)) GSLs are defined in EPCA to include general service incandescent lamps (''GSILs''), compact fluorescent lamps (''CFLs''), general service light-emitting diode (''LED'') lamps and organic light emitting diode (''OLED'') lamps, and any other lamps that the Secretary of Energy (Secretary) determines are used to satisfy lighting applications traditionally served by general service incandescent lamps. (42 U.S.C. 6291(30)(BB)(i)) The term ''general service lamp'' does not include any of the 22 lighting applications or bulb shapes explicitly not included in the definition of ''general service

[1] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020).

[2] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

incandescent lamp,'' [3] or any general service fluorescent lamp or incandescent reflector lamp. (42 U.S.C. 6291(30)(BB)(ii))

For the first rulemaking cycle, EPCA directs DOE to initiate a rulemaking process prior to January 1, 2014, to consider two questions: (1) Whether to amend energy conservation standards for general service lamps and (2) whether ''the exemptions for certain incandescent lamps should be maintained or discontinued.'' (42 U.S.C. 6295(i)(6)(A)(i)) Further, if the Secretary determines that the standards in effect for GSILs should be amended, EPCA provides that a final rule must be published by January 1, 2017, with a compliance date at least 3 years after the date on which the final rule is published. (42 U.S.C. 6295(i)(6)(A)(iii)) In developing such a rule, DOE must consider a minimum efficacy standard of 45 lm/W. (42 U.S.C. 6295(i)(6)(A)(ii)) If DOE fails to complete a rulemaking in accordance with 42 U.S.C. 6295(i)(6)(A)(i)–(iv) or a final rule from the first rulemaking cycle does not produce savings greater than or equal to the savings from a minimum efficacy standard of 45 lm/W, the statute provides a ''backstop'' under which DOE must prohibit sales of GSLs that do not meet a minimum 45 lm/W standard. (42 U.S.C. 6295(i)(6)(A)(v))

EPCA further directed DOE to initiate a second rulemaking cycle by January 1, 2020, to determine whether standards in effect for GSILs, a subset of GSLs, should be amended with more stringent requirements and whether the exemptions for certain incandescent lamps should be maintained or discontinued. (42 U.S.C. 6295(i)(6)(B)(i)) The scope of this rulemaking is also not limited to incandescent lamp technologies. (42 U.S.C. 6295(i)(6)(B)(ii))

[3] As defined in EPCA ''general service incandescent lamp'' does not include the following incandescent lamps: (I) An appliance lamp; (II) A black light lamp; (III) A bug lamp; (IV) A colored lamp; (V) An infrared lamp; (VI) A left-hand thread lamp; (VII) A marine lamp; (VIII) A marine signal service lamp; (IX) A mine service lamp; (X) A plant light lamp; (XI) A reflector lamp; (XII) A rough service lamp; (XIII) A shatter-resistant lamp (including a shatter-proof lamp and a shatter-protected lamp); (XIV) A sign service lamp; (XV) A silver bowl lamp; (XVI) A showcase lamp; (XVII) A 3-way incandescent lamp; (XVIII) A traffic signal lamp; (XIX) A vibration service lamp; (XX) A G shape lamp (as defined in ANSI C78.20–2003 and C79.1–2002 1 with a diameter of 5 inches or more; (XXI) A T shape lamp (as defined in ANSI C78.20–2003 and C79.1–2002) and that uses not more than 40 watts or has a length of more than 10 inches; (XXII) A B, BA, CA, F, G16–1/2, G–25, G30, S, or M–14 lamp (as defined in ANSI C79.1–2002 and ANSI C78.20–2003) of 40 watts or less. (42 U.S.C. 6291(30)(D)(ii))

*B. Background*

DOE initiated the first GSL standards rulemaking process by publishing in the **Federal Register** a notice of public meeting and availability of the framework document. 78 FR 73737 (Dec. 9, 2013); *see also* 79 FR 73503 (Dec. 11, 2014) (notice of public meeting and availability of preliminary technical support document) (''December 2014 Preliminary Analysis''). DOE later issued a notice of proposed rulemaking (''NOPR'') to propose amended energy conservation standards for GSLs (''March 2016 NOPR''). 81 FR 14528, 14629–14630 (Mar. 17, 2016). The March 2016 NOPR focused on the first question that Congress directed DOE to consider—whether to amend energy conservation standards for GSLs. (42 U.S.C. 6295(i)(6)(A)(i)(I)) In the March 2016 NOPR proposing energy conservation standards for GSLs, DOE stated that it would be unable to undertake any analysis regarding GSILs and other incandescent lamps because of a then-applicable congressional restriction (''the Appropriations Rider'') [4] on the use of appropriated funds to implement or enforce 10 CFR 430.32(x). 81 FR 14528, 14540–14541 (Mar. 17, 2016). Notably, the Appropriations Rider originally was adopted in 2011 and was readopted and extended continuously in multiple subsequent legislative actions, and expired on May 5, 2017, when the Consolidated Appropriations Act of 2017 was enacted.[5]

In response to comments on the March 2016 NOPR, DOE conducted additional research and published a notice of proposed definition and data availability (''NOPDDA''), which proposed to amend the definitions of GSIL, GSL, and related terms (''October 2016 NOPDDA''). 81 FR 71794, 71815 (Oct. 18, 2016). DOE explained that the October 2016 NOPDDA related to the second question that Congress directed DOE to consider—whether ''the exemptions for certain incandescent lamps should be maintained or discontinued''—and stated explicitly that the NOPDDA was not a rulemaking to establish an energy conservation standard for GSLs. (42 U.S.C. 6295(i)(6)(A)(i)(II)); *see also* 81 FR 71798. The relevant ''exemptions,'' DOE explained, referred to the 22 categories of incandescent lamps that are statutorily excluded from the definitions of GSIL and GSL. 81 FR 71798. In the October 2016 NOPDDA, DOE clarified that it was defining what lamps constitute GSLs so that manufacturers could understand how any potential energy conservation standards might apply to the market. *Id.*

On January 19, 2017, DOE published two final rules concerning the definitions of GSL, GSIL, and related terms (''January 2017 Definition Final Rules''). 82 FR 7276; 82 FR 7322. The January 2017 Definition Final Rules amended the definitions of GSIL and GSL by bringing certain categories of lamps that had been excluded by statute from the definition of GSIL within the definitions of GSIL and GSL. These two rules were issued simultaneously, with the first rule maintaining the existing exemption for incandescent reflector lamps (''IRLs'') in the definition of GSL and the second rulemaking determining to discontinue the exemption from the GSL definition for IRLs. Like the October 2016 NOPDDA, DOE stated that the January 2017 Definition Final Rules related only to the second question that Congress directed DOE to consider, regarding whether to maintain or discontinue certain ''exemptions.'' (42 U.S.C. 6295(i)(6)(A)(i)(II)). That is, neither of the two final rules issued on January 19, 2017, established energy conservation standards applicable to GSLs. DOE explained that the Appropriations Rider prevented it from establishing, or even analyzing, standards for GSILs. 82 FR 7276, 7278. Instead, DOE explained that it may impose standards for GSLs in the future, and if it does not, then GSLs would be subject to the statutory backstop of 45 lm/W. 82 FR 7276, 7277–7278. The two final rules were to become effective as of January 1, 2020.

With the removal of the Appropriations Rider in the Consolidated Appropriations Act, 2017, DOE was no longer restricted from undertaking the analysis and decision-making required to address the first question presented by Congress, *i.e.,* whether to amend energy conservation standards for general service lamps, including GSILs. Thus, on August 15, 2017, DOE published a notice of data availability and request for information (''NODA'') seeking data for GSILs and other incandescent lamps (''August 2017 NODA''). 82 FR 38613.

The purpose of the August 2017 NODA was to assist DOE in making a

[4] Section 312 of the Consolidated and Further Continuing Appropriations Act, 2016 (Pub. L. 114–113, 129 Stat. 2419) prohibits expenditure of funds appropriated by that law to implement or enforce: (1) 10 CFR 430.32(x), which includes maximum wattage and minimum rated lifetime requirements for GSILs; and (2) standards set forth in section 325(i)(1)(B) of EPCA (42 U.S.C. 6295(i)(1)(B)), which sets minimum lamp efficiency ratings for incandescent reflector lamps.

[5] See the Consolidated Appropriations Act, 2017 (Pub. L. 115–31, div. D, tit. III); see also, Consolidated Appropriations Act, 2018 (Pub. L. 115–141).

decision on the first question posed to DOE by Congress; *i.e.,* a determination regarding whether standards for GSILs should be amended. Comments submitted in response to the August 2017 NODA also led DOE to re-consider the decisions it had already made with respect to the second question presented to DOE—*i.e.,* whether the exemptions for certain incandescent lamps should be maintained or discontinued. As a result of the comments received in response to the August 2017 NODA, DOE also re-assessed the legal interpretations underlying certain decisions made in the January 2017 Definition Final Rules.

On February 11, 2019, DOE published a NOPR proposing to withdraw the revised definitions of GSL, GSIL and other related terms that were to go into effect on January 1, 2020 (''February 2019 Definition NOPR''). 84 FR 3120. In a final rule published September 5, 2019, DOE finalized the withdrawal of the definitions in the January 2017 Definition Final Rules and instead maintained the existing regulatory definitions of GSL and GSIL, which are the same as the statutory definitions of those terms (''September 2019 Definition Final Rule''). 84 FR 46661. In the September 2019 Definition Final Rule, DOE stated that the obligation to issue a final rule prescribing standards by a date certain applies if, and only if, the Secretary makes a determination that standards in effect for GSILs need to be amended. 84 FR 46661, 46663. DOE further stated that, since it had not yet made the predicate determination on whether to amend standards for GSILs, the obligation to issue a final rule by a date certain did not yet exist and, as a result, the condition precedent to the potential imposition of the backstop requirement did not yet exist and no backstop requirement has yet been imposed. 84 FR 46661, 46664.

DOE initiated a rulemaking to determine whether standards for GSILs should be amended by publishing a notice of proposed determination (''NOPD'') on September 5, 2019 (''September 2019 NOPD''). 84 FR 46830. In a final determination published on December 27, 2019, DOE determined that amending energy conservation standards for GSILs was not economically justified (''December 2019 Final Determination''). 84 FR 71626. DOE also concluded in the December 2019 Final Determination that, because it had made the predicate determination not to amend standards for GSILs, there was no obligation to issue a final rule by January 1, 2017, and thus the backstop sales prohibition had not been triggered and was not in effect. 84 FR 71626, 71636.

On January 20, 2021, President Biden issued Executive Order (''E.O.'') 13990, ''Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.'' 86 FR 7037 (Jan. 25, 2021). Section 1 of that Order lists a number of policies related to the protection of public health and the environment, including reducing greenhouse gas emissions and bolstering the Nation's resilience to climate change. *Id.* at 86 FR 7037, 7041. Section 2 of the Order instructs all agencies to review ''existing regulations, orders, guidance documents, policies, and any other similar agency actions promulgated, issued, or adopted between January 20, 2017, and January 20, 2021, that are or may be inconsistent with, or present obstacles to, [these policies].'' *Id.* Agencies are then directed, as appropriate and consistent with applicable law, to consider suspending, revising, or rescinding these agency actions and to immediately commence work to confront the climate crisis. *Id.*

In accordance with E.O. 13990, DOE is re-evaluating its understanding of the backstop requirement

## II. Request for Information and Comments

As described in section I.A of this document, EPCA specifies several criteria that DOE must adhere to in its first rulemaking cycle for GSLs. (*See* 42 U.S.C. 6295(i)(6)(A)(i)–(iv)) Under the backstop requirement, if DOE fails to complete a rulemaking in accordance with the statutory criteria, or if the final rule does not produce a certain amount of energy savings, the Secretary must prohibit the sale of GSLs that do not meet a minimum efficacy standard. (42 U.S.C. 6295(i)(6)(A)(v)) Were DOE to determine that DOE did not fulfill the criteria in paragraphs (i)–(iv) of section 6295, the sales prohibition under the backstop requirement would affect any lamp type that is defined as a GSL. As such, DOE requests certain information about the lamp types discussed in the following sections, including whether a phased implementation would be appropriate for certain lamp types.

### *A. General Service Lamp Definition*

DOE's regulatory definition for GSL is consistent with the statutory definition for GSL. GSL is defined in EPCA to include GSILs, CFLs, general service LED lamps and OLED lamps, and any other lamps that the Secretary determines are used to satisfy lighting applications traditionally served by GSILs. 10 CFR 430.2. (*See also,* 42 U.S.C. 6291(30)(BB)(i)) DOE's regulatory definition of ''general service lamp'' does not include any of the 22 lighting applications or bulb shapes explicitly not included in the definition of ''general service incandescent lamp,'' or any general service fluorescent lamp or incandescent reflector lamp. 10 CFR 430.2. (*See also,* 42 U.S.C. 6291(30)(BB)(ii))

By comparison, the definition of GSL as amended by the January 2017 Definition Final Rules was broader than the statutory definition. The January 2017 Definition Final Rules defined a GSL as a lamp that had an ANSI base; was able to operate at a voltage of 12 volts or 24 volts, at or between 100 to 130 volts, at or between 220 to 240 volts, or of 277 volts for integrated lamps, or was able to operate at any voltage for non-integrated lamps; had an initial lumen output of greater than or equal to 310 lumens (or 232 lumens for modified spectrum general service incandescent lamps) and less than or equal to 3,300 lumens; was not a light fixture; was not an LED downlight retrofit kit; and was used in general lighting applications. General service lamps included, but were not limited to, general service incandescent lamps, compact fluorescent lamps, general service light-emitting diode lamps, and general service organic light-emitting diode lamps. General service lamps did not include:

(1) Appliance lamps;
(2) Black light lamps;
(3) Bug lamps;
(4) Colored lamps;
(5) G shape lamps with a diameter of 5 inches or more as defined in ANSI C79.1–2002;
(6) General service fluorescent lamps;
(7) High intensity discharge lamps;
(8) Infrared lamps;
(9) J, JC, JCD, JCS, JCV, JCX, JD, JS, and JT shape lamps that do not have Edison screw bases;
(10) Lamps that have a wedge base or prefocus base;
(11) Left-hand thread lamps;
(12) Marine lamps;
(13) Marine signal service lamps;
(14) Mine service lamps;
(15) MR shape lamps that have a first number symbol equal to 16 (diameter equal to 2 inches) as defined in ANSI C79.1–2002, operate at 12 volts, and have a lumen output greater than or equal to 800;
(16) Other fluorescent lamps;
(17) Plant light lamps;
(18) R20 short lamps;
(19) Reflector lamps that have a first number symbol less than 16 (diameter less than 2 inches) as defined in ANSI C79.1–2002 and that do not have E26/E24, E26d, E26/50x39, E26/53x39, E29/28, E29/53x39, E39, E39d, EP39, or EX39 bases;
(20) S shape or G shape lamps that have a first number symbol less than or equal to

12.5 (diameter less than or equal to 1.5625 inches) as defined in ANSI C79.1–2002;
(21) Sign service lamps;
(22) Silver bowl lamps;
(23) Showcase lamps;
(24) Specialty MR lamps;
(25) T shape lamps that have a first number symbol less than or equal to 8 (diameter less than or equal to 1 inch) as defined in ANSI C79.1–2002, nominal overall length less than 12 inches, and that are not compact fluorescent lamps;
(26) Traffic signal lamps.

See 82 FR 7276, 7321 and 82 FR 7322, 7333.

Similarly, the definition of GSIL as amended by the January 2017 Definition Final Rules was also broader than the statutory definition. The January 2017 Definition Final Rules defined a GSIL as a standard incandescent or halogen type lamp that was intended for general service applications; had a medium screw base; had a lumen range of not less than 310 lumens and not more than 2,600 lumens or, in the case of a modified spectrum lamp, not less than 232 lumens and not more than 1,950 lumens; and was capable of being operated at a voltage range at least partially within 110 and 130 volts; however this definition did not apply to the following incandescent lamps—

(1) An appliance lamp;
(2) A black light lamp;
(3) A bug lamp;
(4) A colored lamp;
(5) A G shape lamp with a diameter of 5 inches or more as defined in ANSI C79.1–2002;
(6) An infrared lamp;
(7) A left-hand thread lamp;
(8) A marine lamp;
(9) A marine signal service lamp;
(10) A mine service lamp;
(11) A plant light lamp;
(12) An R20 short lamp;
(13) A sign service lamp;
(14) A silver bowl lamp;
(15) A showcase lamp; and
(16) A traffic signal lamp.

See 82 FR 7276, 7321.

### *B. Availability of GSLs That Comply With The Backstop Requirement*

EPCA provides that, if DOE does not complete a rulemaking that meets certain criteria, DOE is required to prohibit the sale of any GSL that does not meet a minimum efficacy standard of 45 lm/W. DOE recognizes that this prohibition would present different implementation challenges than most DOE standards, which are based on the date of manufacturing. Notably, specifying a date beyond which certain GSLs can no longer be sold could possibly lead to stranded inventory. DOE recognizes that manufacturers, distributors, and retailers would need to take steps to account for the supply chain to avoid inventory that could not be sold legally.

For these reasons, DOE is publishing an RFI seeking comment and information on the availability of GSLs that have an efficacy of at least 45 lm/W. DOE is also requesting comment and information on the availability of lamp types excluded from the definition of GSL that have an efficacy of at least 45 lm/W. To the extent that such lamps are not currently available, DOE is seeking information on the expected availability of such lamps and the expected timetable to bring such lamps to the market.

*Issue 1:* DOE requests information on the availability of lamps defined as GSLs that have a minimum efficacy of 45 lm/W. To the extent available, DOE requests information for all lumen outputs, voltages, and base types included in the GSL definition.

*Issue 2:* DOE requests information of the availability of lamps excluded from the definition of GSL that have a minimum efficacy of 45 lm/W. To the extent available, DOE requests information for all lumen outputs, voltages, and base types of such lamps.

*Issue 3:* To the extent that any lamp type within the definition of GSL or any lamp type excluded from the definition of GSL already performs at a minimum efficacy of 45 lm/W, DOE requests information on the percent of the market of that lamp type represented by the 45 lm/W lamps.

*Issue 4:* If a lamp type within the definition of GSL or a lamp type excluded from the definition of GSL does not currently have units with an efficacy of at least 45 lm/W, DOE requests information on whether it is possible to create lamps in that category that perform at such a level and how long it would take for those products to be sold at retail locations.

*Issue 5:* Given normal stock levels, how long does it take for a store to sell through its inventory of lamps (*i.e.* from when the lamp arrives at the store to when the store sells it to a customer)?

*Issue 6:* What steps would manufacturers/retailers need to take to avoid stranded inventory for lamps that do not have an efficacy of at least 45 lm/W? How long would each step take (*i.e.,* how early must a manufacturer/retailer know that a lamp cannot be sold to avoid stranded inventory)?

*Issue 7:* If manufacturers/retailers end up with stranded inventory, what will they do with it (*e.g.,* will it be destroyed or exported)? What are the costs associated with handling the stranded inventory?

## III. Submission of Comments

DOE invites all interested parties to submit in writing by the date specified in the **DATES** section of this document, comments and information on matters addressed in this document and on other matters relevant to DOE's consideration of how, if triggered, the backstop requirement for GSLs could be implemented.

*Submitting comments via https://www.regulations.gov.* The *https://www.regulations.gov* web page requires you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies Office staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. If this instruction is followed, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *https://www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (''CBI'')). Comments submitted through *https://www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *https://www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *https://*

*www.regulations.gov* provides after you have successfully uploaded your comment.

*Submitting comments via email.* Comments and documents submitted via email also will be posted to *https://www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. No faxes will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

*Campaign form letters.* Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

*Confidential Business Information.* Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: One copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

DOE considers public participation to be a very important part of the process for developing energy conservation standards. DOE actively encourages the participation and interaction of the public during the comment period in this process. Interactions with and between members of the public provide a balanced discussion of the issues and assist DOE. Anyone who wishes to be added to the DOE mailing list to receive future notices and information about this process or would like to request a public meeting should contact Appliance and Equipment Standards Program staff at (202) 287–1445 or via email at *ApplianceStandardsQuestions@ee.doe.gov.*

**Signing Authority**

This document of the Department of Energy was signed on May 20, 2021, by Kelly Speakes-Backman, Principal Deputy Assistant Secretary and Acting Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on May 20, 2021.

**Treena V. Garrett,**

*Federal Register Liaison Officer, U.S. Department of Energy.*

[FR Doc. 2021–11018 Filed 5–24–21; 8:45 am]

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## DEPARTMENT OF ENERGY

### 10 CFR Part 431

**[EERE–2019–BT–TP–0027]**

**RIN 1904–AE65**

## Energy Conservation Program: Test Procedures for Packaged Terminal Air Conditioners and Packaged Terminal Heat Pumps

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Request for information.

**SUMMARY:** The U.S. Department of Energy (''DOE'') is undertaking the preliminary stages of a rulemaking to consider amendments to the test procedures for Packaged Terminal Air Conditioners (''PTACs'') and Packaged Terminal Heat Pumps (''PTHPs'').

Through this request for information (''RFI''), DOE seeks data and information regarding issues pertinent to whether amended test procedures would more accurately or fully comply with the requirement that the test procedure produces results that measure energy use during a representative average use cycle for the equipment without being unduly burdensome to conduct, or reduce testing burden. DOE welcomes written comments from the public on any subject within the scope of this document (including topics not raised in this RFI), as well as the submission of data and other relevant information.

**DATES:** Written comments and information are requested and will be accepted on or before June 24, 2021.

**ADDRESSES:** Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *https://www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments by email to the following address: *PTACHP2019TP0027@ee.doe.gov.* Include ''Request for information'' and docket number EERE–2019–BT–TP–0027 and/or RIN number 1904–AE65 in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format, and avoid the use of special characters or any form of encryption.

Although DOE has routinely accepted public comment submissions through a variety of mechanisms, including the postal mail and hand delivery/courier, the Department has found it necessary to make temporary modifications to the comment submission process in light of the ongoing Covid–19 pandemic. DOE is accepting only electronic submissions at this time. If a commenter finds that this change poses an undue hardship, please contact Appliance Standards Program staff at (202) 586–1445 to discuss the need for alternative arrangements. Once the Covid–19 pandemic health emergency is resolved, DOE anticipates resuming all of its regular options for public comment submission, including postal mail and hand delivery/courier.

No telefacsimiles (faxes) will be accepted. For detailed instructions on submitting comments and additional information on the rulemaking process, see section III of this document.

*Docket:* The docket for this activity, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *https://*

*www.regulations.gov.* All documents in the docket are listed in the *https://www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at *https://www.regulations.gov/docket/EERE-2019-BT-TP-0027.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section III for information on how to submit comments through *https://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Bryan Berringer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–0371. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Ms. Amelia Whiting, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–2588. Email: *Amelia.Whiting@Hq.Doe.Gov.*

For further information on how to submit a comment or review other public comments and the docket, contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

**SUPPLEMENTARY INFORMATION:**

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## I. Introduction

PTACs and PTHPs are included in the list of ''covered equipment'' for which DOE is authorized to establish and amend energy conservation standards and test procedures. (42 U.S.C. 6311(1)(I)) DOE's test procedures for PTACs and PTHPs are prescribed at title 10 of the Code of Federal Regulations (''CFR''), subpart F of part 431. See 10 CFR 431.96. The following sections discuss DOE's authority to establish and amend test procedures for PTACs and PTHPs, as well as relevant background information regarding DOE's consideration of test procedures for this equipment.

### *A. Authority and Background*

The Energy Policy and Conservation Act, as amended (''EPCA''),[1] authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part C of EPCA,[2] added by the National Energy Conservation Policy Act, Public Law 95–619 (Nov. 9, 1978), Title IV, section 441(a) (42 U.S.C. 6311–6317 as codified), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve industrial equipment energy efficiency. The equipment addressed under these provisions includes PTACs and PTHPs, the subjects of this RFI. (42 U.S.C. 6311(1)(I))

The energy conservation program under EPCA consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA include definitions (42 U.S.C. 6311), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), energy conservation standards (42 U.S.C. 6313), and the authority to require information and reports from manufacturers (42 U.S.C. 6316).

Federal energy efficiency requirements for covered equipment established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6316(a) and 42 U.S.C. 6316(b); 42 U.S.C. 6297). DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions of EPCA. (42 U.S.C. 6316(b)(2)(D)).

The Federal testing requirements consist of test procedures that manufacturers of covered equipment must use as the basis for: (1) Certifying to DOE that their equipment complies with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6316(b); 42 U.S.C. 6296), and (2) making representations about the efficiency of that equipment (42 U.S.C. 6314(d)). Similarly, DOE uses these test procedures to determine whether the equipment complies with relevant standards promulgated under EPCA.

Under 42 U.S.C. 6314, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered equipment. EPCA requires that any test procedures prescribed or amended under this section must be reasonably designed to produce test results that reflect the energy efficiency, energy use or estimated annual operating cost of a given type of covered equipment during a representative average use cycle and requires that test procedures not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(2))

EPCA requires that the test procedures for PTACs and PTHPs be those generally accepted industry testing procedures or rating procedures developed or recognized by the Air-Conditioning, Heating, and Refrigeration Institute (''AHRI'') or by the American Society of Heating, Refrigerating and Air-Conditioning Engineers (''ASHRAE''), as referenced in ASHRAE Standard 90.1, ''Energy Standard for Buildings Except Low-Rise Residential Buildings'' (''ASHRAE Standard 90.1''). (42 U.S.C. 6314(a)(4)(A)) If such an industry test procedure is amended, DOE must update its test procedure to be consistent with the amended industry test procedure, unless DOE determines, by rule published in the **Federal Register** and supported by clear and convincing evidence, that the amended test procedure would not meet the requirements in 42 U.S.C. 6314(a)(2) and (3) related to representative use and test burden. (42 U.S.C. 6314(a)(4)(B) and 42 U.S.C. 6314(a)(4)(C))

EPCA also requires that, at least once every 7 years, DOE review test procedures for all types of covered equipment, including PTACs and PTHPs, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle and to not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(1)) In addition, if the Secretary determines that a test procedure amendment is warranted, the Secretary must publish proposed test procedures in the **Federal Register**, and afford interested persons an opportunity (of not less than 45 days' duration) to present oral and written data, views, and arguments on the proposed test procedures. (42 U.S.C. 6314(b)). If DOE

[1] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020).

[2] For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A–1.

determines that test procedure revisions are not appropriate, DOE must publish its determination not to amend the test procedures. DOE is publishing this RFI to collect data and information to inform its decision in satisfaction of the 7-year review requirement specified in EPCA. (42 U.S.C. 6314(a)(1))

*B. Rulemaking History*

On December 8, 2020, DOE published an early assessment review RFI in which it sought data and information pertinent to whether amended test procedures would (1) more accurately or fully comply with the requirement that the test procedure produces results that measure energy use during a representative average use cycle for the equipment without being unduly burdensome to conduct, or (2) reduce testing burden. See 85 FR 78967 (''December 2020 Early Assessment RFI''). DOE received comments in response to the December 2020 Early Assessment RFI from the interested parties listed in Table I.1. A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[3]

TABLE I.1—WRITTEN COMMENTS RECEIVED IN RESPONSE TO THE DECEMBER 2020 EARLY ASSESSMENT RFI

| Commenter(s) | Reference in this NOPR | Commenter type |
|---|---|---|
| Appliance Standards Awareness Project, American Council for an Energy-Efficient Economy, Natural Resources Defense Council. | Joint Advocates | Efficiency Organizations. |
| Air-Conditioning, Heating, and Refrigeration Institute | AHRI | Trade Association. |
| California Investor-owned Utilities | CA IOUs | Utility Association. |
| GE Appliances | GEA | Manufacturer. |
| Northwest Energy Efficiency Alliance | NEEA | Efficiency Organization. |

Based on DOE's review of the test procedures for PTACs and PTHPs and the comments received, as discussed in the following sections, DOE has determined it is appropriate to continue the test procedure rulemaking after the early assessment process. Specific comments are discussed in the sections that follow.

## II. Request for Information

In the following sections, DOE has identified a variety of issues on which it seeks input to determine whether, and if so how, an amended test procedure for PTACs and PTHPs would (1) more accurately or fully comply with the requirements in EPCA that test procedures be reasonably designed to produce test results which reflect energy use during a representative average use cycle, without being unduly burdensome to conduct, or (2) reduce testing burden. (42 U.S.C. 6314(a)(2))

Additionally, DOE welcomes comments on any aspect of the existing test procedures for PTACs and PTHPs that may not specifically be identified in this document.

*A. Scope and Definitions*

This RFI covers PTACs and PTHPs. ''Packaged terminal air conditioner'' is defined at 10 CFR 431.92 as a wall sleeve and a separate un-encased combination of heating and cooling assemblies specified by the builder and intended for mounting through the wall, and that is industrial equipment. It includes a prime source of refrigeration, separable outdoor louvers, forced ventilation, and heating availability by builder's choice of hot water, steam, or electricity. ''Packaged terminal heat pump'' is defined at 10 CFR 431.92 as a packaged terminal air conditioner that utilizes reverse cycle refrigeration as its prime heat source, that has a supplementary heat source available, with the choice of hot water, steam, or electric resistant heat, and that is industrial equipment. Further, relevant to PTACs and PTHPs, DOE defines ''standard size'' to mean a packaged terminal air conditioner or packaged terminal heat pump with wall sleeve dimensions having an external wall opening of greater than or equal to 16 inches high or greater than or equal to 42 inches wide, and a cross-sectional area greater than or equal to 670 square inches. 10 CFR 431.92. ''Non-standard size'' means a packaged terminal air conditioner or packaged terminal heat pump with existing wall sleeve dimensions having an external wall opening of less than 16 inches high or less than 42 inches wide, and a cross-sectional area less than 670 square inches. *Id.*

DOE notes that the current Federal test procedure and energy conservation standards at 10 CFR 431.96 and 431.97 apply to both standard size and non-standard size PTACs and PTHPs with cooling capacities less than 760,000 British thermal unit (''Btu'')/hour. 10 CFR 431.96(b).

*Issue 1:* DOE requests comment on the definitions of PTACs and PTHPs and whether any of the terms should be amended, and if so, how the terms should be amended. In particular, DOE requests comment on whether the terms are sufficient to identify which equipment is subject to the test procedure and whether any test procedure amendments are required to ensure that all such equipment can be appropriately tested in accordance with the test procedure.

*B. Dehumidification of Fresh Air*

In a final rule published on July 21, 2015, DOE amended the energy conservation standards for PTACs and PTHPs. 80 FR 43161 (''July 2015 Final Rule''). Comments offered during the public meeting conducted for development of the July 2015 Final Rule indicate that the majority of PTAC and PTHP units are installed in hotel applications.[4] In hotel installations, the PTAC or PTHP unit provides cooling and heating to individual rooms or suites within the hotel; hotel hallways and common areas are usually serviced by a separate air conditioning system. In older building designs, fresh air ventilation is supplied to hotel rooms via the corridors to which the rooms are connected. In these designs, air is exhausted from each hotel room by a bathroom exhaust fan and is replaced by ''make-up'' air supplied via the corridor and conditioned by the heating, ventilation, and air conditioning (''HVAC'') system that serves the corridor. Make-up air from the corridor enters the hotel rooms by passing through an undercut or grill in the hotel room door.

[3] The parenthetical reference provides a reference for information located in DOE's test procedure rulemaking docket. (Docket No. EERE–2019–BT–TP–0027, which is maintained at *https://www.regulations.gov/docket/EERE-2019-BT-TP-0027*). The references are arranged as follows: (Commenter name, comment docket ID number, page of that document).

[4] See Docket No. EERE–2012–BT–STD–0029–0007 at p. 91.

Building designs that supply make-up air via corridors generally are no longer permissible under the building codes adopted in most U.S. states. Chapter 10, Section 1018.5 of the 2009 International Building Code (''IBC'') states that, with some exceptions, ''corridors shall not serve as supply, return, exhaust, relief or ventilation air ducts.'' [5] The International Code Council (''ICC'') tracks the adoption of the IBC by state. The ICC reports that, as of January 2021, only seven states had not fully adopted the 2009 version or a more recent version of the IBC.[6] These IBC code requirements have precipitated the introduction of PTAC and PTHP models that are designed to draw outdoor air into the unit, dehumidify the outdoor air, and introduce the dehumidified air into the conditioned space. These models are commonly referred to as ''make-up air PTACs'' or ''make-up air PTHPs.'' The following paragraphs discuss issues regarding the market size and energy consumption of make-up air PTACs and PTHPs.

1. Market Size of Make-Up Air PTACs and PTHPs

DOE has identified two different designs of make-up air PTAC and PTHP units on the market. In the first design, the PTAC or PTHP includes a dehumidifier module situated in the outdoor portion of the unit between the unit's outdoor heat exchanger and the panel that divides the indoor and outdoor portions of the unit. The dehumidifier module contains a compressor and refrigerant loop that are separate from the main refrigerant loop that the PTAC or PTHP uses to provide cooling to the conditioned space. In this design, outdoor air flows through the dehumidifier module, which removes moisture from the air, and into the conditioned space.

In the second identified design, the make-up air PTAC or PTHP does not include a dehumidifier module. Instead, the unit incorporates a variable-speed compressor that can operate at speeds less than full speed. In this design, outdoor air is drawn through the unit and across the unit's primary evaporator coil; dehumidification is provided by the unit's main refrigerant loop; and the unit's variable-speed compressor adjusts its capacity to provide humidity control by matching compressor operation to the required load of sensible [7] or latent [8] cooling, such that the unit removes moisture from the air without cooling the air to a temperature well below the setpoint.

In the December 2020 Early Assessment RFI, DOE requested information on the need for DOE's test procedure for PTACs and PTHPs to specify how to measure the energy use associated with dehumidification of make-up air; whether any existing industry test procedures may be used to measure the energy use associated with make-up air operation; and how make-up air operation relates to a representative average use cycle for PTACs and PTHPs. 85 FR 78967, 78969–78970.

AHRI recommended that DOE not pursue changes to the test procedure to measure the energy use associated with dehumidification of make-up air, stating that the market for make-up air PTACs and PTHPs is very small (AHRI, No. 7 at p. 4). AHRI estimated that only a small fraction of PTACs/PTHPs sold include outdoor air capabilities and of these, an even smaller percentage include dehumidification capabilities. (*Id.*)

The Joint Advocates stated that demand for make-up air units may be increasing (Joint Advocates, No. 4 at p. 1). The Joint Advocates cited marketing materials from two manufacturers that the Joint Advocates stated suggest an increase in the market for such equipment due to changes in the building codes and the purported cost benefits of such units. (*Id.*)

DOE notes that while the market for make-up air PTACs and PTHPs may be small currently, the new IBC code requirements may lead to increased demand for these units. To better understand the current and future market for these make-up air units, DOE is requesting information on the following issues.

*Issue 2:* DOE requests information on the market size for each of the PTAC and PTHP design options it has identified that provide dehumidification of fresh air.

*Issue 3:* DOE requests information on any other design pathways by which a PTAC or PTHP can provide dehumidification of outdoor air and, if alternative designs exist, the market size of these alternative designs.

*Issue 4:* DOE requests comment on how a ''make-up air PTAC'' and a ''make-up air PTHP'' could be defined, and what characteristics could be used to distinguish make-up air PTACs and PTHPs from other PTACs and PTHPs.

2. Dehumidification Energy Use

For PTACs and PTHPs, DOE currently specifies the energy efficiency ratio (''EER'') as the energy efficiency descriptor for cooling efficiency. Table 1 to 10 CFR 431.96. EER is the ratio of the produced cooling effect of the PTAC or PTHP to its net work input, expressed in Btu/watt-hour, and measured at standard rating conditions. 10 CFR 431.92. For PTHPs, DOE specifies the coefficient of performance (''COP'') as the energy efficiency descriptor for heating efficiency. Table 1 to 10 CFR 431.96. COP is the ratio of the produced heating effect of the PTHP to its net work input, expressed in watts/watts, and measured at standard rating conditions. 10 CFR 431.92

The test procedure for PTACs and PTHPs incorporates by reference certain provisions of the industry test standard AHRI Standard 310/380–2014, ''Standard for Packaged Terminal Air-Conditioners and Heat Pumps'' (''AHRI Standard 310/380–2014''). 10 CFR 431.96(g). Neither the current DOE test procedure nor the industry test procedure, AHRI Standard 310/380–2014, account for any additional energy associated with the dehumidification of make-up air traversing the unit. When a unit is operating in cooling mode, the dehumidification function may add heat to the room, thus increasing the cooling load on the unit. In addition, introducing make-up air to the room while the unit is operating in heating mode could increase a unit's energy consumption if the unit uses electric resistance heating to heat the make-up air. The amount of energy consumed by a dehumidification function depends on a variety of factors, including the airflow rate, the amount of time the dehumidification function is engaged, how the dehumidification function is controlled, and the ambient air temperature, among others.

As stated, EPCA requires that test procedures prescribed by DOE be reasonably designed to produce test results which reflect energy efficiency during a representative average use cycle, and must not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(2)). In the December 2020 Early Assessment RFI, DOE sought comment on make-up air operation as it relates to a representative average use cycle for PTACs and PTHPs. 85 FR 78967, 78970.

AHRI commented that multiple factors would need to be considered in evaluating the operational use of make-

[5] International Code Council. 2009 International Building Code. Available at: *https://codes.iccsafe.org/content/chapter/4641/*.

[6] International Code Council (2021). ''International Codes—Adoption by State.'' Available at: *https://www.iccsafe.org/wp-content/uploads/Master-I-Code-Adoption-Chart-jan-2021.pdf*.

[7] ''Sensible cooling'' refers to cooling that reduces air temperature without removing moisture from the air.

[8] ''Latent cooling'' refers to cooling that only removes moisture from the air.

up units, such as the rate of airflow/CFM being brought into the indoor space from outside; whether the unit introduces the outside air as primary or supplementary air; and what dehumidification strategy was used (AHRI, No. 7 at p. 5–6). AHRI asserted that dehumidification of make-up air is not representative of an average use cycle for the vast majority of PTAC/PTHP equipment sold currently and will not contribute to significant energy consumption relative to the current EER and COP metrics. *Id.* at 6. AHRI noted the lack of an established test procedure that could be readily adopted to measure dehumidification associated with make-up air operation. *Id.* The Joint Advocates encouraged DOE to incorporate the additional energy use associated with PTACs and PTHPs that provide make-up air so that the test procedure is representative for these units (Joint Advocates, No. 4 at p. 1–2).

DOE recognizes the challenges identified by AHRI regarding the evaluation of the make-up air operation. DOE requests information on the following issues.

*Issue 5:* DOE requests data on the impacts on the energy consumption of PTACs and PTHPs that dehumidify incoming outdoor air for units that include a dehumidification module, a variable-speed compressor, or any other design that dehumidifies outdoor air and introduces it to the conditioned space, in both cooling and heating mode.

*Issue 6:* DOE requests comment on how to quantify the energy consumption associated with the dehumidification function of make-up air PTACs/PTHPs for an average use cycle and what indoor and outdoor temperature and humidity conditions might be appropriate for this characterization.

*Issue 7:* DOE requests data on the typical range of make-up air flowing through a make-up air PTAC/PTHP, and whether this airflow varies while the dehumidification function is engaged.

*Issue 8:* DOE requests comment on how make-up air flowing through the unit is heated while the unit is operating in heating mode.

*Issue 9:* DOE requests comment on how make-up air dehumidification is controlled for units with a dehumidifier module and units without a dehumidifier module. Specifically, what conditions trigger the unit to engage make-up air dehumidification and how do make-up air PTACs/PTHPs interact with variables like occupancy or exhaust fan controls.

*Issue 10:* DOE requests data on the typical amount of time that make-up air PTACs/PHTPs engage the dehumidification function.

*Issue 11:* DOE requests comment on how the cooling and dehumidification modes are coordinated for make-up air PTACs/PTHPs, whether dehumidification and cooling are typically performed simultaneously or separately, and the impact that any such coordination has on energy consumption.

*Issue 12:* DOE requests data on the range of dehumidification capacities (in pints of water/day) for make-up air PTACs/PTHPs in the market and the test conditions used to rate dehumidification capacity.

*Issue 13:* DOE requests data on the relative market share of make-up air PTACs/PTHPs within the three PTAC and PTHP capacity ranges: <7,000 Btu/h; ≥7,000 Btu/h and ≤15,000 Btu/h; and >15,000 Btu/h.

*Issue 14:* DOE requests comment on what instructions the test procedure should provide regarding how to prepare and setup a PTAC or PTHP makeup air unit for testing under the current DOE test procedure, which does not test the makeup air function of the unit.

Part Load Efficiency Metric

As stated, EPCA requires the test procedures for PTACs and PTHPs be the generally accepted industry testing procedures developed or recognized by AHRI or ASHRAE, as referenced in ASHRAE Standard 90.1. (42 U.S.C. 6314(a)(4)(A)) EPCA also requires that test procedures prescribed by DOE be reasonably designed to produce test results which reflect energy efficiency during a representative average use cycle, and must not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(2))

For PTACs and PTHPs, ASHRAE 90.1–2019 specifies minimum efficiency levels expressed in terms of the full-load metrics of EER and COP. ''Full-load'' refers to testing at a single test condition, under which the compressor is operated continuously at 100% of its full capacity. Full load performance is measured at the standard rating conditions in AHRI 310/380–2014. In contrast, for cooling, ''part-load'' refers to testing at a reduced-temperature test condition in which the cooling load of the space is less than the full cooling capacity of the compressor. Any temperatures below the standard rating condition could potentially be considered part-load cooling conditions. For heating, ''part-load'' refers to testing at a higher-temperature test condition in which the heating load of the space is less than the full heating capacity of the compressor. Any temperatures above the standard rating condition could potentially be considered part-load heating conditions. DOE's test procedures for PTACs and PTHPs do not measure unit performance at part-load conditions.

Under part-load operation, in which the cooling (or heating) load of the space is less than the full cooling (or heating) capacity of the compressor, a single-speed compressor cycles on and off. This cycling behavior introduces inefficiencies, *i.e.,* ''cycling losses.'' More efficient part-load operation in PTACs and PTHPs can be enabled by the incorporation of two-stage, multi-stage, or variable-speed compressors, which can reduce or eliminate cycling losses.

3. Market Size of PTACs and PTHPs With Part-Load Operation Capability

In the December 2020 Early Assessment RFI, DOE requested information on the need for DOE's test procedure for PTACs and PTHPs to specify how to measure the energy use associated with part-load operation; whether any existing industry test procedures may be used to measure the energy use associated with part-load operation; and how part-load operation relates to a representative average use cycle for PTACs and PTHPs. 85 FR 78967, 78969–78970.

AHRI commented that very few PTACs or PTHPs with two- or variable-speed compressors are on the market, and that with the vast majority of the current market being single stage products, a full-load metric is completely appropriate for these products (AHRI, No. 7 at p. 4). GEA asserted that moving the entire industry to a part-load metric would have little benefit to consumers and would have little or no effect on energy efficiency, while creating substantial cost and testing burden for industry (GEA, No. 6 at p. 2).

The Joint Advocates and NEAA encouraged DOE to adopt an updated test procedure for PTACs and PTHPs that captures part-load performance (Joint Advocates, No. 4 at p. 2; NEEA, No. 8 at p. 1–2). CA IOUs commented that variable-speed compressors are now increasingly available and stated that this technology is expected to grow (CA IOUs, No. 5 at p. 2).

DOE is aware of several variable-speed PTAC and PTHP models on the market. DOE is requesting more specific information on the market size of these models.

*Issue 15:* DOE requests information on the market availability and market size for PTACs and PTHPs that incorporate

two-stage, multi-stage, or fully variable-speed compressors that enable more efficient part-load operation.

4. Potential Part-Load Efficiency Metrics

To measure part-load performance, a part-load or seasonal efficiency metric for PTACs and PTHPs would need to be incorporated in the DOE test procedure. Several categories of air conditioning and heating equipment are already rated under DOE test procedures using metrics that account for part-load or seasonal performance. For example, commercial unitary air conditioners (''CUACs'') are rated using the part-load metric integrated energy efficiency ratio (''IEER'') (see appendix A to subpart F of part 431); and central air conditioners and heat pumps are rated using the seasonal energy efficiency ratio (''SEER'') (see appendix M to subpart B of 10 CFR part 430). Room air conditioners are rated using the combined energy efficiency ratio (''CEER'').[9] While the CEER metric is not a part-load or seasonal metric, amendments to the DOE test procedure provide for the application of a performance adjustment factor to a variable-speed model's CEER rating (*i.e.,* ''performance-adjusted CEER'') that reflects seasonal efficiency benefits (see appendix F to subpart B of 10 CFR part 430).[10]

In this RFI, DOE is requesting feedback on the appropriateness and potential applicability of these example part-load metrics for PTACs and PTHPs.

PTACs and PTHPs may be considered as an alternative to CUACs in some applications. IEER (applicable to CUACs) integrates the performance of the equipment when operating at part-load, as discussed in section 6.2 of AHRI Standard 340/360–2019. CUACs rated with IEER are generally installed in buildings with high internal loads (*e.g.,* offices, retail, restaurants, schools) resulting from electronic equipment and/or high occupant density. These high internal loads often require that CUACs operate in cooling mode even at low ambient outdoor air temperatures. IEER reflects seasonal performance by integrating test results from four different load points with varying outdoor conditions and load levels (*i.e.,* lower load levels for cooler conditions) in order to represent the equipment's average efficiency throughout the cooling season (see appendix A to subpart F of 10 CFR part 431). DOE notes that most PTACs and PTHPs are installed in a narrow range of building types (including hotels, lodging, and assisted living). As such, the IEER load points and weighting factors developed for CUAC equipment may not represent typical operating conditions for PTACs and PTHPs.

Products and equipment rated with SEER are generally used in residential or small commercial applications, often with smaller internal loads (in comparison to the internal loads of buildings typically served by CUAC equipment) that require minimal or no cooling at low ambient outdoor air temperatures. SEER (applicable to central air conditioning and heat pump systems) reflects seasonal performance by averaging test results from up to five different load points, depending on system configuration (single-speed, two-capacity, or variable-speed), with varying outdoor conditions and staging levels to represent the product's average efficiency throughout the cooling season (see appendix M to subpart B of 10 CFR part 430). The test procedure also includes optional cyclic testing to evaluate cycling losses.

Room air conditioners and PTACs and PTHPs are both packaged air conditioning and heating equipment and have similar ranges of cooling capacity. Performance-adjusted CEER (applicable to room air conditioners with variable speed compressors) reflects the relative performance improvement associated with variable speed operation, in relation to theoretical single-speed operation, across four different outdoor temperature rating conditions (see appendix F to subpart B of 10 CFR part 430). Products rated with CEER are typically used in residential or small commercial applications.

*Issue 16:* DOE requests feedback on how to best measure part-load cooling performance for PTACs and PTHPs. Specifically, DOE requests comment on the number of tests that are appropriate to represent the part-load capabilities of the unit; the outdoor ambient conditions that best represent real world performance; the averaging weights that should be applied to each condition; whether a cyclic test component should be incorporated; and whether an optional test for multi-capacity rating should be incorporated.

*Issue 17:* DOE requests feedback on whether IEER, SEER or performance-adjusted CEER would be appropriate metrics for PTACs and PTHPs.

*Issue 18:* If IEER would be an appropriate metric, DOE requests information as to the outdoor temperature rating conditions appropriate for testing PTACs and PTHPs to produce test results representative of an average use cycle. DOE requests comment on what changes to the IEER test procedure for CUACs other that the temperature rating conditions would be necessary for testing PTACs and PTHPs. DOE requests information on the costs that would be associated with a test procedure that uses IEER as the metric for PTACs and PTHPs.

*Issue 19:* If SEER would be an appropriate metric, DOE requests feedback on whether a test procedure for PTACs and PTHPs that uses SEER as the metric would produce test results that reflect the energy efficiency of that equipment during a representative average use cycle. DOE requests information on the costs that would be associated with a test procedure that uses SEER as the metric for PTACs and PTHPs.

*Issue 20:* If performance-adjusted CEER would be an appropriate metric, DOE requests feedback on whether a test procedure for PTACs and PTHPs that uses performance-adjusted CEER as the metric would produce test results that reflect the energy efficiency of that equipment during a representative average use cycle. DOE requests information on the costs that would be associated with a test procedure that uses performance-adjusted CEER as the metric for PTACs and PTHPs.

*Issue 21:* DOE requests comment on whether any other seasonal efficiency metrics that incorporate part-load performance would produce test results that reflect the energy efficiency of PTACs and PTHPs during a representative average use cycle, and if so, which outdoor temperature rating conditions would be appropriate for testing PTACs and PTHPs. DOE requests information on the costs that would be associated with use of any such metrics.

*Issue 22:* DOE requests comment on whether the distribution and weighting of rating conditions used for the measurement of IEER, SEER, or performance-adjusted CEER would be appropriate for rating the performance of PTAC and PTHP equipment.

DOE notes that, like the EER cooling metric, the COP heating metric measures performance only at full load operation. For the reasons described previously with regard to cooling efficiency, using a heating efficiency metric that accounts for only full-load operation does not measure the part-load operation in PTHPs that may be

[9] CEER is an energy efficiency metric for room air conditioners that integrates standby/inactive and off mode energy use with the active mode energy use. 10 CFR 430.23(f)(3); Appendix F to subpart V of 10 CFR part 430 section 2 and 5.2.2.

[10] DOE published a final rule on March 29, 2021 amending the test procedure for room air conditioners to establish test provisions for measuring the energy use of variable-speed units during a representative average use cycle. 86 FR 16446.

enabled by the incorporation of two-stage, multi-stage, or variable-speed compressors. Heating Season Performance Factor (''HSPF'') (applicable to central heat pump products) is a metric that serves as a counterpart to SEER and accounts for seasonal performance in the heating season. It reflects seasonal performance by averaging test results from multiple load points, depending on system configuration (single-speed, two-capacity, or variable-speed), with varying outdoor conditions and staging levels to represent the product's average efficiency throughout the heating season (see appendix M to subpart B of 10 CFR part 430).

*Issue 23:* DOE requests feedback on how to best measure part-load and seasonal heating performance for PTHPs. Specifically, DOE requests comment on the number of tests that are appropriate to represent the part-load capabilities of the unit; the outdoor ambient conditions that best represent real world performance; the averaging weights that should be applied to each condition; whether a cyclic test component should be incorporated; whether an optional test for multi-capacity rating should be incorporated; and whether a test to evaluate the PTHP in defrost cycles is required.

*Issue 24:* DOE requests feedback on whether HSPF would be an appropriate metric for PTHPs.

*Issue 25:* DOE requests information on any other seasonal heating efficiency metrics that would produce test results that reflect the energy efficiency of PTHPs during a representative average use cycle, and if so, which outdoor temperature rating conditions would be appropriate for testing PTHPs.

*Issue 26:* DOE requests information on the costs that would be associated with the use of any such seasonal heating efficiency metric to rate PTHP performance.

### *C. Fan-Only Mode*

In response to the December 2020 Early Assessment RFI, NEAA commented that DOE should account for ''fan-only'' mode, which NEEA asserted can account for a large number of annual hours, resulting in significant energy use (NEAA, No. 8 at p. 5). NEAA recommended that DOE assess the number of hours spent in fan-only mode and account for the energy used during these hours in the test procedure. *Id.*

DOE interprets the ''fan-only'' mode discussed by NEAA as a mode in which the fan is operating and providing ventilation or air circulation without active cooling or heating. The current DOE test procedures for PTACs and PTHPs do not address energy consumption during ''fan-only'' mode. To better understand the power consumption associated with the ''fan-only'' mode and how it relates to a representative average use cycle, DOE is requesting information on the following issues.

*Issue 27:* DOE requests data and information related to the power consumption of PTAC and PTHP units during ''fan-only'' mode. Specifically, DOE requests comment on whether the indoor and outdoor fans are powered by the same source motor; whether the default fan control scheme dictates that the indoor fan cycles with the compressor or stays on; and whether the fan operates at a lower power if the fan remains on when the compressor cycles off.

*Issue 28:* DOE requests data and information on the annual number of hours PTAC and PTHP units operate in ''fan-only'' mode.

### *D. Low Ambient Heating and Cold Climate Heat Pumps*

Heat pumps generally perform less efficiently at low ambient outdoor temperatures than they do at moderate ambient outdoor temperatures. DOE is aware of residential central heat pump models that are optimized for operation in cold climates and can operate at temperatures as low as −20 degrees Fahrenheit (''°F''). DOE expects that such cold climate optimization may be desirable for PTHP customers, and DOE is aware of at least one PTHP model that is optimized for cold climates and can operate at temperatures as low as −5 °F.

A conventional PTHP model switches its heat source from reverse-cycle vapor compression heating to electric resistance heating, which is less efficient than vapor compression heating, at an outdoor ambient temperature of around 32 °F. A PTHP design that is optimized for operation in cold climates could provide energy savings compared to conventional PTHP models by enabling the use of the more efficient vapor compression heating, rather than electric resistance heating, at lower ambient temperatures. However, DOE's current test metric for heating efficiency, COP, requires testing only at the standard rating condition of 47 °F dry bulb for the outdoor side. Thus, DOE's COP metric does not account for the energy savings that could result from using reverse-cycle heating at low ambient temperatures.

In response to the December 2020 Early Assessment RFI, the Joint Advocates and NEAA commented that DOE should consider updating the test procedure to capture performance of PTHPs at low ambient temperatures, including energy used in defrost (Joint Advocates, No. 4 at p. 2; NEAA, No. 8 at p. 4). The CA IOUs noted that AHRI 310/380–2004 specified 17 °F as the standard rating condition for low-temperature heat pump heating, but that this test point is no longer included in the 2014 or 2017 versions of the standard (CA IOUs, No. 5 at p. 3).

DOE requests further information on the prevalence of PTHPs that can operate at low temperatures, and any test methods that may be appropriate to account for low temperature performance.

*Issue 29:* DOE request information on the comparison of the seasonal heating load and seasonable cooling load for a typical PTAC/PTHP installation.

*Issue 30:* DOE requests information on the range of low-temperature cutout for compressor operation of PTHPs. Specifically, DOE requests information on the percentage of PTHPs that continue to operate the compressor at outdoor temperatures below 32 °F, below 20 °F, and below 10 °F.

*Issue 31:* DOE requests information on the design changes necessary for a typical PTHP (that has a 32 °F low-temperature cutout) to be converted for satisfactory field performance operation at a 17 °F outdoor test condition.

*Issue 32:* DOE requests information on whether the design optimization of PTHPs for cold-climate operation impacts the COP as measured under the DOE test procedure.

*Issue 33:* DOE requests that model numbers be provided to identify any PTHP units available in the market that are optimized for operation in cold climates.

*Issue 34:* DOE requests feedback on any other test methods that would produce test results that reflect the energy efficiency of these units during a representative average use cycle, as well as information on the test burden associated with such test methods.

## III. Submission of Comments

DOE invites all interested parties to submit in writing by the date specified under the **DATES** heading, comments and information on matters addressed in this RFI and on other matters relevant to DOE's consideration of amended test procedures for PTACs and PTHPs. These comments and information will aid in the development of a test procedure NOPR for PTACs and PTHPs if DOE determines that amended test procedures may be appropriate for this equipment.

*Submitting comments via https://www.regulations.gov.* The *https://www.regulations.gov* web page will

require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Following this instruction, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *https://www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (''CBI'')). Comments submitted through *https://www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *https://www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *https://www.regulations.gov* provides after you have successfully uploaded your comment.

*Submitting comments via email.* Comments and documents submitted via email also will be posted to *https://www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. Faxes will not be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

*Campaign form letters.* Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

*Confidential Business Information.* According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: One copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

DOE considers public participation to be a very important part of the process for developing test procedures and energy conservation standards. DOE actively encourages the participation and interaction of the public during the comment period in each stage of this process. Interactions with and between members of the public provide a balanced discussion of the issues and assist DOE in the process. Anyone who wishes to be added to the DOE mailing list to receive future notices and information about this process should contact Appliance and Equipment Standards Program staff at (202) 287–1445 or via email at *ApplianceStandardsQuestions@ee.doe.gov.*

**Signing Authority**

This document of the Department of Energy was signed on May 15, 2021, by Kelly Speakes-Backman, Principal Deputy Assistant Secretary and Acting Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE **Federal Register** Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on May 15, 2021.

**Treena V. Garrett,**

*Federal Register Liaison Officer, U.S. Department of Energy.*

[FR Doc. 2021–10770 Filed 5–24–21; 8:45 am]

**BILLING CODE 6450–01–P**

## SMALL BUSINESS ADMINISTRATION

## 13 CFR Part 121

**RIN 3245–AH10**

## Small Business Size Standards: Wholesale Trade; Retail Trade

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Small Business Administration (SBA or the Agency) proposes to increase its receipts-based and employee-based small business size definitions (commonly referred to as ''size standards'') for North American Industry Classification System (NAICS) sectors related to Wholesale Trade and Retail Trade. SBA proposes to increase size standards for 49 industries in those sectors, including 14 industries in NAICS Sector 42 (Wholesale Trade) and 35 industries in NAICS Sector 44–45 (Retail Trade). SBA's proposed revisions rely on its recently revised ''Size Standards Methodology'' (Methodology). SBA seeks comments on its proposed changes to size standards in the above sectors and the data sources it evaluated to develop the proposed size standards.

**DATES:** SBA must receive comments to this proposed rule on or before July 26, 2021.

**ADDRESSES:** Identify your comments by RIN 3245–AH10 and submit them by one of the following methods: (1) *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments; or (2) *Mail/Hand Delivery/Courier:* Khem R. Sharma, Ph.D., Chief, Office of Size Standards, 409 Third Street SW, Mail Code 6530, Washington, DC 20416.

SBA will post all comments to this proposed rule on *www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *www.regulations.gov,* you must submit such information to U.S. Small Business Administration, Khem R. Sharma, Ph.D., Chief, Office of Size Standards, 409 Third Street SW, Mail Code 6530, Washington, DC 20416, or send an email to *sizestandards@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review your information and determine whether it will make the information public.

**FOR FURTHER INFORMATION CONTACT:** Jorge Laboy-Bruno, Ph.D., Economist, Office of Size Standards, (202) 205–6618 or *sizestandards@sba.gov.*

**SUPPLEMENTARY INFORMATION:**

**Discussion of Size Standards**

To determine eligibility for Federal small business assistance, SBA establishes small business size definitions (usually referred to as ''size standards'') for private sector industries in the United States. SBA uses two primary measures of business size for size standards purposes: Average annual receipts and average number of employees. SBA uses financial assets for certain financial industries and refining capacity, in addition to employees, for the petroleum refining industry to measure business size. In addition, SBA's Small Business Investment Company (SBIC), Certified Development Company (504/CDC), and 7(a) Loan Programs use either the industry-based size standards or tangible net worth and net income-based alternative size standards to determine eligibility for those programs.

In September 2010, Congress passed the Small Business Jobs Act of 2010 (Pub. L. 111–240, 124 Stat. 2504, September 27, 2010) (''Jobs Act''), requiring SBA to review all size standards every 5 years and make necessary adjustments to reflect current industry and market conditions. In accordance with the Jobs Act, in early 2016, SBA completed the first 5-year review of all size standards—except those for agricultural enterprises for which size standards were previously set by Congress—and made appropriate adjustments to size standards for a number of industries to reflect current industry and Federal market conditions.

During this comprehensive review of size standards, SBA is reviewing industry size standards by groups of NAICS sectors. During the previous 5-year comprehensive review, SBA generally reviewed NAICS sectors independently and by their employee-based or receipt-based size standard. Thus, during the previous comprehensive review, the review of size standards for the industries covered by this proposed rule was conducted under two separate rulemakings: One for receipts-based size standards in Sector 44–45 (75 FR 61597, October 6, 2010) and one for employee-based size standards in Sector 42 and two employee-based industries in Sector 44–45 (81 FR 3941, January 25, 1016). Under these rulemakings, SBA reviewed the size standards for 71 industries within NAICS Sector 42 (Wholesale Trade) and 74 industries within NAICS Sector 44–45 (Retail Trade). These reviews of size standards occurred during October 2009 to January 2016. SBA's analyses of the relevant industry data available at that time supported increasing employee-based size standards for 46 industries and maintaining current size standards for 25 industries in Sectors 42 and 44–45 (81 FR 3941) and increasing receipts-based size standards for 46 industries, maintaining current size standards for 27 industries and replacing the type of size standard from receipts-based to employee-based size standards for 1 industry in Sector 44–45 (75 FR 61597). Table 1, Size Standards Revisions During the First 5-Year Review, provides a summary of these revisions by NAICS sector.

TABLE 1—SIZE STANDARDS REVISIONS DURING THE FIRST 5-YEAR REVIEW

| Sector | Sector name | Number of size standards reviewed | Number of size standards increased | Number of size standards decreased | Number of size standards maintained | Number of type of size standards changed |
|---|---|---|---|---|---|---|
| 42 | Wholesale Trade | 71 | 46 | 0 | 25 | 0 |
| 44–45 | Retail Trade* | 74 | 46 | 0 | 27 | 1 |
| Total | | 145 | 92 | 0 | 52 | 1 |

*The evaluation of this sector used the 2007 NAICS structure.

Currently, there are 27 different size standards levels covering 1,023 NAICS industries and 14 subindustry activities (commonly known as ''exceptions'' in SBA's table of size standards). Of these size levels, 16 are based on average annual receipts, 9 are based on average number of employees, and 2 are based on other measures.

SBA also adjusts its monetary-based size standards for inflation at least once every 5 years. An interim final rule on SBA's latest inflation adjustment to size standards, effective August 19, 2019, was published in the **Federal Register** on July 18, 2019 (84 FR 34261). SBA also updates its size standards every 5 years to adopt the Office of Management and Budget's (OMB) quinquennial NAICS revisions to its table of small business size standards. Effective October 1, 2017, SBA adopted the OMB's 2017 NAICS revisions to its size standards (82 FR 44886, September 27, 2017).

This proposed rule is one of a series of proposed rules that will review size standards of industries grouped by various NAICS sectors. Rather than review all size standards at one time, SBA is reviewing size standards by grouping industries within various NAICS sectors that use the same size measure (*i.e.,* employees or receipts). In the current review, SBA will review size standards in 6 groups of NAICS sectors. (In the prior review, SBA reviewed size standards mostly on a sector-by-sector basis.) Once SBA completes its review of size standards for a group of sectors, it issues for public comment a proposed rule to revise size standards for those

industries based on the latest available data and other factors deemed relevant by the SBA's Administrator.

Below is a discussion of SBA's revised ''Size Standards Methodology'' (Methodology), available at *www.sba.gov/size,* for establishing, reviewing, or modifying employee-based size standards that SBA has applied to this proposed rule. SBA examines the structural characteristics of an industry as a basis to assess industry differences and the overall degree of competitiveness of an industry and of firms within the industry. Industry structure is typically examined by analyzing four primary factors—average firm size, degree of competition within an industry, start-up costs and entry barriers, and distribution of firms by size. To assess the ability of small businesses to compete for Federal contracting opportunities under the current size standards, as the fifth primary factor, SBA also examines, for each industry averaging $20.0 million or more in average annual Federal contract dollars, the small business share of Federal contract dollars relative to the small business share of total industry receipts. When necessary, SBA also considers other secondary factors that are relevant to the industries and the interests of small businesses, including impacts of size standards changes on small businesses.

**Size Standards Methodology**

SBA has recently revised its Methodology for establishing, reviewing, or modifying size standards when necessary. See the notification in the April 11, 2019, edition of the **Federal Register** (84 FR 14587). The revised Methodology is available on SBA's size standards web page at *www.sba.gov/size.* Prior to finalizing the revised Methodology, SBA issued a notification in the April 27, 2018 edition of the **Federal Register** (83 FR 18468) to solicit comments from the public and notify stakeholders of the proposed changes to the Methodology. SBA considered all public comments in finalizing the revised Methodology. For a summary of comments and SBA's responses, refer to the SBA's April 11, 2019, **Federal Register** notification cited above.

The revised Methodology represents a major change from the previous methodology, which was issued on October 21, 2009 (74 FR 53940). Specifically, in its revised Methodology, SBA is replacing the ''anchor'' approach applied in the previous methodology with a ''percentile'' approach for evaluating differences in characteristics among various industries. Under the ''anchor'' approach, SBA generally evaluated the characteristics of individual industries relative to the average characteristics of industries with the anchor size standard to determine whether they should have a higher or a lower size standard than the anchor. In the ''percentile'' approach, SBA ranks each industry among all industries with the same measure of size standards (such as receipts or employees) in terms of four primary industry factors, discussed in the Industry Analysis subsection below. The ''percentile'' approach is explained more fully in the Industry Analysis section of this proposed rule. For a more detailed explanation, please see the revised Methodology at *www.sba.gov/size.*

Additionally, as the fifth factor, SBA evaluates the difference between the small business share of Federal contract dollars and the small business share of total industry receipts to compute the size standard for the Federal contracting factor. The overall size standard for an industry is then obtained by averaging all size standards supported by each primary factor. The evaluation of the Federal contracting factor is explained more fully in the industry analysis section below.

SBA does not apply all aspects of its Methodology to all proposed rules because not all features are relevant for every industry covered by each proposed rule. For example, since NAICS codes in the Wholesale Trade and Retail Trade sectors cannot be used to classify Government acquisitions for supplies, and only the applicable manufacturing code can be applied (13 CFR 121.402(b)(2)), the Federal contracting factor is not considered in evaluating industry based size standards for these sectors. SBA's Methodology is available on its website at *www.sba.gov/size.*

**Industry Analysis**

Congress granted SBA's Administrator discretion to establish detailed small business size standards (15 U.S.C. 632(a)(2)). Specifically, section 3(a)(3) of the Small Business Act (15 U.S.C. 632(a)(3)) requires that ''. . . the [SBA] Administrator shall ensure that the size standard varies from industry to industry to the extent necessary to reflect the differing characteristics of the various industries and consider other factors deemed to be relevant by the Administrator.'' Accordingly, the economic structure of an industry is the basis for establishing, reviewing, or modifying small business size standards. In addition, SBA considers current economic conditions, its mission and program objectives, the Administration's current policies, impacts on small businesses under current size and proposed or revised size standards, suggestions from industry groups and Federal agencies, and public comments on the proposed rule. SBA also examines whether a size standard based on industry and other relevant data successfully excludes businesses that are dominant in the industry.

The goal of SBA's size standards review is to determine whether its existing small business size standards reflect the current industry structure and Federal market conditions and revise them when the latest available data suggest that revisions are warranted. In the past, SBA compared the characteristics of each industry with the average characteristics of a group of industries associated with the ''anchor'' size standard. For example, in the first 5-year comprehensive review of size standards under the Jobs Act, $7.0 million (now $8.0 million due to the inflation adjustment in 2019; see 84 FR 34261, July 18, 2019) was considered the ''anchor'' for receipts-based size standards and 500 employees was the ''anchor'' for employee-based size standards. If the characteristics of a specific industry under review were similar to the average characteristics of industries in the anchor group, SBA generally adopted the anchor size standard for that industry. If the specific industry's characteristics were significantly different from those in the anchor group, SBA assigned a size standard that was higher or lower than the anchor. To determine a size standard above or below the anchor size standard, SBA evaluated the characteristics of a second comparison group of industries with higher size standards. For industries with receipts-based standards, including the Retail Trade industries, the second comparison group consisted of industries with size standards between $23.0 million and $35.5 million, with the weighted average size standard for the group equaling $29.0 million. For manufacturing industries and other industries with employee-based size standards (except for Wholesale Trade and Retail Trade), the second comparison group included industries with a size standard of 1,000 employees or 1,500 employees, with the weighted average size standard of 1,323 employees. Using the anchor size standard and average size standard for the second comparison group, SBA computed a size standard for an industry's characteristic (factor) based

on the industry's position for that factor relative to the average values of the same factor for industries in the anchor and second comparison groups.

For Wholesale Trade and Retail Trade industries using the employee-based size standards, SBA used a different approach. The anchor approach was difficult to implement in reviewing the size standards of industries in Wholesale Trade because all the industries in the sector were sharing the same 100-employee size standard. SBA used a quintile approach in which industries were ranked and compared using each industry factor based on where the factor of that industry falls within the five ranked quintiles. The five implied size standard levels were 50 employees, 100 employees, 150 employees, 200 employees, and 250 employees. If the value of an industry factor fell in the first quintile (*i.e.,* less than the 20th percentile), that factor would support a size standard of 50 employees. If the value fell in the second quintile (*i.e.,* the 20th to less than the 40th percentile), it would support 100 employees. Similarly, if the value falls in the fifth quintile (*i.e.,* the 80th or higher percentile), the factor would support 250 employees. Under the ''percentile'' approach, for each industry factor, an industry is ranked and compared with the 20th percentile and 80th percentile values of that factor among the industries sharing the same measure of size standards (*i.e.,* receipts or employees). Combining that result with the 20th percentile and 80th percentile values of size standards among the industries with the same measure of size standards, SBA computes a size standard supported by each industry factor for each industry. In the previous Methodology, comparison industry groups were predetermined independent of the data, while in the revised Methodology they are established using the actual data. A more detailed description of the percentile method is provided in SBA's Methodology, available at *www.sba.gov/size.*

The primary factors that SBA evaluates to examine industry structure include average firm size, startup costs and entry barriers, industry competition, and distribution of firms by size. SBA also evaluates, as an additional primary factor, small business success in receiving Federal contracting assistance under the current size standards. Specifically, for the Federal contracting factor, SBA examines the small business share of Federal contract dollars relative to small business share of total receipts within an industry. These are, generally, the five most important factors SBA examines when establishing, reviewing, or revising a size standard for an industry. However, SBA will also consider and evaluate other secondary factors that it believes are relevant to a particular industry (such as technological changes, growth trends, SBA financial assistance, and other program factors). SBA also considers possible impacts of size standard revisions on eligibility for Federal small business assistance, current economic conditions, the Administration's policies, and suggestions from industry groups and Federal agencies. Public comments on proposed rules also provide important additional information. SBA thoroughly reviews all public comments before making a final decision on its proposed revisions to size standards. Below are brief descriptions of each of the five primary factors that SBA has evaluated for each industry being reviewed in this proposed rule. A more detailed description of this analysis is provided in the SBA's Methodology, available at *www.sba.gov/size.*

*1. Average Firm Size*

SBA computes two measures of average firm size: Simple average and weighted average. For industries with receipts-based size standards, the simple average is the total receipts of the industry divided by the total number of firms in the industry. The weighted average firm size is the summation of all the receipts of the firms in an industry multiplied by their share of receipts in the industry. The simple average weighs all firms within an industry equally regardless of their size. The weighted average overcomes that limitation by giving more weight to larger firms. The size standard supported by average firm size is obtained by averaging size standards supported by simple average firm size and weighted average firm size.

If the average firm size of an industry is higher than the average firm size for most other industries, this would generally support a size standard higher than the size standards for other industries. Conversely, if the industry's average firm size is lower than that of most other industries, it would provide a basis to assign a lower size standard as compared to size standards for most other industries.

*2. Startup Costs and Entry Barriers*

Startup costs reflect a firm's initial size in an industry. New entrants to an industry must have sufficient capital and other assets to start and maintain a viable business. If firms entering an industry under review have greater capital requirements than firms in most other industries, all other factors remaining the same, this would be a basis for a higher size standard. Conversely, if the industry has smaller capital needs compared to most other industries, a lower size standard would be considered appropriate.

Given the lack of actual data on startup costs and entry barriers by industry, SBA uses average assets as a proxy for startup costs and entry barriers. To calculate average assets, SBA begins with the sales to total assets ratio for an industry from the Risk Management Association's Annual Statement Studies, available at *https://rmau.org.* SBA then applies these ratios to the average receipts of firms in that industry obtained from the Economic Census tabulation. An industry with average assets that are significantly higher than most other industries is likely to have higher startup costs; this in turn will support a higher size standard. Conversely, an industry with average assets that are similar to or lower than most other industries is likely to have lower startup costs; this will support either lowering or maintaining the size standard.

*3. Industry Competition*

Industry competition is generally measured by the share of total industry receipts generated by the largest firms in an industry. SBA generally evaluates the share of industry receipts generated by the four largest firms in each industry. This is referred to as the ''4-firm concentration ratio,'' a commonly used economic measure of market competition. Using the 4-firm concentration ratio, SBA compares the degree of concentration within an industry to the degree of concentration of the other industries with the same measure of size standards. If a significantly higher share of economic activity within an industry is concentrated among the four largest firms compared to most other industries, all else being equal, SBA would set a size standard that is relatively higher than for most other industries. Conversely, if the market share of the four largest firms in an industry is appreciably lower than the similar share for most other industries, the industry will be assigned a size standard that is lower than those for most other industries.

*4. Distribution of Firms by Size*

SBA examines the shares of industry total receipts accounted for by firms of different receipts and employment sizes in an industry. This is an additional

factor SBA considers in assessing competition within an industry besides the 4-firm concentration ratio. If the preponderance of an industry's economic activity is attributable to smaller firms, this generally indicates that small businesses are competitive in that industry, which would support adopting a smaller size standard. A higher size standard would be supported for an industry in which the distribution of firms indicates that most of the economic activity is concentrated among the larger firms.

Concentration is a measure of inequality of distribution. To determine the degree of inequality of distribution in an industry, SBA computes the Gini coefficient, using the Lorenz curve. The Lorenz curve presents the cumulative percentages of units (firms) along the horizontal axis and the cumulative percentages of receipts (or other measures of size) along the vertical axis. (For further detail, see SBA's Methodology on its website at *www.sba.gov/size.*) Gini coefficient values vary from zero to one. If receipts are distributed equally among all the firms in an industry, the value of the Gini coefficient will equal zero. If an industry's total receipts are attributed to a single firm, the Gini coefficient will equal one.

SBA compares the degree of inequality of distribution for an industry under review with other industries with the same type of size standards. If an industry shows a higher degree of inequality of distribution (hence, a higher Gini coefficient value) compared to most other industries in the group, this would, all else being equal, warrant a size standard that is higher than the size standards assigned to most other industries. Conversely, an industry with lower degree of inequality (*i.e.,* a lower Gini coefficient value) than most others will be assigned a lower size standard relative to others.

*5. Federal Contracting*

As the fifth factor, SBA examines the success small businesses are having in winning Federal contracts under the current size standard, as well as the possible impact a size standard change may have on Federal small business contracting opportunities. The Small Business Act requires the Federal Government to ensure that small businesses receive a ''fair proportion'' of Federal contracts. The legislative history also discusses the importance of size standards in Federal contracting. To incorporate the Federal contracting factor in the size standards analysis, SBA evaluates small business participation in Federal contracting in terms of the share of total Federal contract dollars awarded to small businesses relative to the small business share of the industry's total receipts. In general, if the share of Federal contract dollars awarded to small businesses in an industry is significantly smaller than the small business share of total industry receipts, all else remaining the same, a justification would exist for considering a size standard higher than the current size standard. In cases where small business share of the Federal market is already appreciably high relative to the small business share of the overall market, SBA generally assumes that the existing size standard is adequate with respect to the Federal contracting factor.

The disparity between the small business Federal market share and industry-wide small business share may be due to various factors, such as extensive administrative and compliance requirements associated with Federal contracts, the different skill set required to perform Federal contracts as compared to typical commercial contracting work, and the size of Federal contracts. These, as well as other factors, are likely to influence the type of firms within an industry that compete for Federal contracts. By comparing the small business Federal contracting share with the industry-wide small business share, SBA includes in its size standards analysis the latest Federal market conditions. In addition to the impact on Federal contracting, SBA also examines impacts on SBA's loan programs both under the current and revised size standards.

As explained above, the Federal contracting factor is not evaluated for Sectors 42 and 44–45, because the NAICS codes in these sectors cannot be used to classify Government acquisitions for supplies, and only the applicable manufacturing NAICS codes can be applied (13 CFR 121.402(b)(2)).

**Sources of Industry and Program Data**

SBA used a tabulation of the Economic Census from the U.S. Census Bureau as its primary source of industry data to evaluate industry characteristics and develop size standards for this proposed rule (*www.census.gov/programs-surveys/economic-census.html*). The tabulation based on the 2012 Economic Census was the latest available at the time this proposed rule was developed. The special tabulation provides industry data on the number of firms, number of establishments, number of employees, annual payroll, and annual receipts of companies by Industry (6-digit level), Industry Group (4-digit level), Subsector (3-digit level), and Sector (2-digit level). These data are arrayed by various classes of firms' size based on the overall number of employees and receipts of the entire enterprise (all establishments and affiliated firms) from all industries. The special tabulation also contains information for different levels of NAICS categories on average and median firm size in terms of both receipts and employment, total receipts generated by the four and eight largest firms, the Herfindahl-Hirschman Index (HHI), the Gini coefficient, and size distributions of firms by various receipts and employment size groupings.

In some cases where data were not available due to disclosure prohibitions in the Census Bureau's tabulation, SBA either estimated missing values using available relevant data or examined data at a higher level of industry aggregation, such as at the NAICS Sector (2-digit), Subsector (3-digit), or Industry Group (4-digit) level. In some instances, SBA's analysis was based only on those factors for which data were available or estimates of missing values were possible.

To evaluate some industries that are not covered by the Economic Census, SBA used a similar special tabulation of the latest County Business Patterns (CBP) published by the U.S. Census Bureau (*www.census.gov/programs-surveys/cbp.html*). Similarly, to evaluate industries in NAICS Sector 11 that are also not covered by the Economic Census and CBP, SBA evaluated a similar special tabulation based on the 2012 Census of Agriculture (*www.nass.usda.gov*) from the National Agricultural Statistics Service (NASS). Besides the Economic Census, Agricultural Census and CBP tabulations, SBA also evaluates relevant industry data from other sources when necessary, especially for industries that are not covered by the Economic Census or CBP. These include the Quarterly Census of Employment and Wages (QCEW, also known as ES–202 data) (*www.bls.gov/cew/*) and Business Employment Dynamics (BED) data (*www.bls.gov/bdm/*) from the U.S. Bureau of Labor Statistics. Similarly, to evaluate certain financial industries that have asset-based size standards, SBA examines the data from the Statistics on Depository Institutions (SDI) database (*www5.fdic.gov/sdi/main.asp*) of the Federal Depository Insurance Corporation (FDIC) data. Finally, to evaluate the capacity component of the Petroleum Refiners (NAICS 324110) size standard, SBA evaluates the petroleum production data from the Energy Information Administration (*www.eia.gov*).

To calculate average assets, SBA used sales to total assets ratios from the Risk Management Association's Annual eStatement Studies (*https://rmau.org*). To evaluate Federal contracting trends and evaluate exceptions or sub-industries under different 6-digit NAICS industries, SBA examined the data on Federal prime contract awards from the Federal Procurement Data System—Next Generation (FPDS–NG) (*www.fpds.gov*). To assess the impact on financial assistance to small businesses, SBA examined its internal data on 7(a) and 504 loan programs. For some portion of impact analysis, SBA also evaluated the data from the System of Award Management (SAM) (*www.sam.gov*).

Data sources and estimation procedures SBA uses in its size standards analysis are documented in detail in SBA's Methodology, which is available at *www.sba.gov/size.*

**Dominance in Field of Operation**

Section 3(a) of the Small Business Act (15 U.S.C. 632(a)) defines a small business concern as one that is: (1) Independently owned and operated; (2) not dominant in its field of operation; and (3) within a specific small business definition or size standard established by the SBA Administrator. SBA considers as part of its evaluation whether a business concern at a proposed size standard would be dominant in its field of operation. For this, SBA generally examines the industry's market share of firms at the proposed or revised size standard as well as the distribution of firms by size. Market share and size distribution may indicate whether a firm can exercise a major controlling influence on a national basis in an industry where a significant number of business concerns are engaged. If a contemplated size standard includes a dominant firm, SBA will consider a lower size standard to exclude the dominant firm from being defined as small.

**Selection of Size Standards**

In the 2009 Methodology, which SBA applied to the first 5-year comprehensive review of size standards, SBA adopted a fixed number of size standards levels as part of its effort to simplify size standards. In response to public comments to the 2009 Methodology white paper, and the 2013 amendment to the Small Business Act (section 3(a)(8)) under section 1661 of the National Defense Authorization Act for Fiscal Year 2013 (''NDAA 2013'') (Pub. L. 112–239, January 2, 2013), in the revised Methodology, SBA has relaxed the limitation on the number of small business size standards. Specifically, section 1661 of NDAA 2013 states ''SBA cannot limit the number of size standards, and shall assign the appropriate size standard to each industry identified by NAICS.''

In the revised Methodology, SBA calculates a separate size standard for each NAICS industry. However, to account for errors and limitations associated with various data SBA evaluates in the size standards analysis, SBA rounds the calculated size standard value for a receipts-based size standard to the nearest $500,000, except for agricultural industries in Subsectors 111 and 112 for which the calculated size standards will be rounded to the nearest $250,000. Similarly, the calculated value for an employee-based size standard is rounded to the nearest 50 employees for industries in manufacturing and other sectors (except Wholesale Trade and Retail Trade) and to the nearest 25 employees for industries in Wholesale Trade and Retail Trade. This rounding procedure is applied both in calculating a size standard for each of the five primary factors and in calculating the overall size standard for the industry.

As a policy decision, SBA continues to maintain the minimum and maximum levels for both receipts and employee-based size standards. Accordingly, SBA will not generally propose or adopt a size standard that is either below the minimum level or above the maximum, even though the calculations yield values below the minimum or above the maximum. The minimum size standard reflects the size an established small business should be to have adequate capabilities and resources to be able to compete for and perform Federal contracts (but does not account for small businesses that are newly formed or just starting operations). On the other hand, the maximum size standard represents the level above which businesses, if qualified as small, would outcompete much smaller businesses when accessing Federal assistance.

With respect to employee-based size standards, SBA has established 250 employees and 1,500 employees, respectively, as the minimum and maximum size standard levels for Manufacturing and other industries (excluding Wholesale and Retail Trade).

The industry data suggests that a 250 employee minimum and 1,500 employee maximum size standards would be too high for Wholesale and Retail Trade industries. Accordingly, SBA has established 50 employees as the minimum size standard and 250 employees as the maximum size standard for Wholesale and Retail Trade industries.

**Evaluation of Industry Factors**

As mentioned earlier, to assess the appropriateness of the current size standards, SBA evaluates the structure of each industry in terms of four economic characteristics or factors: average firm size, average assets size as a proxy for startup costs and entry barriers, the 4-firm concentration ratio as a measure of industry competition, and size distribution of firms using the Gini coefficient. For each size standard type (*i.e.,* receipts-based or employee-based), SBA ranks industries both in terms of each of the four industry factors and in terms of the existing size standard and computes the 20th percentile and 80th percentile values for both. SBA then evaluates each industry by comparing its value for each industry factor to the 20th percentile and 80th percentile values for the corresponding factor for industries under a particular type of size standard.

If the characteristics of an industry under review within a particular size standard type are similar to the average characteristics of industries within the same size standard type in the 20th percentile, SBA will consider adopting as an appropriate size standard for that industry the 20th percentile value of size standards for those industries. For each size standard type, if the industry's characteristics are similar to the average characteristics of industries in the 80th percentile, SBA will assign a size standard that corresponds to the 80th percentile in the size standard rankings of industries. A separate size standard is established for each factor based on the amount of differences between the factor value for an industry under a particular size standard type and 20th percentile and 80th percentile values for the corresponding factor for all industries in the same type. Specifically, the actual level of the new size standard for each industry factor is derived by a linear interpolation using the 20th percentile and 80th percentile values of that factor and corresponding percentiles of size standards. Each calculated size standard is bounded between the minimum and maximum size standards levels, as discussed before. As noted earlier, the calculated value for an employee-based size standard is rounded to the nearest 50 employees for industries in manufacturing and other sectors (except Wholesale Trade and Retail Trade) and to the nearest 25 employees for industries in Wholesale Trade and Retail Trade. SBA rounds the calculated size standard value for a receipts-based

size standard to the nearest $500,000, except for agricultural industries in Subsectors 111 and 112 for which the calculated size standards will be rounded to the nearest $250,000.

Table 2, 20th and 80th Percentiles of Industry Factors for Receipts-Based Size Standards, and Table 3, 20th and 80th Percentiles of Industry Factors for Employee-Based Size Standards, show the 20th percentile and 80th percentile values for average firm size (simple and weighted), average assets size, 4-firm concentration ratio, and Gini coefficient for industries with receipt-based and employee-based size standards, respectively.

TABLE 2—20TH AND 80TH PERCENTILES OF INDUSTRY FACTORS FOR RECEIPTS-BASED SIZE STANDARDS

| Industries/percentiles | Simple average receipts size ($ million) | Weighted average receipts size ($ million) | Average assets size ($ million) | Four-firm concentration ratio (%) | Gini coefficient |
|---|---|---|---|---|---|
| Industries, excluding Subsectors 111 and 112: | | | | | |
| 20th percentile | 0.83 | 19.42 | 0.34 | 7.9 | 0.686 |
| 80th percentile | 7.52 | 830.65 | 5.19 | 42.4 | 0.834 |
| Industries in Subsectors 111 and 112: | | | | | |
| 20th percentile | 0.06 | 1.48 | 0.07 | 1.7 | 0.608 |
| 80th percentile | 0.83 | 13.32 | 0.88 | 12.3 | 0.908 |

TABLE 3—20TH AND 80TH PERCENTILES OF INDUSTRY FACTORS FOR EMPLOYEE-BASED SIZE STANDARDS

| Industries/percentiles | Simple average firm size (no. of employees) | Weighted average firm size (no. of employees) | Average assets size ($ million) | Four-firm concentration ratio (%) | Gini coefficient |
|---|---|---|---|---|---|
| Manufacturing and other industries, excluding Sectors 42 and 44–45: | | | | | |
| 20th percentile | 29.5 | 250.7 | 4.18 | 24.7 | 0.760 |
| 80th percentile | 118.3 | 1,629.0 | 45.4 | 61.3 | 0.853 |
| Industries in Sectors 42 and 44–45: | | | | | |
| 20th percentile | 12.6 | 199.8 | 3.19 | 16.1 | 0.794 |
| 80th percentile | 27.9 | 1,693.8 | 11.99 | 38.9 | 0.865 |

**Estimation of Size Standards Based on Industry Factors**

*Receipts-Based Size Standards*

An estimated size standard supported by each industry factor is derived by comparing its value for a specific industry to the 20th percentile and 80th percentile values for that factor. If an industry's value for a particular factor is near the 20th percentile value in the distribution, the supported size standard will be one that is close to the 20th percentile value of size standards for industries in the size standards group, which is $8.0 million. If a factor for an industry is close to the 80th percentile value of that factor, it would support a size standard that is close to the 80th percentile value in the distribution of size standards, which is $35.0 million. For a factor that is within, above, or below the 20–80th percentile range, the size standard is calculated using linear interpolation based on the 20th percentile and 80th percentile values for that factor and the 20th percentile and 80th percentile values of size standards.

For example, if an industry's simple average receipts are $1.9 million, that would support a size standard of $12.5 million. According to Table 2, the 20th percentile and 80th percentile values of average receipts are $0.83 million and $7.52 million, respectively. The $1.9 million is 15.9% between the 20th percentile value ($0.83 million) and the 80th percentile value ($7.52 million) of simple average receipts (($1.9 million − $0.83 million) ÷ ($7.52 million − $0.83 million) = 0.159 or 15.9%). Applying this percentage to the difference between the 20th percentile value ($8 million) and 80th percentile ($35.0 million) value of size standards and then adding the result to the 20th percentile size standard value ($8.0 million) yields a calculated size standard value of $12.32 million ([{$35.0 million − $8.0 million} * 0.159] + $8.0 million = $12.32 million). The final step is to round the calculated $12.32 million size standard to the nearest $500,000, which in this example yields $12.5 million. This procedure is applied to calculate size standards supported by other industry factors.

*Employee-Based Size Standards*

An estimated size standard supported by each industry factor is derived by comparing its value for a specific industry to the 20th percentile and 80th percentile values for that factor. If an industry's value for a particular factor is near the 20th percentile value in the distribution, the supported size standard will be one that is close to the 20th percentile value of size standards for industries in the size standards group, which is 50 employees for Sector 42, Wholesale Trade and 2 industries from sector 44–45, Retail Trade that have employee-based size standards. If a factor for an industry is close to the 80th percentile value of that factor, it would support a size standard that is close to the 80th percentile value in the distribution of size standards, which is 250 employees. For a factor that is within, above, or below the 20–80th percentile range, the size standard is calculated using linear interpolation based on the 20th percentile and 80th percentile values for that factor and the 20th percentile and 80th percentile values of size standards.

For example, if an industry's simple average firm size in number of employees is 19 employees, that would support a size standard of 125 employees. According to Table 3, the 20th percentile and 80th percentile values of average number of employees are 12.6 and 27.9 employees, respectively. The 19 employee average firm size is 41.8% between the 20th percentile value (12.6 employees) and

the 80th percentile value (27.9 employees) of simple average firm size in number of employees ((19 employees − 12.6 employees) ÷ (250 employees − 50 employees) = 0.4183 or 41.8%). Applying this percentage to the difference between the 20th percentile value (50 employees) and 80th percentile (250 employees) value of size standards and then adding the result to the 20th percentile size standard value (50 employees) yields a calculated size standard value of 125 employees ([{250 employees − 50 employees} * 0.4183] + 50 employees = 134 employees). The final step is to round the calculated 134 employee size standard to the nearest 25 employees, which in this example yields 125 employees. This procedure is applied to calculate size standards supported by other industry factors. Detailed formulas involved in these calculations are presented in SBA's Methodology, which is available on its website at *www.sba.gov/size.*

**Derivation of Size Standards Based on Federal Contracting Factor**

Besides industry structure, SBA also evaluates Federal contracting data to assess the success of small businesses in getting Federal contracts under the existing size standards. For each industry with $20.0 million or more in annual Federal contract dollars, SBA evaluates the small business share of total Federal contract dollars relative to the small business share of total industry receipts. However, since NAICS codes in the Wholesale Trade and Retail Trade sectors cannot be used to classify Government acquisitions for supplies, and only the applicable manufacturing code can be applied, the Federal contracting factor is not considered in evaluating industry-based size standards for these sectors (13 CFR 121.402(b)). For a detail explanation of the evaluation of the Federal Contracting Factor, see the SBA Methodology at *www.sba.gov/size.*

The SBA's Methodology presented above results in five separate size standards based on evaluation of the five primary factors (*i.e.,* four industry factors and one Federal contracting factor). As discussed in more detail above, the Federal contracting factor is not considered in evaluating the Wholesale Trade and Retail Trade sectors. SBA typically derives an industry's overall size standard by assigning equal weights to size standards supported by each of these five factors. However, if necessary, SBA's Methodology would allow assigning different weights to some of these factors in response to its policy decisions and other considerations. For detailed calculations, see SBA's Methodology, available on its website at *www.sba.gov/size.*

**Calculated Size Standards Based on Industry Factors**

Table 5 and Table 6 below, Size Standards Supported by Each Factor for Each Industry (Employees) and Size Standards Supported by Each Factor for Each Industry (Receipts), show the results of analyses of industry by measure of size for each industry covered by this proposed rule. NAICS industries in columns 3, 4, 5, 6 and 7 show two numbers. The upper number is the value for the industry factor on the top of the column and the lower number is the size standard supported by that factor (number of employees in Table 5 and receipts in Table 6). Column 8 shows a calculated new size standard for each industry. This is the average of the size standards supported by each factor (the size standard for average firm size is an average of size standards supported by simple average firm size, and weighted average firm size), rounded to the nearest 25 employees for industries using employee-based size standards in Wholesale Trade and Retail Trade, and to the nearest $500,000 for industries in retail trade using receipts-based size standards. Analytical details involved in the averaging procedure are described in SBA's Methodology, which is available on its website at *www.sba.gov/size.* For comparison with the calculated new size standards, the current size standards are in column 9 of Table 5 and Table 6.

TABLE 5—SIZE STANDARDS SUPPORTED BY EACH FACTOR FOR EACH INDUSTRY (EMPLOYEES)

[For Columns 3–7: Upper value = Calculated factor; Lower value = size standard supported by that factor]

| NAICS code NAICS industry title | Type | Simple average firm size (number of employees) | Weighted average firm size (number of employees) | Average assets size ($ million) | Four-firm ratio (%) | Gini coefficient | Calculated size standard (number of employees) | Current size standard (number of employees) |
|---|---|---|---|---|---|---|---|---|
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (9) | (10) |
| 423110 Automobile and Other Motor Vehicle Merchant Wholesalers. | Factor ..... | 21.4 | 657.2 | 37.1 | 47.4 | 0.883 | 225 | 250 |
| | Size Std. ..... | 175 | 100 | 250 | 250 | 250 | | |
| 423120 Motor Vehicle Supplies and New Parts Merchant Wholesalers. | Factor ..... | 21.5 | 749.6 | 7.8 | 19.4 | 0.847 | 150 | 200 |
| | Size Std. ..... | 175 | 125 | 150 | 75 | 200 | | |
| 423130 Tire and Tube Merchant Wholesalers. | Factor ..... | 28.2 | 580.6 | 9.5 | 24.8 | 0.828 | 175 | 200 |
| | Size Std. ..... | 250 | 100 | 200 | 125 | 150 | | |
| 423140 Motor Vehicle Parts (Used) Merchant Wholesalers. | Factor ..... | 9.9 | 767.5 | 1.0 | 39.3 | 0.759 | 125 | 100 |
| | Size Std. ..... | 50 | 125 | 50 | 250 | 50 | | |
| 423210 Furniture Merchant Wholesalers. | Factor ..... | 12.0 | 103.0 | 2.3 | 16.1 | 0.798 | 50 | 100 |
| | Size Std. ..... | 50 | 50 | 50 | 50 | 75 | | |
| 423220 Home Furnishing Merchant Wholesalers. | Factor ..... | 14.1 | 225.1 | 3.8 | 17.7 | 0.794 | 75 | 100 |
| | Size Std. ..... | 75 | 50 | 75 | 75 | 50 | | |
| 423310 Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers. | Factor ..... | 18.8 | 396.0 | 4.3 | 13.0 | 0.802 | 75 | 150 |
| | Size Std. ..... | 125 | 75 | 75 | 50 | 75 | | |

TABLE 5—SIZE STANDARDS SUPPORTED BY EACH FACTOR FOR EACH INDUSTRY (EMPLOYEES)—Continued

[For Columns 3–7: Upper value = Calculated factor; Lower value = size standard supported by that factor]

| NAICS code NAICS industry title | Type | Simple average firm size (number of employees) | Weighted average firm size (number of employees) | Average assets size ($ million) | Four-firm ratio (%) | Gini coefficient | Calculated size standard (number of employees) | Current size standard (number of employees) |
|---|---|---|---|---|---|---|---|---|
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (9) | (10) |
| 423320 Brick, Stone, and Related Construction Material Merchant Wholesalers. | Factor ..... | 12.7 | 220.9 | 4.7 | 30.1 | 0.815 | 100 | 150 |
| | Size Std. ..... | 50 | 50 | 75 | 175 | 100 | | |
| 423330 Roofing, Siding, and Insulation Material Merchant Wholesalers. | Factor ..... | 32.6 | 1403.0 | 11.5 | 46.6 | 0.847 | 225 | 200 |
| | Size Std. ..... | 250 | 200 | 250 | 250 | 200 | | |
| 423390 Other Construction Material Merchant Wholesalers. | Factor ..... | 14.9 | 168.2 | 2.4 | 18.5 | 0.749 | 75 | 100 |
| | Size Std. ..... | 75 | 50 | 50 | 75 | 50 | | |
| 423410 Photographic Equipment and Supplies Merchant Wholesalers. | Factor ..... | 17.8 | 399.7 | 6.2 | 56.1 | 0.832 | 150 | 200 |
| | Size Std. ..... | 125 | 75 | 125 | 250 | 150 | | |
| 423420 Office Equipment Merchant Wholesalers. | Factor ..... | 49.4 | 10864.6 | 5.2 | 49.2 | 0.849 | 200 | 200 |
| | Size Std. ..... | 250 | 250 | 100 | 250 | 200 | | |
| 423430 Computer and Computer Peripheral Equipment and Software Merchant Wholesalers. | Factor ..... | 31.0 | 4333.1 | 10.1 | 31.9 | 0.872 | 225 | 250 |
| | Size Std. ..... | 250 | 250 | 200 | 200 | 250 | | |
| 423440 Other Commercial Equipment Merchant Wholesalers. | Factor ..... | 12.8 | 164.2 | 2.2 | 12.4 | 0.775 | 50 | 100 |
| | Size Std. ..... | 50 | 50 | 50 | 50 | 50 | | |
| 423450 Medical, Dental, and Hospital Equipment and Supplies Merchant Wholesalers. | Factor ..... | 26.9 | 2500.2 | 8.4 | 22.6 | 0.873 | 200 | 200 |
| | Size Std. ..... | 225 | 250 | 175 | 100 | 250 | | |
| 423460 Ophthalmic Goods Merchant Wholesalers. | Factor ..... | 24.3 | 1532.8 | 4.0 | 35.0 | 0.839 | 175 | 150 |
| | Size Std. ..... | 200 | 225 | 75 | 225 | 175 | | |
| 423490 Other Professional Equipment and Supplies Merchant Wholesalers. | Factor ..... | 17.0 | 417.9 | 3.5 | 36.7 | 0.823 | 125 | 150 |
| | Size Std. ..... | 100 | 75 | 50 | 225 | 125 | | |
| 423510 Metal Service Centers and Other Metal Merchant Wholesalers. | Factor ..... | 19.7 | 653.7 | 12.0 | 15.9 | 0.842 | 150 | 200 |
| | Size Std. ..... | 150 | 100 | 250 | 50 | 175 | | |
| 423520 Coal and Other Mineral and Ore Merchant Wholesalers. | Factor ..... | 8.5 | 64.6 | 27.0 | 58.9 | 0.866 | 200 | 100 |
| | Size Std. ..... | 50 | 50 | 250 | 250 | 250 | | |
| 423610 Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers. | Factor ..... | 20.7 | 1693.8 | 5.5 | 16.1 | 0.836 | 125 | 200 |
| | Size Std. ..... | 150 | 250 | 100 | 50 | 175 | | |
| 423620 Household Appliances, Electric Housewares, and Consumer Electronics Merchant Wholesalers. | Factor ..... | 20.8 | 442.3 | 14.4 | 36.0 | 0.870 | 225 | 200 |
| | Size Std. ..... | 150 | 75 | 250 | 225 | 250 | | |
| 423690 Other Electronic Parts and Equipment Merchant Wholesalers. | Factor ..... | 31.5 | 6181.3 | 11.4 | 32.8 | 0.871 | 225 | 250 |
| | Size Std. ..... | 250 | 250 | 225 | 200 | 250 | | |
| 423710 Hardware Merchant Wholesalers. | Factor ..... | 15.9 | 425.2 | 3.6 | 19.8 | 0.812 | 75 | 150 |
| | Size Std. ..... | 100 | 75 | 50 | 75 | 100 | | |
| 423720 Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers. | Factor ..... | 24.2 | 2136.3 | 5.6 | 32.6 | 0.811 | 150 | 200 |
| | Size Std. ..... | 200 | 250 | 100 | 200 | 100 | | |

TABLE 5—SIZE STANDARDS SUPPORTED BY EACH FACTOR FOR EACH INDUSTRY (EMPLOYEES)—Continued

[For Columns 3–7: Upper value = Calculated factor; Lower value = size standard supported by that factor]

| NAICS code NAICS industry title | Type | Simple average firm size (number of employees) | Weighted average firm size (number of employees) | Average assets size ($ million) | Four-firm ratio (%) | Gini coefficient | Calculated size standard (number of employees) | Current size standard (number of employees) |
|---|---|---|---|---|---|---|---|---|
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (9) | (10) |
| 423730 Warm Air Heating and Air-Conditioning Equipment and Supplies Merchant Wholesalers. | Factor ..... | 28.3 | 1400.6 | 6.4 | 39.2 | 0.821 | 175 | 150 |
| | Size Std. ..... | 250 | 200 | 125 | 250 | 125 | | |
| 423740 Refrigeration Equipment and Supplies Merchant Wholesalers. | Factor ..... | 18.5 | 431.0 | 3.7 | 29.5 | 0.790 | 100 | 100 |
| | Size Std. ..... | 125 | 75 | 50 | 175 | 50 | | |
| 423810 Construction and Mining (except Oil Well) Machinery and Equipment Merchant Wholesalers. | Factor ..... | 30.4 | 603.3 | 18.2 | 32.7 | 0.840 | 200 | 250 |
| | Size Std. ..... | 250 | 100 | 250 | 200 | 175 | | |
| 423820 Farm and Garden Machinery and Equipment Merchant Wholesalers. | Factor ..... | 19.0 | 168.8 | 8.3 | 22.6 | 0.794 | 100 | 100 |
| | Size Std. ..... | 125 | 50 | 175 | 100 | 50 | | |
| 423830 Industrial Machinery and Equipment Merchant Wholesalers. | Factor ..... | 15.1 | 498.3 | 4.1 | 10.8 | 0.795 | 75 | 100 |
| | Size Std. ..... | 75 | 100 | 75 | 50 | 50 | | |
| 423840 Industrial Supplies Merchant Wholesalers. | Factor ..... | 17.6 | 654.3 | 5.1 | 18.5 | 0.805 | 100 | 100 |
| | Size Std. ..... | 125 | 100 | 100 | 75 | 75 | | |
| 423850 Service Establishment Equipment and Supplies Merchant Wholesalers. | Factor ..... | 14.9 | 885.3 | 1.9 | 27.9 | 0.789 | 100 | 100 |
| | Size Std. ..... | 75 | 150 | 50 | 150 | 50 | | |
| 423860 Transportation Equipment and Supplies (except Motor Vehicle) Merchant Wholesalers. | Factor ..... | 17.2 | 223.1 | 10.4 | 34.9 | 0.829 | 175 | 150 |
| | Size Std. ..... | 100 | 50 | 225 | 225 | 150 | | |
| 423910 Sporting and Recreational Goods and Supplies Merchant Wholesalers. | Factor ..... | 10.9 | 199.8 | 3.1 | 11.0 | 0.806 | 50 | 100 |
| | Size Std. ..... | 50 | 50 | 50 | 50 | 75 | | |
| 423920 Toy and Hobby Goods and Supplies Merchant Wholesalers. | Factor ..... | 16.2 | 559.8 | 6.2 | 37.8 | 0.841 | 175 | 150 |
| | Size Std. ..... | 100 | 100 | 125 | 250 | 175 | | |
| 423930 Recyclable Material Merchant Wholesalers. | Factor ..... | 16.0 | 291.3 | 4.5 | 19.9 | 0.816 | 100 | 100 |
| | Size Std. ..... | 100 | 50 | 75 | 75 | 125 | | |
| 423940 Jewelry, Watch, Precious Stone, and Precious Metal Merchant Wholesalers. | Factor ..... | 7.1 | 183.5 | 4.0 | 27.4 | 0.817 | 100 | 100 |
| | Size Std. ..... | 50 | 50 | 75 | 150 | 125 | | |
| 423990 Other Miscellaneous Durable Goods Merchant Wholesalers. | Factor ..... | 9.5 | 273.5 | 1.9 | 16.8 | 0.805 | 50 | 100 |
| | Size Std. ..... | 50 | 50 | 50 | 50 | 75 | | |
| 424110 Printing and Writing Paper Merchant Wholesalers. | Factor ..... | 22.4 | 589.6 | 12.5 | 42.5 | 0.876 | 225 | 200 |
| | Size Std. ..... | 175 | 100 | 250 | 250 | 250 | | |
| 424120 Stationery and Office Supplies Merchant Wholesalers. | Factor ..... | 18.6 | 2997.2 | 3.1 | 29.5 | 0.845 | 150 | 150 |
| | Size Std. ..... | 125 | 250 | 50 | 175 | 200 | | |
| 424130 Industrial and Personal Service Paper Merchant Wholesalers. | Factor ..... | 16.4 | 267.5 | 5.3 | 29.7 | 0.832 | 125 | 150 |
| | Size Std. ..... | 100 | 50 | 100 | 175 | 150 | | |
| 424210 Drugs and Druggists' Sundries Merchant Wholesalers. | Factor ..... | 44.8 | 3002.2 | 36.8 | 43.5 | 0.890 | 250 | 250 |
| | Size Std. ..... | 250 | 250 | 250 | 250 | 250 | | |

TABLE 5—SIZE STANDARDS SUPPORTED BY EACH FACTOR FOR EACH INDUSTRY (EMPLOYEES)—Continued

[For Columns 3–7: Upper value = Calculated factor; Lower value = size standard supported by that factor]

| NAICS code NAICS industry title | Type | Simple average firm size (number of employees) | Weighted average firm size (number of employees) | Average assets size ($ million) | Four-firm ratio (%) | Gini coefficient | Calculated size standard (number of employees) | Current size standard (number of employees) |
|---|---|---|---|---|---|---|---|---|
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (9) | (10) |
| 424310 Piece Goods, Notions, and Other Dry Goods Merchant Wholesalers. | Factor ..... | 9.0 | 83.8 | 2.3 | 15.4 | 0.775 | 50 | 100 |
| | Size Std. ..... | 50 | 50 | 50 | 50 | 50 | | |
| 424320 Men's and Boys' Clothing and Furnishings Merchant Wholesalers. | Factor ..... | 15.7 | 281.1 | 5.8 | 21.3 | 0.836 | 125 | 150 |
| | Size Std. ..... | 100 | 50 | 100 | 100 | 175 | | |
| 424330 Women's, Children's, and Infants' Clothing and Accessories Merchant Wholesalers. | Factor ..... | 12.4 | 182.2 | 3.4 | 15.9 | 0.814 | 75 | 100 |
| | Size Std. ..... | 50 | 50 | 50 | 50 | 100 | | |
| 424340 Footwear Merchant Wholesalers. | Factor ..... | 17.8 | 439.7 | 9.6 | 41.0 | 0.849 | 200 | 200 |
| | Size Std. ..... | 125 | 75 | 200 | 250 | 200 | | |
| 424410 General Line Grocery Merchant Wholesalers. | Factor ..... | 62.9 | 9786.9 | 16.6 | 38.2 | 0.883 | 250 | 250 |
| | Size Std. ..... | 250 | 250 | 250 | 250 | 250 | | |
| 424420 Packaged Frozen Food Merchant Wholesalers. | Factor ..... | 27.5 | 871.9 | 8.3 | 21.4 | 0.822 | 150 | 200 |
| | Size Std. ..... | 250 | 150 | 175 | 100 | 125 | | |
| 424430 Dairy Product (except Dried or Canned) Merchant Wholesalers. | Factor ..... | 27.9 | 952.2 | 8.7 | 28.4 | 0.862 | 200 | 200 |
| | Size Std. ..... | 250 | 150 | 175 | 150 | 250 | | |
| 424440 Poultry and Poultry Product Merchant Wholesalers. | Factor ..... | 24.5 | 334.4 | 4.9 | 26.5 | 0.783 | 125 | 150 |
| | Size Std. ..... | 200 | 75 | 100 | 150 | 50 | | |
| 424450 Confectionery Merchant Wholesalers. | Factor ..... | 30.5 | 11213.6 | 7.7 | 60.3 | 0.873 | 225 | 200 |
| | Size Std. ..... | 250 | 250 | 150 | 250 | 250 | | |
| 424460 Fish and Seafood Merchant Wholesalers. | Factor ..... | 11.2 | 90.0 | 2.0 | 10.9 | 0.725 | 50 | 100 |
| | Size Std. ..... | 50 | 50 | 50 | 50 | 50 | | |
| 424470 Meat and Meat Product Merchant Wholesalers. | Factor ..... | 19.9 | 271.3 | 4.3 | 22.7 | 0.813 | 100 | 150 |
| | Size Std. ..... | 150 | 50 | 75 | 100 | 100 | | |
| 424480 Fresh Fruit and Vegetable Merchant Wholesalers. | Factor ..... | 24.0 | 293.2 | 3.2 | 12.2 | 0.767 | 75 | 100 |
| | Size Std. ..... | 200 | 75 | 50 | 50 | 50 | | |
| 424490 Other Grocery and Related Products Merchant Wholesalers. | Factor ..... | 27.7 | 7804.5 | 8.9 | 25.8 | 0.874 | 200 | 250 |
| | Size Std. ..... | 250 | 250 | 175 | 125 | 250 | | |
| 424510 Grain and Field Bean Merchant Wholesalers. | Factor ..... | 21.8 | 375.0 | 42.3 | 31.6 | 0.831 | 175 | 200 |
| | Size Std. ..... | 175 | 75 | 250 | 175 | 150 | | |
| 424520 Livestock Merchant Wholesalers. | Factor ..... | 7.9 | 31.8 | 4.4 | 21.5 | 0.817 | 100 | 100 |
| | Size Std. ..... | 50 | 50 | 75 | 100 | 125 | | |
| 424590 Other Farm Product Raw Material Merchant Wholesalers. | Factor ..... | 9.6 | 54.3 | 10.2 | 35.0 | 0.857 | 175 | 100 |
| | Size Std. ..... | 50 | 50 | 200 | 225 | 225 | | |
| 424610 Plastics Materials and Basic Forms and Shapes Merchant Wholesalers. | Factor ..... | 12.6 | 117.2 | 5.9 | 26.4 | 0.825 | 125 | 150 |
| | Size Std. ..... | 50 | 50 | 100 | 150 | 150 | | |
| 424690 Other Chemical and Allied Products Merchant Wholesalers. | Factor ..... | 18.6 | 1443.2 | 9.9 | 13.7 | 0.857 | 175 | 150 |
| | Size Std. ..... | 125 | 225 | 200 | 50 | 225 | | |
| 424710 Petroleum Bulk Stations and Terminals. | Factor ..... | 26.1 | 425.6 | 58.6 | 38.9 | 0.865 | 225 | 200 |
| | Size Std. ..... | 225 | 75 | 250 | 250 | 250 | | |
| 424720 Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals). | Factor ..... | 15.4 | 253.7 | 49.9 | 33.6 | 0.881 | 200 | 200 |
| | Size Std. ..... | 75 | 50 | 250 | 200 | 250 | | |
| 424810 Beer and Ale Merchant Wholesalers. | Factor ..... | 70.4 | 498.2 | 14.7 | 14.5 | 0.733 | 125 | 200 |
| | Size Std. ..... | 250 | 100 | 250 | 50 | 50 | | |

TABLE 5—SIZE STANDARDS SUPPORTED BY EACH FACTOR FOR EACH INDUSTRY (EMPLOYEES)—Continued

[For Columns 3–7: Upper value = Calculated factor; Lower value = size standard supported by that factor]

| NAICS code NAICS industry title | Type | Simple average firm size (number of employees) | Weighted average firm size (number of employees) | Average assets size ($ million) | Four-firm ratio (%) | Gini coefficient | Calculated size standard (number of employees) | Current size standard (number of employees) |
|---|---|---|---|---|---|---|---|---|
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (9) | (10) |
| 424820 Wine and Distilled Alcoholic Beverage Merchant Wholesalers. | Factor ..... | 40.9 | 3125.0 | 15.2 | 31.7 | 0.872 | 225 | 250 |
| | Size Std. ..... | 250 | 250 | 250 | 175 | 250 | | |
| 424910 Farm Supplies Merchant Wholesalers. | Factor ..... | 20.2 | 1343.1 | 15.0 | 20.3 | 0.838 | 175 | 200 |
| | Size Std. ..... | 150 | 200 | 250 | 75 | 175 | | |
| 424920 Book, Periodical, and Newspaper Merchant Wholesalers. | Factor ..... | 24.8 | 1541.6 | 4.7 | 41.9 | 0.868 | 200 | 200 |
| | Size Std. ..... | 200 | 225 | 75 | 250 | 250 | | |
| 424930 Flower, Nursery Stock, and Florists' Supplies Merchant Wholesalers. | Factor ..... | 14.9 | 200.8 | 1.2 | 9.2 | 0.749 | 50 | 100 |
| | Size Std. ..... | 75 | 50 | 50 | 50 | 50 | | |
| 424940 Tobacco and Tobacco Product Merchant Wholesalers. | Factor ..... | 41.4 | 2419.0 | 11.6 | 55.4 | 0.859 | 250 | 250 |
| | Size Std. ..... | 250 | 250 | 250 | 250 | 225 | | |
| 424950 Paint, Varnish, and Supplies Merchant Wholesalers. | Factor ..... | 16.7 | 359.6 | 5.4 | 41.0 | 0.829 | 150 | 150 |
| | Size Std. ..... | 100 | 75 | 100 | 250 | 150 | | |
| 424990 Other Miscellaneous Nondurable Goods Merchant Wholesalers. | Factor ..... | 7.2 | 92.2 | 1.4 | 14.4 | 0.799 | 50 | 100 |
| | Size Std. ..... | 50 | 50 | 50 | 50 | 75 | | |
| 425110 Business to Business Electronic Markets. | Factor ..... | 3.8 | 20.1 | 3.0 | 33.7 | 0.792 | 100 | 100 |
| | Size Std. ..... | 50 | 50 | 50 | 200 | 50 | | |
| 425120 Wholesale Trade Agents and Brokers. | Factor ..... | 6.9 | 5713.0 | 4.3 | 24.9 | 0.834 | 125 | 100 |
| | Size Std. ..... | 50 | 250 | 75 | 125 | 150 | | |
| 441110 New Car Dealers | Factor ..... | 54.5 | 870.2 | 12.1 | 5.8 | 0.632 | 150 | 200 |
| | Size Std. ..... | 250 | 150 | 250 | 50 | 50 | | |
| 454310 Fuel Dealers ..... | Factor ..... | 14.8 | 1890.5 | 2.1 | 17.4 | 0.723 | 75 | 100 |
| | Size Std. ..... | 75 | 250 | 50 | 50 | 50 | | |

TABLE 6—SIZE STANDARDS SUPPORTED BY EACH FACTOR FOR EACH INDUSTRY (RECEIPTS)

[For columns 3–7: Upper value = Calculated factor; Lower value = size standard supported by that factor]

| NAICS code NAICS industry title | Type | Simple average firm size ($ million) | Weighted average firm size ($ million) | Average assets size ($ million) | Four-firm ratio (%) | Gini coefficient | Calculated size standard ($ million) | Current size standard ($ million) |
|---|---|---|---|---|---|---|---|---|
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (9) | (10) |
| 441120 Used Car Dealers | Factor ..... | 3.0 | 1,604.2 | 0.8 | 18.0 | 0.704 | ..... | ..... |
| | Size Std. ..... | 16.5 | 41.5 | 10.5 | 16.0 | 11.5 | 17.0 | 27.0 |
| 441210 Recreational Vehicle Dealers. | Factor ..... | 6.4 | 219.3 | 2.8 | 18.8 | 0.724 | ..... | ..... |
| | Size Std. ..... | 30.5 | 14.5 | 21.5 | 16.5 | 15.0 | 19.0 | 35.0 |
| 441222 Boat Dealers ..... | Factor ..... | 2.7 | 79.2 | 1.3 | 14.4 | 0.677 | ..... | ..... |
| | Size Std. ..... | 15.5 | 10.0 | 13.0 | 13.0 | 6.5 | 11.5 | 35.0 |
| 441228 Motorcycle, ATV, and All Other Motor Vehicle Dealers. | Factor ..... | 3.4 | 25.8 | 1.5 | 4.4 | 0.656 | ..... | ..... |
| | Size Std. ..... | 18.5 | 8.0 | 14.5 | 6.0 | 6.0 | 10.0 | 35.0 |
| 441310 Automotive Parts and Accessories Stores. | Factor ..... | 2.7 | 2,949.6 | 1.0 | 45.1 | 0.767 | ..... | ..... |
| | Size Std. ..... | 15.5 | 41.5 | 12.0 | 37.0 | 22.5 | 25.0 | 16.5 |
| 441320 Tire Dealers ..... | Factor ..... | 3.0 | 1,312.0 | 1.0 | 33.7 | 0.759 | ..... | ..... |
| | Size Std. ..... | 16.5 | 41.5 | 11.5 | 28.0 | 21.5 | 22.5 | 16.5 |
| 442110 Furniture Stores | Factor ..... | 3.3 | 631.2 | 1.2 | 17.3 | 0.774 | ..... | ..... |
| | Size Std. ..... | 18.0 | 28.5 | 13.0 | 15.5 | 24.0 | 19.0 | 22.0 |
| 442210 Floor Covering Stores. | Factor ..... | 1.5 | 18.1 | 0.4 | 4.7 | 0.616 | ..... | ..... |
| | Size Std. ..... | 10.5 | 8.0 | 8.5 | 6.0 | 6.0 | 7.5 | 8.0 |
| 442291 Window Treatment Stores. | Factor ..... | 0.6 | 17.2 | 0.2 | 21.7 | 0.621 | ..... | ..... |
| | Size Std. ..... | 7.0 | 8.0 | 7.5 | 19.0 | 6.0 | 10.0 | 8.0 |
| 442299 All Other Home Furnishings Stores. | Factor ..... | 2.9 | 3,614.3 | 1.1 | 59.8 | 0.836 | ..... | ..... |
| | Size Std. ..... | 16.0 | 41.5 | 12.0 | 41.5 | 35.5 | 29.5 | 22.0 |

TABLE 6—SIZE STANDARDS SUPPORTED BY EACH FACTOR FOR EACH INDUSTRY (RECEIPTS)—Continued

[For columns 3–7: Upper value = Calculated factor; Lower value = size standard supported by that factor]

| NAICS code NAICS industry title | Type | Simple average firm size ($ million) | Weighted average firm size ($ million) | Average assets size ($ million) | Four-firm ratio (%) | Gini coefficient | Calculated size standard ($ million) | Current size standard ($ million) |
|---|---|---|---|---|---|---|---|---|
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (9) | (10) |
| 443141 Household Appliance Stores. | Factor | 2.5 | 513.0 | 0.8 | 28.2 | 0.767 | ..... | ..... |
| | Size Std. | 14.5 | 24.5 | 10.5 | 24.0 | 23.0 | 19.5 | 12.0 |
| 443142 Electronics Stores. | Factor | 4.4 | 15,362.2 | 1.3 | 63.8 | 0.854 | ..... | ..... |
| | Size Std. | 22.5 | 41.5 | 13.0 | 41.5 | 38.5 | 31.5 | 35.0 |
| 444110 Home Centers | Factor | 61.9 | ..... | 23.8 | ..... | ..... | ..... | ..... |
| | Size Std. | 41.5 | ..... | 41.5 | ..... | ..... | 41.5 | 41.5 |
| 444120 Paint and Wallpaper Stores. | Factor | 5.1 | ..... | 1.8 | ..... | ..... | ..... | ..... |
| | Size Std. | 25.5 | ..... | 16.0 | ..... | ..... | 21.0 | 30.0 |
| 444130 Hardware Stores | Factor | 1.9 | 493.3 | 0.9 | 25.9 | 0.674 | ..... | ..... |
| | Size Std. | 12.5 | 24.0 | 11.0 | 22.0 | 6.0 | 14.5 | 8.0 |
| 444190 Other Building Material Dealers. | Factor | 3.3 | 271.8 | 1.1 | 9.1 | 0.729 | ..... | ..... |
| | Size Std. | 18.0 | 16.5 | 12.5 | 9.0 | 16.0 | 14.0 | 22.0 |
| 444210 Outdoor Power Equipment Stores. | Factor | 1.5 | 17.9 | 0.7 | 8.2 | 0.612 | ..... | ..... |
| | Size Std. | 11.0 | 8.0 | 10.0 | 8.0 | 6.0 | 8.5 | 8.0 |
| 444220 Nursery, Garden Center, and Farm Supply Stores. | Factor | 3.0 | 755.2 | 1.2 | 21.6 | 0.749 | ..... | ..... |
| | Size Std. | 17.0 | 32.5 | 12.5 | 18.5 | 19.5 | 19.0 | 12.0 |
| 445110 Supermarkets and Other Grocery (except Convenience) Stores. | Factor | 12.7 | 20,298.0 | 2.5 | 31.1 | 0.863 | ..... | ..... |
| | Size Std. | 41.5 | 41.5 | 20.0 | 26.0 | 40.0 | 32.0 | 35.0 |
| 445120 Convenience Stores. | Factor | 1.0 | 126.3 | 0.2 | 12.5 | 0.606 | ..... | ..... |
| | Size Std. | 8.5 | 11.5 | 7.0 | 11.5 | 6.0 | 8.5 | 32.0 |
| 445210 Meat Markets | Factor | 1.2 | 9.2 | 0.3 | 5.5 | 0.583 | ..... | ..... |
| | Size Std. | 9.5 | 7.5 | 7.5 | 6.0 | 6.0 | 7.0 | 8.0 |
| 445220 Fish and Seafood Markets. | Factor | 1.1 | 6.0 | 0.3 | 5.8 | 0.622 | ..... | ..... |
| | Size Std. | 9.0 | 7.5 | 7.5 | 6.5 | 6.0 | 7.0 | 8.0 |
| 445230 Fruit and Vegetable Markets. | Factor | 1.3 | 13.0 | 0.2 | 7.9 | 0.677 | ..... | ..... |
| | Size Std. | 10.0 | 8.0 | 7.0 | 8.0 | 6.5 | 7.5 | 8.0 |
| 445291 Baked Goods Stores. | Factor | 0.6 | 83.7 | 0.2 | 35.8 | 0.694 | ..... | ..... |
| | Size Std. | 7.0 | 10.0 | 7.0 | 30.0 | 9.5 | 14.0 | 8.0 |
| 445292 Confectionery and Nut Stores. | Factor | 0.9 | 104.7 | 0.3 | 37.6 | 0.741 | ..... | ..... |
| | Size Std. | 8.5 | 11.0 | 8.0 | 31.0 | 18.0 | 17.0 | 8.0 |
| 445299 All Other Specialty Food Stores. | Factor | 0.7 | 23.8 | 0.2 | 15.6 | 0.659 | ..... | ..... |
| | Size Std. | 7.5 | 8.0 | 7.5 | 14.0 | 6.0 | 9.0 | 8.0 |
| 445310 Beer, Wine, and Liquor Stores. | Factor | 1.5 | 163.9 | 0.5 | 10.1 | 0.607 | ..... | ..... |
| | Size Std. | 10.5 | 13.0 | 8.5 | 9.5 | 6.0 | 9.0 | 8.0 |
| 446110 Pharmacies and Drug Stores. | Factor | 12.1 | 41,475.3 | 2.5 | 69.5 | 0.797 | ..... | ..... |
| | Size Std. | 41.5 | 41.5 | 19.5 | 41.5 | 28.5 | 33.0 | 30.0 |
| 446120 Cosmetics, Beauty Supplies, and Perfume Stores. | Factor | 2.1 | 1,347.4 | 0.8 | 56.3 | 0.817 | ..... | ..... |
| | Size Std. | 13.0 | 41.5 | 10.5 | 41.5 | 32.0 | 28.0 | 30.0 |
| 446130 Optical Goods Stores. | Factor | 2.0 | 1,672.9 | 0.6 | 57.2 | 0.780 | ..... | ..... |
| | Size Std. | 13.0 | 41.5 | 9.5 | 41.5 | 25.0 | 26.0 | 22.0 |
| 446191 Food (Health) Supplement Stores. | Factor | 1.2 | 518.0 | 0.4 | 45.0 | 0.734 | ..... | ..... |
| | Size Std. | 9.5 | 24.5 | 8.0 | 37.0 | 17.0 | 20.0 | 16.5 |
| 446199 All Other Health and Personal Care Stores. | Factor | 1.4 | 28.4 | 0.5 | 7.6 | 0.681 | ..... | ..... |
| | Size Std. | 10.5 | 8.5 | 8.5 | 8.0 | 7.0 | 8.5 | 8.0 |
| 447110 Gasoline Stations with Convenience Stores. | Factor | 7.7 | 3,327.0 | 1.5 | 13.2 | 0.746 | ..... | ..... |
| | Size Std. | 36.0 | 41.5 | 14.5 | 12.0 | 19.0 | 21.0 | 32.0 |
| 447190 Other Gasoline Stations. | Factor | 10.5 | 7,328.2 | 2.2 | 38.7 | 0.784 | ..... | ..... |
| | Size Std. | 41.5 | 41.5 | 18.0 | 32.0 | 26.0 | 29.5 | 16.5 |
| 448110 Men's Clothing Stores. | Factor | 2.0 | 495.9 | 0.9 | 42.4 | 0.780 | ..... | ..... |
| | Size Std. | 13.0 | 24.0 | 11.0 | 35.0 | 25.0 | 22.5 | 12.0 |
| 448120 Women's Clothing Stores. | Factor | 3.2 | 1,087.6 | 1.2 | 25.8 | 0.839 | ..... | ..... |
| | Size Std. | 17.5 | 41.5 | 12.5 | 22.0 | 36.0 | 25.0 | 30.0 |
| 448130 Children's and Infants' Clothing Stores. | Factor | 4.4 | 1,116.2 | 1.7 | 61.1 | 0.871 | ..... | ..... |
| | Size Std. | 22.5 | 41.5 | 15.5 | 41.5 | 41.5 | 32.5 | 35.0 |
| 448140 Family Clothing Stores. | Factor | 12.8 | 6,648.7 | 5.1 | 49.6 | 0.882 | ..... | ..... |
| | Size Std. | 41.5 | 41.5 | 34.5 | 40.5 | 41.5 | 39.5 | 41.5 |
| 448150 Clothing Accessories Stores. | Factor | 2.3 | 1,314.2 | 1.0 | 58.3 | 0.840 | ..... | ..... |
| | Size Std. | 14.0 | 41.5 | 11.5 | 41.5 | 36.0 | 29.5 | 16.5 |
| 448190 Other Clothing Stores. | Factor | 2.0 | 1,894.8 | 0.8 | 51.3 | 0.806 | ..... | ..... |
| | Size Std. | 12.5 | 41.5 | 10.5 | 41.5 | 30.0 | 27.5 | 22.0 |

TABLE 6—SIZE STANDARDS SUPPORTED BY EACH FACTOR FOR EACH INDUSTRY (RECEIPTS)—Continued

[For columns 3–7: Upper value = Calculated factor; Lower value = size standard supported by that factor]

| NAICS code NAICS industry title | Type | Simple average firm size ($ million) | Weighted average firm size ($ million) | Average assets size ($ million) | Four-firm ratio (%) | Gini coefficient | Calculated size standard ($ million) | Current size standard ($ million) |
|---|---|---|---|---|---|---|---|---|
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (9) | (10) |
| 448210 Shoe Stores | Factor | 5.2 | 1,301.1 | 2.2 | 34.3 | 0.841 | | |
| | Size Std. | 25.5 | 41.5 | 18.0 | 28.5 | 36.5 | 29.0 | 30.0 |
| 448310 Jewelry Stores | Factor | 1.7 | 580.1 | 1.0 | 24.0 | 0.752 | | |
| | Size Std. | 11.5 | 26.5 | 12.0 | 20.5 | 20.0 | 18.0 | 16.5 |
| 448320 Luggage and Leather Goods Stores. | Factor | 5.0 | 983.0 | 3.1 | 75.0 | 0.848 | | |
| | Size Std. | 24.5 | 40.0 | 23.0 | 41.5 | 37.5 | 33.5 | 30.0 |
| 451110 Sporting Goods Stores. | Factor | 2.5 | 1,481.1 | 1.0 | 32.6 | 0.782 | | |
| | Size Std. | 15.0 | 41.5 | 12.0 | 27.5 | 25.5 | 23.5 | 16.5 |
| 451120 Hobby, Toy, and Game Stores. | Factor | 3.5 | 3,091.1 | 1.4 | 77.4 | 0.851 | | |
| | Size Std. | 18.5 | 41.5 | 14.0 | 41.5 | 38.0 | 31.0 | 30.0 |
| 451130 Sewing, Needlework, and Piece Goods Stores. | Factor | 1.1 | 1,257.0 | 0.5 | | 0.776 | | |
| | Size Std. | 9.0 | 41.5 | 8.5 | | 24.5 | 19.5 | 30.0 |
| 451140 Musical Instrument and Supplies Stores. | Factor | 1.4 | 536.2 | 0.7 | 41.8 | 0.734 | | |
| | Size Std. | 10.5 | 25.0 | 10.0 | 34.5 | 17.0 | 20.0 | 12.0 |
| 451211 Book Stores | Factor | 3.9 | 3,005.3 | 1.6 | 69.7 | 0.853 | | |
| | Size Std. | 20.5 | 41.5 | 14.5 | 41.5 | 38.5 | 31.5 | 30.0 |
| 451212 News Dealers and Newsstands. | Factor | 1.0 | 242.4 | 0.4 | 57.3 | 0.742 | | |
| | Size Std. | 8.5 | 15.5 | 8.5 | 41.5 | 18.0 | 20.0 | 8.0 |
| 452210 Department Stores. | Factor | 11,030.9 | 25,982.4 | 5,014.0 | 82.7 | 0.555 | | |
| | Size Std. | 41.5 | 41.5 | 41.5 | 41.5 | 6.0 | 32.5 | 35.0 |
| 452311 Warehouse Clubs and Supercenters. | Factor | 44,853.1 | 210,447.9 | 15,466.6 | 93.6 | | | |
| | Size Std. | 41.5 | 41.5 | 41.5 | 41.5 | | 41.5 | 32.0 |
| 452319 All Other General Merchandise Stores. | Factor | 7.1 | 7,543.1 | 2.4 | 66.1 | 0.876 | | |
| | Size Std. | 33.0 | 41.5 | 19.5 | 41.5 | 41.5 | 35.0 | 35.0 |
| 453110 Florists | Factor | 0.3 | 1.5 | 0.1 | 1.6 | 0.527 | | |
| | Size Std. | 6.0 | 7.5 | 6.5 | 6.0 | 6.0 | 6.5 | 8.0 |
| 453210 Office Supplies and Stationery Stores. | Factor | 5.0 | 4,645.9 | 1.4 | 85.1 | 0.862 | | |
| | Size Std. | 24.5 | 41.5 | 14.0 | 41.5 | 40.0 | 32.0 | 35.0 |
| 453220 Gift, Novelty, and Souvenir Stores. | Factor | 0.8 | 165.7 | 0.3 | 18.8 | 0.713 | | |
| | Size Std. | 8.0 | 13.0 | 8.0 | 16.5 | 13.0 | 12.0 | 8.0 |
| 453310 Used Merchandise Stores. | Factor | 0.9 | 73.6 | 0.4 | 12.7 | 0.756 | | |
| | Size Std. | 8.5 | 10.0 | 8.5 | 11.5 | 21.0 | 12.5 | 8.0 |
| 453910 Pet and Pet Supplies Stores. | Factor | 2.8 | 3,479.3 | 0.8 | 69.0 | 0.814 | | |
| | Size Std. | 16.0 | 41.5 | 10.5 | 41.5 | 31.0 | 28.0 | 22.0 |
| 453920 Art Dealers | Factor | 1.4 | 55.3 | 0.7 | 14.4 | 0.779 | | |
| | Size Std. | 10.0 | 9.0 | 10.0 | 13.0 | 25.0 | 14.5 | 8.0 |
| 453930 Manufactured (Mobile) Home Dealers. | Factor | 2.4 | 235.3 | 1.4 | 31.4 | 0.696 | | |
| | Size Std. | 14.5 | 15.0 | 14.0 | 26.5 | 10.0 | 16.5 | 16.5 |
| 453991 Tobacco Stores | Factor | 1.2 | 17.1 | 0.4 | 5.7 | 0.656 | | |
| | Size Std. | 9.5 | 8.0 | 8.0 | 6.5 | 6.0 | 7.5 | 8.0 |
| 453998 All Other Miscellaneous Store Retailers (except Tobacco Stores). | Factor | 1.2 | 55.7 | 0.4 | 10.1 | 0.712 | | |
| | Size Std. | 9.5 | 9.0 | 8.5 | 9.5 | 13.0 | 10.0 | 8.0 |
| 454110 Electronic Shopping and Mail-Order Houses. | Factor | 11.4 | 9,493.0 | 3.3 | 30.2 | 0.868 | | |
| | Size Std. | 41.5 | 41.5 | 24.5 | 25.5 | 41.0 | 33.0 | 41.5 |
| 454210 Vending Machine Operators. | Factor | 1.6 | 254.9 | 0.6 | 28.2 | 0.787 | | |
| | Size Std. | 11.0 | 16.0 | 9.5 | 24.0 | 26.5 | 18.5 | 12.0 |
| 454390 Other Direct Selling Establishments. | Factor | 1.1 | 202.5 | 0.4 | 15.1 | 0.749 | | |
| | Size Std. | 9.0 | 14.0 | 8.0 | 13.5 | 19.5 | 13.0 | 8.0 |

**Summary of Calculated Size Standards**

Of the 137 industries reviewed in this proposed rule, the results from analyses of the latest available data on the four primary industry factors (*i.e.,* average firm size, average assets size, four-firm ratio, and Gini coefficient) from Table 5 and Table 6 above support increasing size standards for 49 industries, decreasing size standards for 66 industries, and maintaining size standards for 22 industries. Table 7, Summary of Calculated Size Standards, summarizes these results by NAICS sector.

TABLE 7—SUMMARY OF CALCULATED SIZE STANDARDS

| Sector | Sector name | Number of size standards reviewed | Number of size standards increased | Number of size standards decreased | Number of size standards maintained |
|---|---|---|---|---|---|
| 42 | Wholesale Trade | 71 | 14 | 38 | 19 |
| 44–45 | Retail Trade | 66 | 35 | 28 | 3 |
| Total | | 137 | 49 | 66 | 22 |

**Evaluation of SBA Loan Data**

Before proposing or deciding on an industry's size standard revision, SBA also considers the impact of size standards revisions on SBA's loan programs. Accordingly, SBA examined its internal 7(a) and 504 loan data for fiscal years 2016–2018 to assess whether the calculated size standards in Table 5 and Table 6 need further adjustments to ensure credit opportunities for small businesses through those programs. For the industries reviewed in this rule, the data shows that it is mostly businesses much smaller than the current or proposed size standards that receive SBA's 7(a) and 504 loans. For example, for industries covered by this rule, more than 96.9% of 7(a) and 504 loans in fiscal years 2016–2018 went to businesses below the current or proposed size standards.

*Special Considerations*

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

The Coronavirus Aid, Relief, and Economic Security Act (the CARES Act or the Act) (Pub. L. 116–136) was signed on March 27, 2020, to provide emergency assistance and health care response for individuals, families, and businesses affected by the coronavirus pandemic. Section 1102 of the Act temporarily permits SBA to guarantee 100% of 7(a) loans under a new program titled the Paycheck Protection Program (PPP). Section 1106 of the Act provides for forgiveness of up to the full principal amount of qualifying loans guaranteed under the PPP. The PPP and loan forgiveness are intended to provide economic relief to small businesses nationwide adversely impacted by COVID–19. On April 24, 2020, additional funding for the CARES Act, including for the PPP, was provided (see The Paycheck Protection Program and Health Care Enhancement Act, Pub. L. 116–139). On December 27, 2020, Congress passed the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act as part of the Consolidation Appropriations Act, approving additional funding for the PPP loans program and allowing the hardest-hit small businesses to receive a second draw PPP loan (Pub. L. 116–260). Additionally, the law approved grants for shuttered-venue operators. On March 11, 2021, the American Rescue Plan Act of 2021 (Pub. L. 117–2) was signed into law. This act provides additional relief for the nation's small businesses and hard-hit industries by adding new support to the recovery effort, including additional funding for the Paycheck Protection Program and the Shuttered Venue Operators Grant program. The act also adds additional funding for targeted Economic Injury Disaster Loan (EIDL) Advance payments.

The Agency is following closely the development of the pandemic and the economic situation. A variety of economic indicators such as the Gross Domestic Product (GDP) and the unemployment rate show that this recession is significantly worse than any other recession since World War II. According to the Bureau of Economic Analysis (BEA), real GDP decreased 5% and real personal consumption in goods and services decreased 6.9% in the first quarter of 2020. In the second quarter, real GDP decreased 31.4% and real personal consumption in goods and services decreased 33.2%. In the third quarter, real GDP increased 33.4%, and real personal consumption in goods and services increased 41.0%. Real GDP showed a more moderate increase of 4.3% and real personal consumption expenditures increased 2.3% in the fourth quarter of 2020. Real GDP decreased 3.5% in 2020 from 2019 (from the 2019 annual level to the 2020 annual level), compared with an increase of 2.2 percent in 2019 from 2018. According to the BEA's 'advance' estimate, real GDP increased 6.4% and real personal consumption expenditures increased 10.7% in the first quarter of 2021.

In April 2021, both the unemployment rate, at 6.1%, and the number of unemployed persons, at 9.8 million, were little changed from the previous month. These measures are down considerably from their April 2020 highs (14.8% and 23.1 million, respectively) but remain well above their pre-pandemic levels in February 2020 (3.5% and 5.7 million, respectively). Specifically, for the sectors evaluated in this proposed rule, in April 2021, the unemployment rate for the Wholesale Trade sector was 3.3%, and the unemployment rate for the Retail Trade sector was 6.8%. In April 2020, the unemployment rates for these sectors were 9.9% and 18.6%, respectively. The Federal Reserve Board's Monetary Policy Report, published in June 2020, shows that, in general, the most impacted firms in these sectors are small businesses.[1]

**Proposed Changes to Size Standards**

Accordingly, in view of the analytical data discussed above and the economic impacts of the COVID–19 pandemic, SBA proposes to adopt increases to size standards for 49 industries and to retain the current size standards for 88 industries.

The proposed size standards are presented by measure of size in Table 8, Proposed Size Standards Revisions (Employees) and Table 9, Proposed Size

[1] See the special section titled ''Small Businesses during the COVID–19 Crisis'' on page 24 of the Monetary Policy Report prepared by the Board of Governors of the Federal Reserve System in June 2020. (*https://www.federalreserve.gov/monetarypolicy/files/20200612_mprfullreport.pdf*). The latest publication of the Monetary Policy Report was published on February 19, 2021. Also, see *https://portal.census.gov/pulse/data*. This report is a recent survey created by the Census Bureau to provide high-frequency, detailed information on participation in small business-specific initiatives such as the PPP.

Standards Revisions (Receipts). Also presented in Table 8 and Table 9 are current and calculated size standards for comparison.

TABLE 8—PROPOSED SIZE STANDARDS REVISIONS (EMPLOYEES)

| NAICS code | NAICS industry title | Calculated size standard (employees) | Proposed size standard (employees) | Current size standard (employees) |
|---|---|---|---|---|
| 423140 | Motor Vehicle Parts (Used) Merchant Wholesalers | 125 | 125 | 100 |
| 423330 | Roofing, Siding, and Insulation Material Merchant Wholesalers | 225 | 225 | 200 |
| 423460 | Ophthalmic Goods Merchant Wholesalers | 175 | 175 | 150 |
| 423520 | Coal and Other Mineral and Ore Merchant Wholesalers | 200 | 200 | 100 |
| 423620 | Household Appliances, Electric Housewares, and Consumer Electronics Merchant Wholesalers. | 225 | 225 | 200 |
| 423730 | Warm Air Heating and Air-Conditioning Equipment and Supplies Merchant Wholesalers. | 175 | 175 | 150 |
| 423860 | Transportation Equipment and Supplies (except Motor Vehicle) Merchant Wholesalers. | 175 | 175 | 150 |
| 423920 | Toy and Hobby Goods and Supplies Merchant Wholesalers | 175 | 175 | 150 |
| 424110 | Printing and Writing Paper Merchant Wholesalers | 225 | 225 | 200 |
| 424450 | Confectionery Merchant Wholesalers | 225 | 225 | 200 |
| 424590 | Other Farm Product Raw Material Merchant Wholesalers | 175 | 175 | 100 |
| 424690 | Other Chemical and Allied Products Merchant Wholesalers | 175 | 175 | 150 |
| 424710 | Petroleum Bulk Stations and Terminals | 225 | 225 | 200 |
| 425120 | Wholesale Trade Agents and Brokers | 125 | 125 | 100 |

TABLE 9—PROPOSED SIZE STANDARDS REVISIONS (RECEIPTS)

| NAICS code | NAICS industry title | Calculated size standard ($ million) | Proposed size standard ($ million) | Current size standard ($ million) |
|---|---|---|---|---|
| 441310 | Automotive Parts and Accessories Stores | 25.0 | 25.0 | 16.5 |
| 441320 | Tire Dealers | 22.5 | 22.5 | 16.5 |
| 442291 | Window Treatment Stores | 10.0 | 10.0 | 8.0 |
| 442299 | All Other Home Furnishings Stores | 29.5 | 29.5 | 22.0 |
| 443141 | Household Appliance Stores | 19.5 | 19.5 | 12.0 |
| 444130 | Hardware Stores | 14.5 | 14.5 | 8.0 |
| 444210 | Outdoor Power Equipment Stores | 8.5 | 8.5 | 8.0 |
| 444220 | Nursery, Garden Center, and Farm Supply Stores | 19.0 | 19.0 | 12.0 |
| 445291 | Baked Goods Stores | 14.0 | 14.0 | 8.0 |
| 445292 | Confectionery and Nut Stores | 17.0 | 17.0 | 8.0 |
| 445299 | All Other Specialty Food Stores | 9.0 | 9.0 | 8.0 |
| 445310 | Beer, Wine, and Liquor Stores | 9.0 | 9.0 | 8.0 |
| 446110 | Pharmacies and Drug Stores | 33.0 | 33.0 | 30.0 |
| 446130 | Optical Goods Stores | 26.0 | 26.0 | 22.0 |
| 446191 | Food (Health) Supplement Stores | 20.0 | 20.0 | 16.5 |
| 446199 | All Other Health and Personal Care Stores | 8.5 | 8.5 | 8.0 |
| 447190 | Other Gasoline Stations | 29.5 | 29.5 | 16.5 |
| 448110 | Men's Clothing Stores | 22.5 | 22.5 | 12.0 |
| 448150 | Clothing Accessories Stores | 29.5 | 29.5 | 16.5 |
| 448190 | Other Clothing Stores | 27.5 | 27.5 | 22.0 |
| 448310 | Jewelry Stores | 18.0 | 18.0 | 16.5 |
| 448320 | Luggage and Leather Goods Stores | 33.5 | 33.5 | 30.0 |
| 451110 | Sporting Goods Stores | 23.5 | 23.5 | 16.5 |
| 451120 | Hobby, Toy, and Game Stores | 31.0 | 31.0 | 30.0 |
| 451140 | Musical Instrument and Supplies Stores | 20.0 | 20.0 | 12.0 |
| 451211 | Book Stores | 31.5 | 31.5 | 30.0 |
| 451212 | News Dealers and Newsstands | 20.0 | 20.0 | 8.0 |
| 452311 | Warehouse Clubs and Supercenters | 41.5 | 41.5 | 32.0 |
| 453220 | Gift, Novelty, and Souvenir Stores | 12.0 | 12.0 | 8.0 |
| 453310 | Used Merchandise Stores | 12.5 | 12.5 | 8.0 |
| 453910 | Pet and Pet Supplies Stores | 28.0 | 28.0 | 22.0 |
| 453920 | Art Dealers | 14.5 | 14.5 | 8.0 |
| 453998 | All Other Miscellaneous Store Retailers (except Tobacco Stores) | 10.0 | 10.0 | 8.0 |
| 454210 | Vending Machine Operators | 18.5 | 18.5 | 12.0 |
| 454390 | Other Direct Selling Establishments | 13.0 | 13.0 | 8.0 |

Table 10, Summary of Proposed Size Standards Revisions by Sector, below, summarizes the proposed changes to size standards by NAICS sector.

TABLE 10—SUMMARY OF PROPOSED SIZE STANDARDS REVISIONS BY SECTOR

| Sector | Sector name | Number of size standards reviewed | Number of size standards increased | Number of size standards decreased | Number of size standards maintained |
|---|---|---|---|---|---|
| 42 | Wholesale Trade | 71 | 14 | 0 | 57 |
| 44–45 | Retail Trade | 66 | 35 | 0 | 31 |
| Total | | 137 | 49 | 0 | 88 |

**Evaluation of Dominance in Field of Operation**

SBA has determined that for the industries that it has evaluated in this proposed rule, no individual firm at or below the proposed size standard would be large enough to dominate its field of operation. At the proposed size standards levels, if adopted, the small business share of total industry receipts would be, on average, 0.4%, varying from 0.01% to 3.4%.

**Alternatives Considered**

By law, SBA is required to develop numerical size standards for establishing eligibility for Federal small business assistance programs and to review every five years all size standards and make necessary adjustments to reflect the current industry structure and Federal market conditions. Other than varying the levels of size standards by industry and changing the measures of size standards (*e.g.,* using annual receipts vs. the number of employees), no practical alternatives exist to the systems of numerical size standards.

The proposal is to increase size standards where the data suggested increases are warranted, and to retain, in response to COVID–19 emergency and resultant economic impacts on small businesses, all current size standards where the data suggested lowering is appropriate.

Nonetheless, SBA considered two other alternatives. Alternative Option 1 was to propose changes exactly as suggested by the analytical results. In other words, Option 1 would entail increasing size standards for 49 industries, decreasing them for 66 industries, and retaining them at their current levels for 22 industries. Alternative Option 2 was to retain all current size standards.

Alternative Option 1 would cause a substantial number of currently small businesses to lose their small business status and hence to lose their access to Federal small business assistance, especially SBA's financial assistance in some cases.

However, in the present situation with the global COVID–19 pandemic resulting in high levels of risk and dramatic reductions in economic activity of unprecedented nature, SBA presents the impacts of adopting the analytical results without adjustment in Alternative Option 1 and proposes to retain all size standards for which the evaluation of principal factors suggested reductions, and to adopt only the increases suggested by the evaluation. SBA will adopt this approach temporarily and may reevaluate as the economic situation evolves.

Under Option 2, given the current COVID–19 pandemic, SBA considered retaining the current level of all size standards even though the current analysis may suggest changing them. SBA considers that the option of retaining all size standards at this moment provides the opportunity to reassess the economic situation once the economic recovery starts. Under this option, as the current situation develops, SBA will be able to assess new data available on economic indicators, federal procurement, and SBA loans before adopting changes to size standards. However, SBA is not adopting Option 2 because the Regulatory Impact Analysis conducted for this rule in accordance with Executive Order 12866 (see below) shows that retaining all size standards at their current levels is more onerous for the small businesses than the option of adopting 49 increases and retaining 88 size standards. SBA may reevaluate this approach as the current economic situation evolves.

**Request for Comments**

SBA invites public comments on this proposed rule, especially on the following issues:

1. SBA seeks feedback on whether SBA's proposal to increase 49 size standards and retain 88 size standards is appropriate given the results from the latest available industry and Federal contracting data of each industry and subindustry (exception) reviewed in this proposed rule, along with ongoing uncertainty and dramatic contraction in economic activity due to the global COVID–19 pandemic. SBA also seeks suggestions, along with supporting facts and analysis, for alternative standards, if they would be more appropriate than the proposed size standards.

2. SBA also seeks comments on whether SBA should not lower any size standards in view of the COVID–19 pandemic and its adverse impacts on small businesses as well as on the overall economic situation when analytical results suggest some size standards could be lowered. SBA believes that lowering size standards under the current economic environment would run counter to Congress's and the Federal Government's efforts to aid and provide relief to the nation's small businesses impacted by the COVID–19 pandemic.

3. Given the uncertainty produced by the global COVID–19 pandemic and the economic consequences, SBA would like to receive comments from the public on the possibility of lowering size standards while mitigating the consequences of the lower standards, instead of not lowering any size standards at all.

4. In calculating the overall industry size standard, SBA has assigned equal weight to each of the four primary factors in all industries and subindustries covered by this proposed rule. SBA seeks feedback on whether it should assign equal weight to each factor or whether it should give more weight to one or more factors for certain industries or subindustries. Recommendations to weigh some factors differently than others should include suggested weights for each factor along with supporting facts and analysis.

5. Finally, SBA seeks comments on data sources it used to examine industry and Federal market conditions, as well as suggestions on relevant alternative data sources that the Agency should evaluate in reviewing or modifying size

standards for industries covered by this proposed rule.

Public comments on the above issues are very valuable to SBA for validating its proposed size standards revisions in this proposed rule. Commenters addressing size standards for a specific industry or a group of industries should include relevant data and/or other information supporting their comments.

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

*Executive Order 12866*

The Office of Management and Budget (OMB) has determined that this proposed rule is a significant regulatory action for purposes of Executive Order 12866. However, this rule is not a ''major rule'' under the Congressional Review Act, 5 U.S.C. 800. Accordingly, in the next section SBA provides a Regulatory Impact Analysis of this proposed rule, including: (1) A statement of the need for the proposed action, (2) an evaluation of the benefits and costs—both quantitative and qualitative—of the proposed action, and (3) an examination of the alternative approaches considered.

*Regulatory Impact Analysis*

1. What is a need for this regulatory action?

Under the Small Business Act, SBA's Administrator is responsible for establishing small business size definitions (or ''size standards'') and ensuring that such definitions vary from industry to industry to reflect differences among various industries. The Jobs Act requires SBA to review every 5 years all size standards and make necessary adjustments to reflect current industry and Federal market conditions. This proposed rule is part of the second 5-year review of size standards in accordance with the Jobs Act. The first 5-year review of size standards was completed in early 2016. Such periodic reviews of size standards provide SBA with an opportunity to incorporate ongoing changes to industry structure and Federal market environment into size standards and to evaluate the impacts of prior revisions to size standards on small businesses. This also provides SBA with an opportunity to seek and incorporate public input to the size standards review and analysis. SBA believes that proposed size standards revisions for industries being reviewed in this rule will make size standards more reflective of the current economic characteristics of businesses in those industries and the latest trends in Federal marketplace.

SBA's mission is to aid and assist small businesses through a variety of financial, procurement, business development and counseling, and disaster assistance programs. To determine the actual intended beneficiaries of these programs, SBA establishes numerical size standards by industry to identify businesses that are deemed small.

The proposed revisions to the existing size standards for 49 industries or subindustries in NAICS Sectors 42 and 44–45 are consistent with SBA's statutory mandates to help small businesses grow and create jobs and to review and adjust size standards every five years. This regulatory action promotes the Administration's goals and objectives as well as meets the SBA's statutory responsibility. One of SBA's goals in support of promoting the Administration's objectives is to help small businesses succeed through fair and equitable access to capital and credit, Federal Government contracts and purchases, and management and technical assistance. Reviewing and modifying size standards, when appropriate, ensures that intended beneficiaries are able to access Federal small business programs that are designed to assist them to become competitive and create jobs.

2. What are the potential benefits and costs of this regulatory action?

OMB directs agencies to establish an appropriate baseline to evaluate any benefits, costs, or transfer impacts of regulatory actions and alternative approaches considered. The baseline should represent the agency's best assessment of what the world would look like absent the regulatory action. For a new regulatory action promulgating modifications to an existing regulation (such as modifying the existing size standards), a baseline assuming no change to the regulation (*i.e.,* making no changes to current size standards) generally provides an appropriate benchmark for evaluating benefits, costs, or transfer impacts of proposed regulatory changes and their alternatives.

Proposed Changes to Size Standards

Based on the results from analyses of latest industry data, as well as consideration of impact of size standards changes on small businesses and significant adverse impacts of the COVID–19 emergency on small businesses and the overall economic activity, of the total of 137 industries in Sectors 42 and 44–45, SBA proposes to increase size standards for 49 industries and maintain current size standards for remaining 88 industries.

The Baseline

For purposes of this regulatory action, the baseline represents maintaining the ''status quo,'' *i.e.,* making no changes to the current size standards. Using the number of small businesses and levels of benefits (such as SBA's loans, disaster assistance, etc.) they receive under the current size standards, one can examine the potential benefits, costs, and transfer impacts of proposed changes to size standards on small businesses and on the overall economy.

Based on the 2012 Economic Census (the latest available), of a total of about 975,569 businesses in industries in Sectors 42 and 44–45, 97.4% are considered small under the current size standards. That percentage varies from 96.6% in Sector 42 to 97.9% in Sector 44–45. Based on the SBA's internal data on its loan programs for fiscal years 2016–2018, small businesses in those industries received, on an annual basis, a total of 11,666 7(a) and 504 loans in that period, totaling about $5.5 billion, of which 84.7% was issued through the 7(a) program and 15.3% was issued through the 504/CDC program. During fiscal years 2016–2018, small businesses in those industries also received 667 loans through the SBA's EIDL program, totaling about $63.2 million on an annual basis. Table 11, Baseline for All Industries, below, provides these baseline results by sector.

TABLE 11—BASELINE FOR ALL INDUSTRIES

| | Sector 42 | Sector 44–45 | Total |
|---|---|---|---|
| Baseline All Industries (current size standards) | 71 | 66 | 137 |
| Total firms (Economic Census) | 319,716 | 655,853 | 975,569 |
| Total small firms under current size standards (Economic Census) | 308,710 | 641,995 | 950,705 |
| Small firms as % of total firms | 96.6 | 97.9 | 97.5 |

TABLE 11—BASELINE FOR ALL INDUSTRIES—Continued

| | Sector 42 | Sector 44–45 | Total |
|---|---|---|---|
| No. of 7(a) and 504/CDC loans (FY 2016–2018) | 3,249 | 8,417 | 11,666 |
| Amount of 7(a) and 504 loans ($ million) (FY 2016–2018) | $1,836.7 | $3,692.9 | $5,529.6 |
| No. of EIDL loans (FY 2016–2018) | 137 | 530 | 667 |
| Amount of EIDL loans ($ million) (FY 2016–2018) | $16.7 | $46.6 | $63.2 |

Totals may not sum due to rounding.

Increases to Size Standards

As stated above, of the 137 employee-based and receipts-based size standards in Sectors 42 and 44–45 that were reviewed in preparation for this rule, based on the results from analyses of latest industry data as well as impacts of size standards changes on small businesses, SBA proposes to increase 49 size standards. Below are descriptions of the benefits, costs, and transfer impacts of these proposed increases to size standards.

A. Benefits of Increases to Size Standards

The most significant benefit to businesses from proposed increases to size standards would be gaining eligibility for Federal small business assistance programs or retaining that eligibility for a longer period. These include SBA's business loan programs, such as the 7(a) and EIDL loan programs. SBA's regulations specify that NAICS codes for the Wholesale and Retail Trade industries shall not be used to classify Government acquisition for supplies (13 CFR 121.402(b)). As such, for purposes of federal contracts set-aside for small businesses the size standard for all industries included in the Wholesale Trade and Retail Trade sectors is 500 employees under the nonmanufacturer rule (see 13 CFR 121.406). SBA is not evaluating the size standard for the nonmanufacturer rule in this rulemaking. Thus, SBA estimates that the proposed increases to size standards as part of this rulemaking will not impact the market for federal contracts using small business set-asides.

Besides the access to SBA financial assistance programs discussed above, small businesses also benefit through reduced fees, less paperwork, and fewer compliance requirements that are available to small businesses through the Federal Government. However, SBA has no data to estimate the number of small businesses receiving such benefits.

Based on the 2012 Economic Census (latest available), SBA estimates that in 49 industries in NAICS Sectors 42 and 44–45 for which it has proposed to increase size standards, 1,839 firms (see Table 12, below) not considered small under the current size standards will become small under the proposed size standards increases and therefore would become eligible for SBA assistance programs. That represents about 0.5% of all firms classified as small under the current size standards in industries for which SBA has proposed increasing size standards. If the proposed increase is adopted, SBA estimates that this would result in an increase to the small business share of total receipts in those industries from 30.4% to 31.5%.

Based on the data for fiscal years 2016–2018, SBA estimates up to 29 SBA 7(a) and 504 loans totaling about $10.9 million could be made to these newly qualified small businesses. That represents a 0.6% increase to the loan amount compared to the Group baseline.[2]

Newly qualified small businesses could also benefit from the SBA's EIDL program. Since the benefit provided through this program is contingent on the occurrence and severity of a disaster in the future, SBA cannot make a meaningful estimate of this impact. However, based on the historical trends of the EIDL data, SBA estimates that, on an annual basis, the newly defined small businesses under the proposed increases to size standards, if adopted, could receive 3 EIDL loans, totaling about $0.31 million.[3]

Additionally, the newly defined small businesses would also benefit through reduced fees, less paperwork, and fewer compliance requirements that are available to small businesses through the Federal Government, but SBA has no data to quantify this impact. Table 12, Impacts of Proposed Increases to Size Standards, provides these results by NAICS sector.

TABLE 12—IMPACTS OF PROPOSED INCREASES TO SIZE STANDARDS

| | Sector 42 | Sector 44–45 | Total |
|---|---|---|---|
| No. of industries with proposed increases to size standards | 14 | 35 | 49 |
| Total current small businesses in industries with Proposed increases to size standards (Economic Census 2012) | 63,984 | 286,758 | 350,742 |
| Additional firms qualifying as small under proposed standards (2012 Economic Census) | 145 | 1,694 | 1,839 |
| Percentage of additional firms qualifying as small relative to current small businesses in industries with proposed increases to size standards | 0.2 | 0.6 | 0.5 |
| Total no. of 7(a) and 504 loans to small business in industries with proposed increases to size standards (FY 2016–2018) | 349 | 4,510 | 4,859 |
| Total amount of 7(a) and 504 loans to small businesses in industries with proposed increases to size standards ($ million) (FY 2016–2018) | $182.8 | $1,633.1 | $1,815.9 |
| Estimated no. of 7(a) and 504 loans to newly qualified small firms | 1 | 28 | 29 |
| Estimated 7(a) and 504 loan amount to newly qualified small firms ($ million) | $0.5 | $10.3 | $10.9 |
| % increase to 7(a) and 504 loan amount relative to the total amount of 7(a) and 504 loans in industries with proposed increases to size standards | 0.3 | 0.6 | 0.6 |

[2] Note that these figures refer to the standard 7(a) and 504 loans, not the Paycheck Protection Program (PPP) under the CARES Act, the Economic Aid to Hard-Hit Small Businesses, Non-Profits, and Venues Act, and the American Rescue Plan Act of 2021.

[3] Note that these figures refer to the standard EIDL loans, not COVID EIDL loans under the CARES Act, the Economic Aid to Hard-Hit Small Businesses, Non-Profits, and Venues Act, and the American Rescue Plan Act of 2021.

TABLE 12—IMPACTS OF PROPOSED INCREASES TO SIZE STANDARDS—Continued

| | Sector 42 | Sector 44–45 | Total |
|---|---|---|---|
| Total no. of EIDL loans to small businesses in industries with proposed increases to size standards (FY 2016–2018) | 12 | 288 | 300 |
| Total amount of EIDL loans to small businesses in industries with proposed increases to size standards ($ million) (FY 2016–2018) | $1.9 | $21.5 | $23.4 |
| Estimated no. of EIDL loans to newly qualified small firms | 1 | 2 | 3 |
| Estimated EIDL loan amount to newly qualified small firms ($ million) | $0.15 | $0.15 | $0.31 |
| % increase to EIDL loan amount relative to the total amount of EIDL loans in industries with proposed increases to size standards | 8.3 | 0.7 | 1.3 |

Totals may not sum due to rounding.

B. Costs of Increases to Size Standards

To the extent that newly qualified small businesses could seek assistance from SBA's financial assistance programs, the proposed increases to size standards, if adopted, may entail some additional administrative costs to the Government. However, small business lenders have an option of using the tangible net worth and net income-based alternative size standard instead of using the industry-based size standards to establish eligibility for SBA's loans. Moreover, this proposed rule does not establish new size standards for the very first time; rather it intends to modify the existing size standards in accordance with a statutory requirement and the latest data and other relevant factors. For these reasons, SBA believes that these added administrative costs will be minor because necessary mechanisms are already in place to handle the additional burden.

C. Transfer Impacts of Increases to Size Standards

The proposed increases to size standards, if adopted, may result in some redistribution of SBA loans between the newly qualified small businesses and small businesses under the current size standards. However, SBA estimates this impact to be de minimus because the vast majority of the SBA loans go to small businesses that are much smaller than the current size standards. Moreover, SBA estimates that this rule would not have any impact on Federal contract dollars awarded to small businesses since SBA's regulations specify that NAICS codes for the Wholesale and Retail Trade industries shall not be used to classify Government acquisition for supplies.

3. What alternatives have been considered?

Under OMB Circular A–4, SBA is required to consider alternative regulatory approaches. In this section, SBA describes and analyzes two such alternatives to the proposed rule. Under Alternative Option 1, SBA would propose adopting size standards based solely on the analytical results. In other words, SBA would raise the size standards of 49 industries for which the analytical results suggest raising size standards and would lower the size standards of 66 industries for which the analytical results suggest lowering size standards. For the 22 remaining industries, size standards would be maintained at their current levels. Under Alternative Option 2, SBA would propose retaining all size standards for all industries, given the uncertainty generated by the ongoing COVID–19 pandemic. Below, SBA discusses and presents the net impacts of each option.

Alternative Option 1: Consider Adopting All Calculated Size Standards

As discussed before, in this proposed rule, Alternative Option 1 would cause a substantial number of currently small businesses to lose their small business status and hence to lose their access to Federal small business assistance, including SBA's financial assistance in some cases. Because we have discussed already the benefits and costs of increasing 49 size standards, here we will emphasize the discussion on the benefits and costs of decreasing 66 size standards.

The primary benefit of adopting Alternative Option 1 is that SBA's procurement, management, technical and financial assistance resources would be targeted to the most appropriate beneficiaries of such programs according to the analytical results. Adopting the size standards suggested by the analytical results would also promote consistency with analytical results in SBA's exercise of its authority to determine size standards.

As explained in the Size Standards Methodology White Paper, in addition to adopting all results of the primary analysis, SBA evaluates other relevant factors as needed such as the impact of the reductions or increases of size standards on the distribution of contracts awarded to small businesses, and may adopt different results with the intention of mitigating potential negative impacts.

A. Benefits of Decreases to Size Standards

The most significant benefit to businesses from decreases to size standards when SBA's analysis suggests such decreases, is that it may help ensure that size standards are more reflective of latest industry structure and that Federal small business assistance is more effectively targeted to its intended beneficiaries. The adoption of smaller size standards when the results support them diminishes the risk of providing assistance to firms that are not small anymore.

Decreasing size standards may reduce the administrative costs of the Government, because the risk of providing assistance to other than small businesses may diminish when the size standards better reflect the structure of the market. The risks of providing SBA's loans to firms that are not in need of financial assistance will provide for a better chance for smaller firms to benefit from the opportunities available to them through the Federal Government. Although SBA did not quantify the impact associated with this risk, SBA considers the impacts associated with this risk to be small since the majority of firms receiving financial assistance from SBA are below the calculated size standards.

B. Costs of Decreases to Size Standards

Decreases to size standards would have a very minor impact on small businesses applying for SBA's 7(a) and 504 loans because a vast majority of such loans are issued to businesses that are far below the reduced size standards. For example, based on the loan data for fiscal years 2016–2018, SBA estimates that 67 of SBA's 7(a) and 504 loans, totaling $38.0 million, could not be made to those small businesses that would lose eligibility under the reduced size standards (before

mitigation). That represents a 1.2% decrease of the loan amounts compared to the baseline. Table 13, below, shows these results by sector. However, the actual impact could be much less as businesses losing small business eligibility under the decreases to industry-based size standards could still qualify for SBA's loans under the tangible net worth and net income-based alternative size standard.

Businesses losing small business status would also be impacted in terms of access to loans through the SBA's EIDL program. However, SBA expects such impact to be minimal as only a small number of businesses in those industries received such loans during fiscal years 2016–2018. Additionally, the majority of those businesses were below the reduced size standards. Since this program is contingent on the occurrence and severity of a disaster in the future, SBA cannot make a meaningful estimate of this impact. However, based on the historical trends of the available EIDL data, SBA estimates that, on an annual basis, 5 EIDL loans, totaling about $0.5 million, would be made unavailable to firms that no longer qualify as small based on the industry size standard.

Small businesses becoming other than small if size standards were decreased might lose the benefits of reduced fees, paperwork and compliance requirements that are available to small businesses through the Federal Government, but SBA has no data to quantify this impact. However, if agencies determine that SBA's size standards do not adequately serve their purposes, they can establish a different size standard with an approval from SBA if they are required to use SBA's size standards for their programs.

SBA may adopt mitigating measures to reduce the negative impact under the assumptions of Option 1. SBA could adopt one or more of the following three actions: 1. To accept decreases in size standards as suggested by the analytical results; 2. to decrease size standards by a smaller amount than the calculated values; and 3. to retain the size standards at their current levels. For example, in response to the 2008 Financial Crisis, SBA adopted a general policy in the first 5-year comprehensive size standards review to not lower any size standard (except to exclude one or more dominant firms) even when the analytical results suggested the size standard should be lowered. Currently, because of the economic challenges presented by the COVID–19 pandemic and the measures taken to protect public health, SBA has decided to propose the same general policy of not lowering size standards in the ongoing second 5-year comprehensive size standards review as well.

Nevertheless, the impact on the overall loan activity is likely to be de minimus because SBA estimates that the majority of firms currently eligible for its loan programs would continue to remain eligible under the reduced size standards. SBA's regulations specify that NAICS codes for the Wholesale and Retail Trade industries shall not be used to classify Government acquisition for supplies (13 CFR 121.402(b)). As such, for purposes of federal contracting, the size standard for all industries included in the Wholesale and Retail Trade industries is 500 employees (13 CFR 121.406). Thus, SBA estimates that any decreases to size standards as part of this rulemaking will not impact the market for federal contracts.

TABLE 13—IMPACTS OF DECREASES TO SIZE STANDARDS UNDER ALTERNATIVE OPTION 1

| | Sector 42 | Sector 44–45 | Total |
|---|---|---|---|
| No. of industries for which SBA considered decreasing size standards (2012 Economic Census) | 38 | 28 | 66 |
| Total current small businesses in industries for which SBA considered decreasing size standards (2012 Economic Census) | 184,837 | 343,639 | 528,476 |
| Estimated no. of firms losing small status for which SBA considered decreasing size standards (2012 Economic Census) | 2,735 | 2,774 | 5,509 |
| % of Firms losing small status relative to current small businesses in industries for which SBA considered decreasing size standards | 1.5 | 0.8 | 1.0 |
| Total no. of 7(a) and 504 loans to small businesses in industries for which SBA considered decreasing size standards (FY 2016–2018) | 2,236 | 3,859 | 6,095 |
| Total amount of 7(a) and 504 loans to small businesses in industries for which SBA considered decreasing size standards ($ million) (FY 2016–2018) | $1,300.2 | $1,931.0 | $3,231.2 |
| Estimated no. of 7(a) and 504 loans not available to firms that would have lost small business status | 34 | 33 | 67 |
| Estimated 7(a) and 504 loan amount not available to firms that would have lost small business status ($ million) | $19.8 | $18.2 | $38.0 |
| % decrease to 7(a) and 504 loan amount relative to the total amount of 7(a) and 504 loans in industries for which SBA considered decreasing size standards | 1.5 | 0.9 | 1.2 |
| Total no. of EIDL loans to small businesses in industries for which SBA considered decreasing size standards (FY 2016–2018) | 86 | 239 | 325 |
| Total amount of EIDL loans to small businesses in industries for which SBA considered decreasing size standards ($ million) (FY 2016–2018) | $10.0 | $24.4 | $34.4 |
| Estimated no. of EIDL loans not available to firms that would have lost small business status | 2 | 3 | 5 |
| Estimated EIDL loan amount not available to firms that would have lost small business status ($ million) | $0.23 | $0.27 | $0.50 |
| % decrease to EIDL loan amount relative to the baseline | 2.3 | 1.1 | 1.5 |

Totals may not sum due to rounding.

C. Transfer Impacts of Decreases to Size Standards

If the size standards were decreased under Alternative Option 1, it may result in a redistribution of loans between the newly qualified small businesses and large businesses and between the newly qualified small businesses and small businesses under the current standards. However, SBA estimates this impact to be de minimus. Moreover, SBA estimates that this rule would not have an impact on Federal contract dollars awarded to small businesses since SBA's regulations

specify that NAICS codes for the Wholesale and Retail Trade industries shall not be used to classify Government acquisition for supplies. While SBA cannot estimate with certainty the actual outcome of the gains and losses among different groups of businesses from this redistribution, it can identify several probable impacts. With a smaller pool of small businesses under the decreases to size standards, some Federal assistance to be otherwise awarded to small businesses may be diverted to other uses or programs. However, since the total benefit provided through this program is contingent on the availability of funds and the occurrence and severity of a disaster in the future, SBA cannot make a meaningful estimate of this impact.

D. Net Impact of Alternative Option 1

To estimate the net impacts of Alternative Option 1, SBA followed the same methodology used to evaluate the impacts of the proposed size standards (see Table 12 above). However, under Alternative Option 1, SBA used the calculated size standards instead of the proposed ones to determine the impacts of changes to current thresholds. The impact of the increases of size standards were already shown in Table 12 above. Table 13, above, and Table 14, Net Impacts of Size Standards Changes under Alternative Option 1, below, present the impact of the decreases of size standards and the net impact of adopting the calculated results under Alternative Option 1, respectively.

Based on the 2012 Economic Census, SBA estimates that in 100 industries in NAICS Sectors 42 and 44–45 for which the analytical results suggested to change size standards, about 3,625 firms (see Table 14, below), would become other-than-small under Alternative One. That represents about 0.4% of all firms classified as small under the current size standards.

Based on the SBA's loan data for fiscal years 2016–2018, the total number of 7(a) and 504 loans may decrease by 38 loans, and the loan amounts by about $27.1 million. This represents a 0.5% decrease of the loan amounts relative to the Group baseline.

Firms' participation under SBA's EIDL program will be affected as well. Since the benefit provided through this program is contingent on the occurrence and severity of a disaster in the future, SBA cannot make a meaningful estimate of this impact. However, based on the historical trends of the EIDL data, SBA estimates that the total number of EIDL loans may decrease by about 2 loans, and the loan amount by about $0.19 million. This represents a 0.3% decrease of the loan amounts relative to the Group baseline. Table 14, below, provides these results by NAICS sector.

TABLE 14—NET IMPACTS OF SIZE STANDARDS CHANGES UNDER ALTERNATIVE OPTION 1

| | Sector 42 | Sector 44–45 | Total |
|---|---|---|---|
| No. of industries with proposed changes to size standards | 52 | 63 | 115 |
| Total no. of small businesses under the current size standards (2012 Economic Census) | 248,821 | 630,396 | 879,217 |
| Additional firms qualifying as small (2012 Economic Census) | −2,591 | −1,079 | −3,670 |
| % of additional firms qualifying as small relative to total current small businesses | −1.0 | −0.2 | −0.4 |
| Total no. of 7(a) and 504 loans to small businesses (FY 2016–2018) | 3,249 | 8,417 | 11,666 |
| Total amount of 7(a) and 504 loans to small businesses (FY 2016–2018) | $1,836.7 | $3,692.9 | $5,529.6 |
| Estimated no. of additional 7(a) and 504 loans to newly qualified small firms | −33 | −5 | −38 |
| Estimated additional 7(a) and 504 loan amount to newly qualified small firms ($ million) | −$19.2 | −$7.9 | −$27.1 |
| % increase to 7(a)and 504 loan amount relative to the total amount of 7(a) and 504 loans to small businesses | −1.0 | −0.2 | −0.5 |
| Total no. of EIDL loans to small businesses (FY 2016–2018) | 137 | 530 | 667 |
| Total amount of EIDL loans to small businesses (FY 2016–2018) | $16.7 | $46.6 | $63.2 |
| Estimated no. of additional EIDL loans to newly qualified small firms | −1 | −1 | −2 |
| Estimated additional EIDL loan amount to newly qualified small firms ($ million) | −$0.08 | −$0.12 | −$0.19 |
| % increase to EIDL loan amount relative to the total amount of EIDL loans to small businesses | −0.5 | −0.3 | −0.3 |

Totals may not sum due to rounding.

Alternative Option 2: To Retain All Current Size Standards

As discussed elsewhere in this rule, SBA considered retaining the current levels of all size standards, despite the results of its analytical data, due to the ongoing pandemic. SBA considered this option because it would provide the opportunity to reassess the economic situation once the economic recovery starts. Under this option, SBA would be able to assess new data on economic indicators, federal procurement, and SBA loans before making any changes to size standards. When compared to the baseline, Alternative Option 2 has a net impact of zero. As described previously, SBA believes the proposed increases in size standards will generate positive net benefits. Thus, SBA is not proposing Alternative Option 2.

Initial Regulatory Flexibility Analysis

According to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, when an agency issues a rulemaking, it must prepare a regulatory flexibility analysis to address the impact of the rule on small entities.

This proposed rule, if adopted, may have a significant impact on a substantial number of small businesses in the industries covered by this proposed rule. As described above, this rule may affect small businesses seeking financial assistance under SBA's 7(a), 504 and EIDL Programs, and assistance under other Federal small business programs.

Immediately below, SBA sets forth an initial regulatory flexibility analysis (IRFA) of this proposed rule addressing the following questions: (1) What is the need for and objective of the rule?; (2) What is SBA's description and estimate of the number of small businesses to which the rule will apply?; (3) What are the projected reporting, record keeping, and other compliance requirements of the rule?; (4) What are the relevant Federal rules that may duplicate, overlap, or conflict with the rule?; and (5) What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small businesses?

1. What is the need for and objective of the rule?

Changes in industry structure, technological changes, productivity growth, mergers and acquisitions, and updated industry definitions have changed the structure of many the industries covered by this proposed rule. Such changes can be enough to support revisions to current size standards for some industries. Based on the analysis of the latest data available, SBA believes that the revised standards in this proposed rule more appropriately reflect the size of businesses that need Federal assistance. The 2010 Jobs Act also requires SBA to review all size standards and make necessary adjustments to reflect market conditions.

2. What is SBA's description and estimate of the number of small businesses to which the rule will apply?

Based on data from the 2012 Economic Census, SBA estimates that there are about 350,742 small firms covered by this rulemaking under industries with proposed changes to size standards. If the proposed rule is adopted in its present form, SBA estimates that an additional 1,839 businesses will be defined as small.

3. What are the projected reporting, record keeping and other compliance requirements of the rule?

The proposed size standard changes impose no additional reporting or record keeping requirements on small businesses. Changing size standards alters the access to SBA's programs that assist small businesses but does not impose a regulatory burden because size standards neither regulate nor control business behavior. Moreover, SBA's regulations specify that NAICS codes for the Wholesale Trade and Retail Trade sectors shall not be used to classify Government acquisition for supplies (13 CFR 121.402(b)). As such, SBA estimates that there will be no additional costs as a result of this rule for firms to update their entity registrations in the Federal Government's System for Award Management (SAM).

4. What are the relevant Federal rules, which may duplicate, overlap or conflict with the rule?

Under section 3(a)(2)(C) of the Small Business Act, 15 U.S.C. 632(a)(2)(c), Federal agencies must use SBA's size standards to define a small business, unless specifically authorized by statute to do otherwise. In 1995, SBA published in the **Federal Register** a list of statutory and regulatory size standards that identified the application of SBA's size standards as well as other size standards used by Federal agencies (60 FR 57988 (November 24, 1995)). SBA is not aware of any Federal rule that would duplicate or conflict with establishing size standards.

However, the Small Business Act and SBA's regulations allow Federal agencies to develop different size standards if they believe that SBA's size standards are not appropriate for their programs, with the approval of SBA's Administrator (13 CFR 121.903). The Regulatory Flexibility Act authorizes an Agency to establish an alternative small business definition, after consultation with the Office of Advocacy of the U.S. Small Business Administration (5 U.S.C. 601(3)).

5. What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

By law, SBA is required to develop numerical size standards for establishing eligibility for Federal small business assistance programs. Other than varying size standards by industry and changing the size measures, no practical alternative exists to the systems of numerical size standards.

However, SBA considered two alternatives to its proposal to increase 49 size standards and maintain 88 size standards at their current levels. The first alternative SBA considered was adopting size standards based solely on the analytical results. In other words, the size standards of 49 industries for which the analytical results suggest raising size standards would be raised. However, the size standards of 66 industries for which the analytical results suggest lowering size standards would be lowered. This would cause a significant number of small businesses to lose their small business status. Under the second alternative, in view of the COVID–19 pandemic, SBA considered retaining all size standards at the current levels, even though the analytical results may suggest increasing 49 size standards and decreasing 66. Retaining all size standards at their current levels would be more onerous for small businesses than the option of adopting increases to size standards in 49 industries and retaining the current size standards for the rest of the industries, because the net benefit from adopting the proposal is greater than the net benefit of maintaining all size standards at their current levels.

*Executive Order 13563*

Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. A description of the need for this regulatory action and benefits and costs associated with this action, including possible distributional impacts that relate to Executive Order 13563, is included above in the Regulatory Impact Analysis under Executive Order 12866. Additionally, Executive Order 13563, section 6, calls for retrospective analyses of existing rules.

The review of size standards in the industries covered by this proposed rule is consistent with section 6 of Executive Order 13563 and the 2010 Jobs Act, which requires SBA to review all size standards and make necessary adjustments to reflect market conditions. Specifically, the 2010 Jobs Act requires SBA to review at least one-third of all size standards during every 18-month period from the date of its enactment (September 27, 2010) and to review all size standards not less frequently than once every 5 years, thereafter. SBA had already launched a comprehensive review of size standards in 2007. In accordance with the Jobs Act, SBA completed the comprehensive review of the small business size standard for each industry, except those for agricultural enterprises previously set by Congress, and made appropriate adjustments to size standards for a number of industries to reflect current Federal and industry market conditions. The first comprehensive review was completed in 2016. Prior to 2007, the last time SBA conducted a comprehensive review of all size standards was during the late 1970s and early 1980s.

SBA issued a White Paper entitled ''Size Standards Methodology'' and published a notice in the April 11, 2019, edition of the **Federal Register** (84 FR 14587) to advise the public that the document was available for public review and comments. The ''Size Standards Methodology'' White Paper explains how SBA establishes, reviews, and modifies its receipts-based and employee-based small business size standards. SBA gave appropriate consideration to all input, suggestions, recommendations, and relevant information obtained from industry groups, individual businesses, and Federal agencies in developing size standards for those industries covered by this proposed rule.

*Executive Order 12988*

This action meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation,

eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

*Executive Order 13132*

For purposes of Executive Order 13132, SBA has determined that this 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. Therefore, SBA has determined that this proposed rule has no federalism implications warranting preparation of a federalism assessment.

*Paperwork Reduction Act*

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this rule will not impose any new reporting or record keeping requirements.

**List of Subjects in 13 CFR Part 121**

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, SBA proposes to amend 13 CFR part 121 as follows:

## PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 1. The authority citation for part 121 continues to read as follows:

**Authority:** 15 U.S.C. 632, 634(b)(6), 636(a)(36), 662, and 694a(9); Pub. L. 116–136, Section 1114.

■ 2. In § 121.201, amend the table ''Small Business Size Standards by NAICS Industry'' by revising entries ''423140,'' ''423330,'' ''423460,'' ''423520,'' ''423620,'' ''423730,'' ''423860,'' ''423920,'' 424110,'' ''424450,'' ''424590,'' ''424690,'' ''424710,'' ''425120,'' ''441310,'' ''441320,'' ''442291,'' ''442299,'' ''443141,'' ''444130,'' ''444210,'' ''444220,'' ''445291,'' ''445292,'' ''445299,'' ''445310,'' ''446110,'' ''446130,'' ''446191,'' ''446199,'' ''447190,'' ''448110,'' ''448150,'' ''448190,'' ''448310,'' ''448320,'' ''451110,'' ''451120,'' ''451140,'' ''451211,'' ''451212,'' ''452311,'' ''453220,'' ''453310,'' ''453910,'' ''453920,'' ''453998,'' ''454210,'' and ''454390'' to read as follows:

**§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?**

* * * * *

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

| NAICS | NAICS U.S. industry title | Size standards in millions of dollars | Size standards in number of employees |
|---|---|---|---|
| * | * * * * * | * | * |
| | **Sector 42—Wholesale Trade** | | |
| * | * * * * * | * | * |
| | **Subsector 423—Merchant Wholesalers, Durable Goods** | | |
| * | * * * * * | * | * |
| 423140 | Motor Vehicle Parts (Used) Merchant Wholesalers | | 125 |
| * | * * * * * | * | * |
| 423330 | Roofing, Siding, and Insulation Material Merchant Wholesalers | | 225 |
| * | * * * * * | * | * |
| 423460 | Ophthalmic Goods Merchant Wholesalers | | 175 |
| * | * * * * * | * | * |
| 423520 | Coal and Other Mineral and Ore Merchant Wholesalers | | 200 |
| * | * * * * * | * | * |
| 423620 | Household Appliances, Electric Housewares, and Consumer Electronics Merchant Wholesalers. | | 225 |
| * | * * * * * | * | * |
| 423730 | Warm Air Heating and Air-Conditioning Equipment and Supplies Merchant Wholesalers. | | 175 |
| * | * * * * * | * | * |
| 423860 | Transportation Equipment and Supplies (except Motor Vehicle) Merchant Wholesalers | | 175 |

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

| NAICS | NAICS U.S. industry title | Size standards in millions of dollars | Size standards in number of employees |
|---|---|---|---|
| * | * * * * * | * | * |
| 423920 ..... | Toy and Hobby Goods and Supplies Merchant Wholesalers ..... | ..... | 175 |
| * | * * * * * | * | * |
| | **Subsector 424—Merchant Wholesalers, Nondurable Goods** | | |
| 424110 ..... | Printing and Writing Paper Merchant Wholesalers ..... | ..... | 225 |
| * | * * * * * | * | * |
| 424450 ..... | Confectionery Merchant Wholesalers ..... | ..... | 225 |
| * | * * * * * | * | * |
| 424590 ..... | Other Farm Product Raw Material Merchant Wholesalers ..... | ..... | 175 |
| * | * * * * * | * | * |
| 424690 ..... | Other Chemical and Allied Products Merchant Wholesalers ..... | ..... | 175 |
| 424710 ..... | Petroleum Bulk Stations and Terminals ..... | ..... | 225 |
| * | * * * * * | * | * |
| | **Subsector 425—Wholesale Electronic Markets and Agents and Brokers** | | |
| * | * * * * * | * | * |
| 425120 ..... | Wholesale Trade Agents and Brokers ..... | ..... | 125 |
| | **Sector 44–45—Retail Trade** | | |
| * | * * * * * | * | * |
| | **Subsector 441—Motor Vehicle and Parts Dealers** | | |
| * | * * * * * | * | * |
| 441310 ..... | Automotive Parts and Accessories Stores ..... | 25.0 | ..... |
| 441320 ..... | Tire Dealers ..... | 22.5 | ..... |
| | **Subsector 442—Furniture and Home Furnishings Stores** | | |
| * | * * * * * | * | * |
| 442291 ..... | Window Treatment Stores ..... | 10.0 | ..... |
| 442299 ..... | All Other Home Furnishings Stores ..... | 29.5 | ..... |
| | **Subsector 443—Electronics and Appliance Stores** | | |
| 443141 ..... | Household Appliance Stores ..... | 19.5 | ..... |
| * | * * * * * | * | * |
| | **Subsector 444—Building Material and Garden Equipment and Supplies Dealers** | | |
| * | * * * * * | * | * |
| 444130 ..... | Hardware Stores ..... | 14.5 | ..... |
| * | * * * * * | * | * |
| 444210 ..... | Outdoor Power Equipment Stores ..... | 8.5 | ..... |
| 444220 ..... | Nursery, Garden Center, and Farm Supply Stores ..... | 19.0 | ..... |

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

| NAICS | NAICS U.S. industry title | Size standards in millions of dollars | Size standards in number of employees |
|---|---|---|---|
| | **Subsector 445—Food and Beverage Stores** | | |
| * | * * * * * * | * | |
| 445291 | Baked Goods Stores | 14.0 | |
| 445292 | Confectionery and Nut Stores | 17.0 | |
| 445299 | All Other Specialty Food Stores | 9.0 | |
| 445310 | Beer, Wine, and Liquor Stores | 9.0 | |
| | **Subsector 446—Health and Personal Care Stores** | | |
| 446110 | Pharmacies and Drug Stores | 33.0 | |
| * | * * * * * * | * | |
| 446130 | Optical Goods Stores | 26.0 | |
| 446191 | Food (Health) Supplement Stores | 20.0 | |
| 446199 | All Other Health and Personal Care Stores | 8.5 | |
| | **Subsector 447—Gasoline Stations** | | |
| * | * * * * * * | * | |
| 447190 | Other Gasoline Stations | 29.5 | |
| | **Subsector 448—Clothing and Clothing Accessories Stores** | | |
| 448110 | Men's Clothing Stores | 22.5 | |
| * | * * * * * * | * | |
| 448150 | Clothing Accessories Stores | 29.5 | |
| 448190 | Other Clothing Stores | 27.5 | |
| * | * * * * * * | * | |
| 448310 | Jewelry Stores | 18.0 | |
| 448320 | Luggage and Leather Goods Stores | 33.5 | |
| | **Subsector 451—Sporting Good, Hobby, Book and Music Stores** | | |
| 451110 | Sporting Goods Stores | 23.5 | |
| 451120 | Hobby, Toy, and Game Stores | 31.0 | |
| * | * * * * * * | * | |
| 451140 | Musical Instrument and Supplies Stores | 20.0 | |
| 451211 | Book Stores | 31.5 | |
| 451212 | News Dealers and Newsstands | 20.0 | |
| | **Subsector 452—General Merchandise Stores** | | |
| * | * * * * * * | * | |
| 452311 | Warehouse Clubs and Supercenters | 41.5 | |
| * | * * * * * * | * | |
| | **Subsector 453—Miscellaneous Store Retailers** | | |
| * | * * * * * * | * | |
| 453220 | Gift, Novelty, and Souvenir Stores | 12.0 | |
| 453310 | Used Merchandise Stores | 12.5 | |
| 453910 | Pet and Pet Supplies Stores | 28.0 | |
| 453920 | Art Dealers | 14.5 | |

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

| NAICS | NAICS U.S. industry title | Size standards in millions of dollars | Size standards in number of employees |
|---|---|---|---|
| * | * * * * * | * | * |
| 453998 ..... | All Other Miscellaneous Store Retailers (except Tobacco Stores) ..... | 10.0 | ..... |
| | **Subsector 454—Nonstore Retailers** | | |
| * | * * * * * | * | * |
| 454210 ..... | Vending Machine Operators ..... | 18.5 | ..... |
| * | * * * * * | * | * |
| 454390 ..... | Other Direct Selling Establishments ..... | 13.0 | ..... |
| * | * * * * * | * | * |

Dated: May 13, 2021.

**Isabella Casillas Guzman,**

*Administrator.*

[FR Doc. 2021–10487 Filed 5–24–21; 8:45 am]

**BILLING CODE 8026–03–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2021–0377; Project Identifier MCAI–2021–00380–R]**

**RIN 2120–AA64**

## Airworthiness Directives; Bell Textron Canada Limited 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 Bell Textron Canada Limited Model 505 helicopters. This proposed AD was prompted by three occurrences of metallic debris in the engine oil lubrication system causing the 12 volts direct current (VDC) reference voltage to be shorted to ground and loss of important flight information to the pilot. This proposed AD would require replacing a certain part-numbered relay panel assembly. 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 July 9, 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 NPRM, contact Bell Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4, Canada; 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–2021–0377; 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 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, Compliance & Airworthiness Division, 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–2021–0377; Project Identifier MCAI–2021–00380–R'' 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 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 Hal Jensen, Aerospace Engineer, Operational Safety Branch, Compliance & Airworthiness Division, 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**

Transport Canada, which is the aviation authority for Canada, has issued Canadian AD CF–2017–36, dated December 15, 2017 (Canadian AD CF–2017–36), to correct an unsafe condition for Bell Helicopter Textron Canada Limited (BHTCL) (now Bell Textron Canada Limited) Model 505 helicopters serial numbers 65011 through 65023, 65025 through 65028, 65030 through 65032, 65034, and 65036. Transport Canada advises of three occurrences of metallic debris in the engine oil lubrication system of the Model 505 helicopter causing the Garmin Engine Airframe (GEA) 12 VDC reference voltage to be shorted to ground. This short to ground results in loss of display of important flight information including the main rotor rotations per minute (Nr), fuel quantity, and transmission oil pressure and temperature, and the generator voltage and ammeter parameters are marked invalid with a red ''X'' on the primary flight display (PFD) and the multi-function display (MFD). This condition, if not addressed, could result in loss of caution, advisory, and system performance indications for multiple helicopter systems, particularly when the initiating event may be the activation of the engine chip detector.

Accordingly, Canadian AD CF–2017–36 requires replacing relay panel assembly part number (P/N) SLS–075–002–107 with relay panel assembly P/N SLS–075–002–109.

**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 evaluating all known relevant information and determining that an unsafe condition is likely to exist or develop on other helicopters of the same type design.

**Related Service Information Under 1 CFR Part 51**

The FAA reviewed Bell Helicopter Alert Service Bulletin 505–17–04, dated December 6, 2017 (ASB 505–17–04). ASB 505–17–04 specifies procedures for replacing relay panel assembly P/N SLS–075–002–107 with relay panel assembly P/N SLS–075–002–109. ASB 505–17–04 also specifies procedures for accomplishing a functional test of the two engine electrical magnetic plugs and provides a notice to ensure 505–FM–1 (TR–2) is inserted into the flight manual.

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.

**Proposed AD Requirements in This NPRM**

This proposed AD would require replacing relay panel assembly P/N SLS–075–002–107 with relay panel assembly P/N SLS–075–002–109.

**Differences Between This Proposed AD and the Transport Canada AD**

Canadian AD CF–2017–36 requires replacing the relay panel assembly within 25 hours air time or 30 days, whichever occurs first, whereas this proposed AD would require that replacement within 25 hours time-in-service instead. Canadian AD CF–2017–36 applies to certain serial-numbered Model 505 helicopters, where as this proposed AD would apply to certain serial-numbered Model 505 helicopters with relay panel assembly P/N SLS–075–002–107 installed instead.

**Costs of Compliance**

The FAA estimates that this proposed AD would affect 3 helicopters of U.S. Registry. The FAA estimates that operators may incur the following costs in order to comply with this proposed AD. Labor costs are estimated at $85 per work-hour.

Replacing each relay panel assembly would take about 3 work-hours and parts would cost $7,079 for an estimated cost of $7,334 per helicopter and $22,002 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 (AD):

**Bell Textron Canada Limited:** Docket No. FAA–2021–0377; Project Identifier MCAI–2021–00380–R.

**(a) Comments Due Date**

The FAA must receive comments on this airworthiness directive (AD) by July 9, 2021.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Bell Textron Canada Limited Model 505 helicopters, certificated in any category, with serial numbers 65011 through 65023 inclusive, 65025 through 65028 inclusive, 65030 through 65032 inclusive, 65034, and 65036 with relay panel assembly part number (P/N) SLS–075–002–107 installed.

**Note 1 to paragraph (c):** Helicopters with serial numbers (S/Ns) 65011 through 65023 inclusive, 65025 through 65028 inclusive, 65030 through 65032 inclusive, 65034, and 65036 are known to have had relay panel assembly P/N SLS–075–002–107 installed during production.

**(d) Subject**

Joint Aircraft Service Component (JASC) Code: 3110, Instrument Panel.

**(e) Unsafe Condition**

This AD was prompted by three occurrences of metallic debris in the engine oil lubrication system causing a short to ground within the engine chip detector. The FAA is issuing this AD to prevent failure of the 12 volts direct current (VDC) reference voltage, loss of display of important flight information to the pilot including the main rotor rotations per minute (Nr), fuel quantity, and transmission oil pressure and temperature, and the generator voltage and ammeter parameters as marked invalid with a red ''X'' on the primary flight display (PFD) and the multi-function display (MFD). The unsafe condition, if not addressed, could result in simultaneous loss of caution, advisory, and system performance indicators for multiple systems.

**(f) Compliance**

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

**(g) Required Actions**

(1) Within 25 hours time-in-service after the effective date of this AD, replace relay panel assembly part number P/N SLS–075–002–107 with relay panel assembly P/N SLS–075–002–109 by following the Accomplishment Instructions, paragraphs 1.a. through 3, of Bell Helicopter Alert Service Bulletin 505–17–04, dated December 6, 2017.

(2) As of the effective date of this AD, do not install relay panel assembly P/N SLS–075–002–107 on any helicopter.

**(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, Compliance & Airworthiness Division, 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, Canada; 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–2017–36, dated December 15, 2017. You may view the Transport Canada AD on the internet at *https://www.regulations.gov* in Docket No. FAA–2021–0377;.

Issued on May 19, 2021.

**Gaetano A. Sciortino,**

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

[FR Doc. 2021–10909 Filed 5–24–21; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2021–0375; Project Identifier MCAI–2020–01245–R]**

**RIN 2120–AA64**

## Airworthiness Directives; Leonardo S.p.a. 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 Leonardo S.p.a. Model AB139 and AW139 helicopters. This proposed AD was prompted by two events of uncommanded emergency flotation system (EFS) deployment during flight. This proposed AD would require replacing certain part-numbered EFS control panels and prohibit installing them. 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 July 9, 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 NPRM, 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 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–2021–0375; 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 European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD, any comments received, and other information. The street address for Docket Operations is listed above.

**FOR FURTHER INFORMATION CONTACT:** Ronnea Derby, Aerospace Engineer, Denver ACO Branch, Compliance & Airworthiness Division, FAA, 26805 E 68th Ave., Mail Stop: Room 214; Denver, CO 80249; telephone (303) 342–1093; email *Ronnea.L.Derby@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–2021–0375; Project Identifier MCAI–2020–01245–R'' 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 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 Ronnea Derby, Aerospace Engineer, Denver ACO Branch, Compliance & Airworthiness Division, FAA, 26805 E 68th Ave., Mail Stop: Room 214; Denver, CO 80249; telephone (303) 342–1093; email *Ronnea.L.Derby@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

**Background**

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2015–0172, dated August 21, 2015 (EASA AD 2015–0172), to correct an unsafe condition for AgustaWestland S.p.A (formerly Agusta S.p.A.), AgustaWestland Philadelphia Corporation (formerly Agusta Aerospace Corporation) (now Leonardo S.p.a.) Model AB139 and AW139 helicopters with an EFS installed. EASA advises of two events of uncommanded EFS deployment during flight. Subsequent investigation revealed that these conditions had been caused by improper design of the EFS control panel part numbers (P/Ns) 3G9560V00556 (for use with night vision goggle) and 3G9560V00557 (standard). This condition, if not addressed, could result in reduced control of the helicopter.

Accordingly, EASA AD 2015–0172 requires replacing EFS control panel P/Ns 3G9560V00556 and 3G9560V00557 with EFS control panel P/Ns 3G9560V00559 and 3G9560V00558, respectively. EASA AD 2015–0172 also prohibits installing EFS control panel P/Ns 3G9560V00556 and 3G9560V00557 on any helicopter.

**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 about the unsafe condition described in its AD. The FAA is proposing this AD after evaluating all known relevant information and determining that the unsafe condition described previously is likely to exist or develop on other helicopters of these same type designs.

**Related Service Information**

The FAA reviewed AgustaWestland Bollettino Tecnico No. 139–374, dated July 6, 2015. This service information specifies procedures for replacing EFS control panel P/Ns 3G9560V00556 and 3G9560V00557 with EFS control panel P/Ns 3G9560V00559 and 3G9560V00558, respectively. This service information also notes that EFS control panel P/Ns 3G9560V00556 and 3G9560V00557 can be upgraded by following Sirio Panel Service Bulletin 6WS–MI100135 Ed.01 and 6WS–MI100134 Ed.01.

**Proposed AD Requirements in This NPRM**

This proposed AD would require replacing EFS control panel P/Ns 3G9560V00556 and 3G9560V00557 with EFS control panel P/Ns 3G9560V00559 and 3G9560V00558, respectively. This proposed AD would also prohibit installing EFS control panel P/Ns 3G9560V00556 and 3G9560V00557 on any helicopter.

**Differences Between This Proposed AD and the EASA AD**

EASA AD 2015–0172 applies to Model AB139 and AW139 helicopters with an EFS installed, whereas this proposed AD would apply to those model helicopters with EFS control panel P/N 3G9560V00556 (for use with night vision goggle) or 3G9560V00557 (standard) installed instead. EASA AD 2015–0172 specifies replacing an affected EFS control panel within a compliance time of flight hours or months, whichever occurs first, based on helicopter configuration, whereas this proposed AD would require that replacement within a shorter compliance time in hours time-in-service but the same number of months, based on helicopter configuration instead.

**Costs of Compliance**

The FAA estimates that this AD, if adopted as proposed, would affect up to 133 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 an EFS control panel would take about 1 work-hour and parts would cost about $12,342 for an estimated cost of $12,427 per helicopter and up to $1,652,791 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:

**Leonardo S.p.a.:** Docket No. FAA–2021–0375; Project Identifier MCAI–2020–01245–R.

**(a) Comments Due Date**

The FAA must receive comments on this airworthiness directive (AD) by July 9, 2021.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Leonardo S.p.a. Model AB139 and AW139 helicopters, certificated in any category, with an emergency flotation system (EFS) control panel part number (P/N) 3G9560V00556 (for use with night vision goggle) or 3G9560V00557 (standard) installed.

**(d) Subject**

Joint Aircraft Service Component (JASC) Code: 3212, Emergency Flotation Section.

**(e) Unsafe Condition**

This AD was prompted by two events of uncommanded EFS deployment during flight. The FAA is issuing this AD to address improper design of certain EFS control panels. The unsafe condition, if not addressed, could result in reduced control of the helicopter.

**(f) Compliance**

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

**(g) Required Actions**

(1) At the following compliance time, replace EFS control panel P/N 3G9560V00556 or 3G9560V00557 with EFS control panel P/N 3G9560V00559 or 3G9560V00558, respectively:

(i) For helicopters with EFS P/N 3G9560F00111 or 3G9560F00113, with Aerosekur floats with ''pyrotechnical'' inflation system P/N 3G9560V01051 installed, within 94 hours time-in-service (TIS) or 3 months after the effective date of this AD, whichever occurs first.

(ii) For helicopters with EFS P/N 3G9560F00111 or 3G9560F00113, with Aerosekur floats with ''SMA'' inflation system P/N 3G9560V01052 installed, within 377 hours TIS or 12 months after the effective date of this AD, whichever occurs first.

(iii) For helicopters with EFS P/N 3G9560F00212 with Aerosekur floats with ''fuse disk'' inflation system P/N 3G9560V02051 installed, within 565 hours TIS or 18 months after the effective date of this AD, whichever occurs first.

(2) As of the effective date of this AD, do not install EFS control panel P/N 3G9560V00556 or 3G9560V00557 on any helicopter.

**(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 Ronnea Derby, Aerospace Engineer, Denver ACO Branch, Compliance & Airworthiness Division, FAA, 26805 E 68th Ave., Mail Stop: Room 214; Denver, CO 80249; telephone (303) 342–1093; email *Ronnea.L.Derby@faa.gov.*

(2) 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.* 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 European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD 2015–0172, dated August 21, 2015. You may view the EASA AD at *https://www.regulations.gov* in Docket No. FAA–2021–0375.

Issued on May 18, 2021.

**Lance T. Gant,**

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

[FR Doc. 2021–10908 Filed 5–24–21; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### 32 CFR Part 159

**[Docket ID: DoD–2020–OS–0016]**

**RIN 0790–AK87**

## Private Security Contractors (PSCs) Operating in Contingency Operations, Humanitarian or Peace Operations, or Other Military Operations or Exercises

**AGENCY:** Office of the Under Secretary of Defense for Acquisition and Sustainment, Department of Defense (DoD).

**ACTION:** Proposed rule.

**SUMMARY:** The DoD is proposing updates to this part to incorporate changes from the National Defense Authorization Act (NDAA) that were not available when the rule was last published on August 11, 2011. These proposed changes include administrative updates and clarifications to PSCs performing duties while under contract to DoD in support of a contingency operations, humanitarian or peace operations, or other military operations or exercises.

**DATES:** Comments must be received by July 26, 2021.

**ADDRESSES:** You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

*Instructions:* All submissions received must include the agency name and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Ms. Donna M. Livingston, 703–692–3032, *donna.m.livingston.civ@mail.mil.*

**SUPPLEMENTARY INFORMATION:**

### I. Executive Summary

*A. Purpose of the Existing Rule*

The DoD may contract for private security functions to fulfill non-combat

requirements for security in contingency operations, humanitarian or peace operations, and other military operations or exercises. Private security functions include guarding of personnel, facilities, designated sites, or property of a Federal agency, a contractor or subcontractor, or a third party. It is DoD policy that PSCs must be established, registered, well regulated, rigidly disciplined, and properly staffed with carefully selected operating personnel. This policy reflects U.S. law and is implemented through this rule, DoD Directives, DoD Instructions, and acquisition policies and regulations, to include the use of rigorous and verifiable business and operational standards.

*B. Summary of Major Provisions of This Regulatory Action*

This regulatory action proposes changes to the current rule in order to provide clarification to PSCs supporting DoD in support of contingency operations, humanitarian or peace operations, or other military operations or exercises outside of the U.S. The proposed changes include additional citations for guidance on inherently governmental functions and PSC compliance with DoD approved national and international recognized quality assurance management standards. PSCs must also cooperate with DoD on all government investigations. DoD is responsible for providing the appropriate contract administration oversight of PSCs. Finally, for clarification, this regulatory action proposes to add the definitions on total force and arming authorities to ensure compliance with statutory requirements.

*C. Legal Authority for This Program*

The proposed updates to this rule are required to meet the mandate of Section 862 of the 2008 NDAA, as amended by Section 813 of the 2010 NDAA and Section 832 of the 2011 NDAA.

**II. Regulatory History**

The rule was initially published as an interim final rule in the **Federal Register** (74 FR 34691) on July 17, 2009, because there was insufficient policy and guidance regulating the actions of DoD and other governmental PSCs and their employees' movements in operational areas. The final rule, published in the **Federal Register** (74 FR 49650) on September 11, 2011, established policy, assigned responsibilities and provided procedures for the regulation of the selection, accountability, training, equipping and conduct of personnel performing private security functions under a covered contract during contingency operations, combat operations, or other significant military operations. It also assigned responsibilities and established procedures for incident reporting, use of and accountability for equipment, rules for the use of force, and a process for administrative action or the removal, as appropriate, of PSCs and PSC personnel.

The corresponding internal DoD policy is captured in DoD Instruction 3020.50, ''Private Security Contractors (PSCs) Operating in Contingency Operations, Humanitarian or Peace Operations, or Other Military Operations or Exercises,'' published on July 22, 2009, and last updated on August 31, 2018. For additional information, DoD Instruction 3020.50 can be accessed at *https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/302050p.pdf.*

**III. Regulatory Analysis**

*A. Regulatory Planning and Review*

a. Executive Orders

Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Accordingly, this rule has been reviewed by the Office of Management and Budget (OMB) under the requirements of these Executive orders. This rule has been designated a ''not significant regulatory action,'' and determined not to be economically significant, under section 3(f) of Executive Order 12866. It has been determined that 32 CFR part 159 does not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities.

b. Summary

This proposed rule provides clarification and updates for PSCs supporting DoD in contingency operations, humanitarian or peace operations, or other military operations or exercises outside of the U.S. The clarification and updates are derived from statue and regulations requiring PSCs not to perform inherently governmental functions, obtain third party quality assurance standards, and cooperate with DoD on all Government investigations.

c. Affected Population

This proposed rule provides information relevant to commercial sector contractors and their personnel who may provide contracted support to the DoD during applicable operations outside the United States.

- Contractor employees—Provides information and describes the requirements DoD imposes on employees of private security companies who may be employed in support of DoD operating in contingency operations, humanitarian or peace operations, or other military operations or exercises.
- Companies or organizations—Provides information and describes the requirements for private security companies who may be employed in support of DoD operating in contingency operations, humanitarian or peace operations, or other military operations or exercises.

d. Costs

The proposed updates to the rule will not result in an increased burden to PSCs. PSCs are already implementing these changes based on the current 32 CFR part 159 and contract clauses outlined in Defense Federal Acquisition Regulation Supplement (DFARS) 252.225–7039, ''Defense Contractors Performing Private Security Functions Outside the United States.'' The changes in the proposed rule are a clarification or update to the current rule.

e. Benefits

The proposed rule will clarify the guidance to the public when considering providing private security contracting support to the DoD while operating in a contingency operation, humanitarian or peace operations, or other military operations or exercises. This updated rule consolidates guidance into one document, which will improve the public planning for providing contract support to DoD. The consolidation will ensure the public is aware of all statutory requirements to compete for and perform private security contracts in support of DoD outside of the U.S.

f. Alternative

DoD has considered the following alternative approaches:

▪ No action. If no action is taken, the public will continue to use the current rule for PSCs supporting DoD outside of the U.S. DoD has improved its oversight of PSCs and Operational Contract Support through lessons learned since the current rule was published. The proposed rule, once accepted, will provide clearer guidance to the public on the contractor and government responsibilities.

▪ Publish proposed rule. This updated rule consolidates guidance into one document which will improve the public planning for providing contract support to DoD. The consolidation will ensure the public is aware of all statutory requirements to compete for and perform private security contracts in support of DoD outside of the U.S.

*B. Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)*

The Department of Defense certifies that this proposed rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

*C. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as amended 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. DoD will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This proposed rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

*D. Sec. 202, Public Law 104–4, ''Unfunded Mandates Reform Act''*

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532) requires agencies to assess anticipated costs and benefits before issuing any rule whose mandates require spending in any one year of $100 million in 1995 dollars, updated annually for inflation. This proposed rule will not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

*E. Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)*

It has been determined that 32 CFR part 159 does impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995. This collection has been reviewed and approved by the OMB under OMB Control Number 0704–0549 (expires October 31, 2022), ''Defense Contractors Performing Private Security Functions Outside the United States.'' It included a total cost of $1,080 annually for PSC companies to report to the Geographic Combatant Commander the following incidents if and when they occur:

▪ A weapon is discharged by PSC personnel performing private security functions.

▪ PSC personnel performing private security functions are attacked, killed, or injured.

▪ PSC personnel are killed or injured or property is destroyed as a result of conduct by contractor personnel.

▪ A weapon is discharged against PSC personnel performing private security functions or personnel performing such functions believe a weapon was so discharged.

▪ Active, non-lethal countermeasures (other than the discharge of a weapon) are employed by PSC personnel performing private security functions in response to a perceived immediate threat.

The changes proposed by this regulatory action neither increases nor decreases the public burden associated with this collection of information.

*F. Executive Order 13132, ''Federalism''*

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has federalism implications. This proposed rule will not have a substantial effect on State and local governments.

**List of Subjects in 32 CFR Part 159**

Government contracts, Reporting and recordkeeping requirements, Security measures.

Accordingly, 32 CFR part 159 is proposed to be amended as follows:

## PART 159—PRIVATE SECURITY CONTRACTORS (PSCs) OPERATING IN CONTINGENCY OPERATIONS, HUMANITARIAN OR PEACE OPERATIONS, OR OTHER MILITARY OPERATIONS OR EXERCISES

■ 1. The authority citation for part 159 is revised to read as follows:

**Authority:** Sec. 862, Pub. L. 110–181, 122 Stat. 253; Sec. 832, Sec 853, Pub. L. 110–417, 122 Stat. 4535; Sec. 831–833, Pub. L. 111–383, 124 Stat. 4276.

■ 2. Revise the heading for part 159 to read as set forth above.
■ 3. Amend § 159.2 by:
■ a. In paragraph (a)(1):
■ i. Adding ''(CJCS)'' after ''Office of the Chairman of the Joint Chiefs of Staff.''
■ ii. Adding ''(DoD)'' after ''the Office of the Inspector General of the Department of Defense.''
■ iii. Removing ''organizational entities in the Department of Defense'' and adding in its place ''organizational entities in the DoD.''
■ b. Revising paragraph (a)(2).
■ c. Adding paragraph (a)(3).
■ d. Revising paragraph (b)(1).
■ e. In paragraph (b)(2), removing ''USG-funded'' and adding in its place ''U.S.G.-funded.''

The revisions and additions read as follows:

**§ 159.2 Applicability and scope.**

* * * * *

(a) * * *

(1) * * *

(2) The Department of State and other U.S. Federal agencies insofar as it implements the requirements of section 862 of Public Law 110–181, as amended. Specifically, in areas of operations which require enhanced coordination of PSC and PSC personnel working for United States Government (U.S.G.) agencies, the Secretary of Defense may designate such areas as areas of combat operations or other significant military operations for the limited purposes of this part. In such an instance, the standards established in accordance with this part would, in coordination with the Secretary of State, expand from covering only DoD PSCs and PSC personnel to cover all U.S.G. funded PSCs and PSC personnel operating in the designated area.

(3) The requirements of this part shall not apply to a nonprofit nongovernmental organization receiving grants or cooperative agreements for activities conducted within an area of other significant military operations if the Secretary of Defense and the Secretary of State agree that such organization may be exempted. An exemption may be granted by the

agreement of the Secretaries under this paragraph (a)(3) on an organization-by-organization or area-by-area basis. Such an exemption may not be granted with respect to an area of combat operations.

(b) * * *

(1) DoD PSCs and PSC personnel on contract and subcontract, at any tier, performing private security functions in support of contingency operations, humanitarian or peace operations, or other military operations or exercises outside the United States.

* * * * *

■ 4. Amend § 159.3 by:

■ a. Adding the definition of ''Arming authority'' in alphabetical order.

■ b. Revising the definition of ''Contingency operation,'' ''Covered contract,'' ''Other significant military operations,'' and ''Private security functions.''

■ c. Removing the definition of ''PSC.''

■ d. Adding the definitions of ''Private Security Contractor (PSC)'' and ''Total Force'' in alphabetical order.

The revisions and additions read as follows:

**§ 159.3 Definitions.**

* * * * *

*Arming authority.* The GCC, or a person or persons designated by the GCC, who can authorize the arming of civilians under their authority or supervision for security functions or to permit the carrying of firearms for personal protection in support of operations outside the United States.

*Contingency operation.* A military operation that is either designated by the Secretary of Defense as a contingency operation or becomes a contingency operation as a matter of law as defined in 10 U.S.C. 101(a)(13).

* * * * *

*Covered contract.* (1) A DoD contract for performance of services and/or delivery of supplies in an area of contingency operations, humanitarian or peace operations, or other military operations or exercises outside the United States or non-DoD Federal agency contract for performance of services and/or delivery of supplies in an area of combat operations or other significant military operations, as designated by the Secretary of Defense; a subcontract at any tier under such contracts; or a task order or delivery order issued under such contracts or subcontracts.

(2) Excludes temporary arrangements entered into by non-DoD contractors for the performance of private security functions by individual indigenous personnel not affiliated with a local or expatriate security company.

*Other significant military operations.* (1) Activities, other than combat operations, as part of an overseas contingency operation that are carried out by United States Armed Forces in an uncontrolled or unpredictable high-threat environment where personnel performing security functions may be called upon to use deadly force.

(2) With respect to an area of other significant military operations, the requirements of this part shall apply only upon agreement of the Secretary of Defense and the Secretary of State. Such an agreement of the Secretaries may be made only on an area-by-area basis. With respect to an area of combat operations, the requirements of this part shall always apply.

*Private security functions.* Activities engaged in by a contractor under a covered contract as follows:

(1) Guarding personnel, facilities, designated sites, or property of a Federal agency, the contractor or subcontractor, or a third party.

(2) Any other activity for which personnel are required to carry weapons in the performance of their duties in accordance with the terms of their contract. For the DoD, DoD Instruction 3020.41, ''Operational Contract Support (OCS)'' (available at *https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/302041p.pdf*) prescribes policies related to personnel allowed to carry weapons for self-defense.

(3) Contractors, including those performing private security functions, are not authorized to perform inherently governmental functions. In this regard, they are limited to a defensive response to hostile acts or demonstrated hostile intent.

*Private Security Contractor (PSC).* A company contracted by the U.S.G. to perform private security functions under a covered contract.

* * * * *

*Total Force.* The organizations, units, and individuals that comprise DoD's resources for implementing the National Security Strategy. It includes the DoD Active and Reserve Component military personnel, DoD civilian personnel (including foreign national direct-hires as well as non-appropriated fund employees), contracted support, and host nation support personnel.

**§ 159.4 [Amended]**

■ 5. Amend § 159.4 by:

■ a. In paragraph (a):

■ i. Adding ''as amended,'' after ''Public Law 110–181,''.

■ ii. Removing ''section 159.5 of this part'' and adding in its place ''§ 159.5.''

■ b. In paragraph (b):

■ i. Adding ''(GCCs)'' after ''Geographic Combatant Commanders.''

■ ii. Redesignating footnotes 4 and 5 as footnotes 1 and 2.

■ c. In paragraph (c):

■ i. Adding ''(COM)'' after ''the relevant Chief of Mission'' in the first sentence.

■ ii. Removing ''geographic Combatant Commander'' and adding in its place ''GCC'' in the first sentence.

■ iii. Removing ''Chief of Mission'' and adding in its place ''COM'' in the second sentence.

■ iv. Removing ''geographic Combatant Commander'' and adding in its place ''GCC'' in the second sentence.

■ 6. Revise § 159.5 to read as follows:

**§ 159.5 Responsibilities.**

(a) The Under Secretary of Defense for Personnel and Readiness (USD(P&R)) will provide Department-wide policies on the total force manpower mix and labor sourcing, consistent with statute, the FAR, the DFARS, and other applicable Federal policy documents, especially with respect to contracted services and restrictions on functions that contractors may and may not perform. The USD(P&R) will ensure that policies specifically address circumstances where use of PSCs would be inherently governmental or where GCCs would need to assess where performance of the function by PSCs or total reliance on PSCs would constitute an unacceptable risk.

(b) The Deputy Assistant Secretary of Defense for Logistics (DASD(Logistics)), under the authority, direction, and control of the Under Secretary of Defense for Acquisition and Sustainment (USD(A&S)) and through the Assistant Secretary of Defense for Sustainment, monitors the registering, processing, and accounting of PSC personnel in areas of contingency operations, humanitarian or peace operations, or other military operations or exercises.

(c) The Principal Director, Defense Pricing and Contracting (DPC), under the authority, direction, and control of the USD(A&S), ensures that the DFARS and (when appropriate, in consultation with the other members of the FAR Council) the FAR, provides appropriate guidance and publish contracting requirements pursuant to this part and Section 862 of Public Law 110–181.

(d) The CJCS shall ensure that joint doctrine is consistent with the principles established by DoD Directive 3020.49, ''Orchestrating, Synchronizing, and Integrating Program Management of Contingency Acquisition Planning and Its Operational Execution'' (available at *https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/*

*302049p.pdf*); DoD Instruction 3020.41, DoD Directive 5210.56, ''Arming and the Use of Force'' (available at *https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/521056_dodd_2016.pdf*); and this part.

(e) The GCCs in whose AOR contingency operations, humanitarian or peace operations, or other military operations or exercises are occurring, and within which PSCs and PSC personnel perform under covered contracts, shall:

(1) Provide guidance and procedures, as necessary and consistent with the principles established by DoD Directive 3020.49, DoD Instruction 3020.41, DoD Instruction 1100.22, ''Policy and Procedures for Determining Workforce Mix'' (available at *https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/110022p.pdf*); DFARS, 48 CFR subpart 225.302, and this part, for the selection, training, accountability, and equipping of such PSC personnel and the conduct of PSCs and PSC personnel within their AOR. Individual training and qualification standards shall meet, at a minimum, one of the Military Departments' established standards. Within a geographic Combatant Command, a sub unified commander or JFC shall be responsible for developing and issuing implementing procedures as warranted by the situation, operation, and environment, in consultation with the relevant COM in designated areas of combat operations or other significant military operations.

(2) Through the Contracting Officer, the PSC should acknowledge that its personnel understand their obligation to comply with the terms and conditions of applicable covered contracts.

(3) Issue written authorization to the PSC identifying individual PSC personnel who are authorized to be armed. Rules for the Use of Force shall be included with the written authorization, if not previously provided. Rules for the Use of Force shall conform to the guidance in DoD Directive 5210.56 and the CJCS Instruction 3121.01B, ''Standing Rules of Engagement/Standing Rules for the Use of Force for U.S. Forces.'' Offerors' and contractors' access to the Rules for the Use of Force may be controlled in accordance with the terms of FAR 52.204–2, ''Security Requirements''; DFARS 252.204–7000, ''Disclosure of Information''; or both.[1]

(4) Ensure that the procedures, orders, directives, and instructions prescribed in § 159.6 are available through a single location (to include an internet website, consistent with security considerations and requirements).

(f) The Heads of the DoD Components shall:

(1) Ensure that all private security-related requirement documents are in compliance with the procedures listed in § 159.6 and the guidance and procedures issued by the geographic Combatant Command.

(2) Ensure private security-related contracts contain the appropriate clauses in accordance with the applicable FAR and DFARS clauses and include additional mission-specific requirements as appropriate.

(3) Ensure the head of the contracting activity responsible for each covered contract takes appropriate steps to assign sufficient oversight personnel to the contract to verify that the contractor responsible for performing private security functions complies with the requirements of this part. This includes ensuring that the contracting officer coordinates with the requiring activity to nominate and appoint a qualified contracting officer's representative (COR) or other multiple or alternate CORs, in accordance with DoD Instruction 5000.72, ''DoD Standard for Contracting Officer's Representative (COR) Certification'' (available at *https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/500072p.pdf*).

■ 7. Amend § 159.6 by:

■ a. Revising paragraph (a) introductory text.

■ b. In paragraph (a)(1)(i), removing '', ''Contractor Personnel Authorized to Accompany the U.S. Armed Forces.'' '' and adding a period in its place.

■ c. In paragraph (a)(1)(iii) introductory text:

■ i. Removing ''geographic Combatant Commander'' everywhere it appears and adding in its place ''GCC'' in the first sentence.

■ ii. Removing ''of this part''.

■ d. In paragraph (a)(1)(iii)(C):

■ i. Removing '' ''Guidance for Determining Workforce Mix'' '' and adding in its place '' ''Policy and Procedures for Determining Workforce Mix'' ''.

■ ii. Redesignating footnote 12 as footnote 1.

■ e. In paragraph (a)(1)(iii)(F)(*1*), redesignating footnote 13 as footnote 2.

■ f. In paragraph (a)(1)(iv), adding ''PSC personnel, weapons,'' before ''armored vehicles''.

■ g. In paragraph (a)(1)(v)(F), removing ''TASER guns'' and adding in its place ''disruption devices''.

■ h. In paragraph (a)(1)(viii), removing ''commander of a combatant command may request'' and adding in its place ''commander of a CCMD may, through the contracting officer, request''.

■ i. In paragraph (a)(1)(x), removing ''paragraph (a)(2)(ii)'' and adding in its place ''paragraph (a)(2)(iii)''.

■ j. In paragraph (a)(2)(i), removing '', ''Contractor Personnel Authorized to Accompany the U.S. Armed Forces.'' '' and adding a period in its place.

■ k. Redesignating paragraphs (a)(2)(ii) through (iv) as paragraphs (a)(2)(iii) through (iv) and adding new paragraph (a)(2)(ii).

■ l. Further redesignating newly redesignated paragraph (a)(2)(iv) as paragraph (a)(2)(vi) and adding new paragraph (a)(2)(v).

■ m. In newly redesignated paragraph (a)(2)(vi), removing ''Chief of Mission'' and adding in its place ''COM''.

■ n. Removing paragraph (b) and redesignating paragraphs (c) and (d) as paragraphs (b) and (c).

■ o. In newly redesignated paragraph (b):

■ i. Revising the paragraph heading.

■ ii. Removing ''Chief of Mission'' and ''combatant command'' and adding in their places ''COM'' and ''CCMD,'' respectively.

■ p. In newly redesignated paragraph (c):

■ i. Revising the paragraph heading.

■ ii. Removing ''Chief of Mission'' and ''geographic Combatant Commander/sub unified commander'' and adding in their places ''COM'' and ''GCC/sub unified commander,'' respectively.

The revisions and additions read as follows:

**§ 159.6 Procedures.**

(a) *Standing Combatant Command (CCMD) guidance and procedures.* Each GCC shall develop and publish guidance and procedures for PSCs and PSC personnel operating during contingency operations, humanitarian or peace operations, or other military operations or exercises within their AOR, consistent with applicable law; this part; applicable Military Department publications; and other applicable DoD issuances including DoD Directive 3020.49, DoD Instruction 1100.22, ''Policy and Procedures for Determining Workforce Mix,'' FAR, DFARS, DoD Instruction 3020.41, DoD Directive 2311.01E, ''DoD Law of War Program'' (available at *https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/231101e.pdf*); DoD 5200.8-R, ''Physical

[1] CJCS Instruction 3121.01B provides guidance on the standing rules of engagement (SROE) and establishes standing rules for the use of force for DoD operations worldwide. This document is classified secret. CJCS Instruction 3121.01B is available via Secure internet Protocol Router Network at *https://jsportal.osd.smil.mil.*

Security Program'' (available at *https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodm/520008rm.pdf*); CJCS Instruction 3121.01B, ''Standing Rules of Engagement/Standing Rules for the Use of Force for U.S. Forces,'' and DoD Directive 5210.56. The guidance and procedures shall:

* * * * *

(2) * * *

(ii) Assessing compliance with DoD approved business and operational standards for private security functions.

* * * * *

(v) Requirements for the PSC to cooperate with any investigation conducted by the DoD, including by providing access to its employees and relevant information in its possession regarding the matter(s) under investigation.

* * * * *

(b) *Subordinate guidance and procedures.* * * *

(c) *Consultation and coordination.* * * *

Dated: May 10, 2021.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2021–10100 Filed 5–24–21; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### 32 CFR Part 310

**[Docket ID: DoD–2021–OS–0004]**

**RIN 0790–AL20**

## Privacy Act of 1974; Implementation

**AGENCY:** Office of the Secretary of Defense (OSD), Department of Defense (DoD).

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Defense (Department or DoD) is giving concurrent notice of a new Department-wide system of records pursuant to the Privacy Act of 1974 for the DoD 0006, ''Military Justice and Civilian Criminal Case Records'' system of records and this proposed rulemaking. In this proposed rulemaking, the Department proposes to exempt portions of this system of records from certain provisions of the Privacy Act because of national security and law enforcement requirements.

**DATES:** Send comments on or before July 26, 2021.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods.

* *Federal eRulemaking Portal: https://www.regulations.gov.*

Follow the instructions for submitting comments.

* *Mail:* The DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

*Instructions:* All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *https://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Ms. Lyn Kirby, Defense Privacy, Civil Liberties, and Transparency Division, Directorate for Oversight and Compliance, Department of Defense, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700; *OSD.DPCLTD@mail.mil;* (703) 571–0070.

**SUPPLEMENTARY INFORMATION:**

### I. Background

In accordance with the Privacy Act of 1974, the Department of Defense (DoD) is establishing a new system of records titled, ''Military Justice and Civilian Criminal Case Records,'' DoD 0006. This system of records describes DoD's collection, use, and maintenance of records for the handling of Uniform Code of Military Justice (UCMJ) and disciplinary cases within the authority of the DoD. This system of records also includes records created when DoD legal practitioners, in support of the U.S. Department of Justice, prosecute in U.S. District Courts crimes that occurred on military installations or property. Individuals covered by this system of records include armed forces members and others identified in Article 2 of the UCMJ, as well as civilians who are alleged to have engaged in criminal acts on DoD installations and properties.

The purpose of this system of records is to support the collection, maintenance, use, and sharing of records compiled by the DoD for the adjudication and litigation of cases conducted under the Uniform Code of Military Justice, as well as criminal proceedings brought in U.S. District Courts for offenses occurring on DoD installations or property. This system contains information, records, and filings publicly accessible on the Department's court docket. It also supports the compilation of internal statistics and reports related to these activities.

The collection and maintenance of this information by the DoD is necessary to meet its statutory obligations and to ensure good order and discipline.

### II. Privacy Act Exemption

The Privacy Act allows federal agencies to exempt eligible records in a system of records from certain provisions of the Act, including those that provide individuals with a right to request access to and amendment of their own records. If an agency intends to exempt a particular system of records, it must first go through the rulemaking process to provide public notice and an opportunity to comment on the proposed exemption. This proposed rule explains why an exemption is being claimed for this system of records and invites public comment, which DoD will consider before the issuance of a final rule implementing the exemption.

The DoD proposes to modify 32 CFR part 310 to add a new Privacy Act exemption rule for the DoD 0006, ''Military Justice and Civilian Criminal Case Records'' system of records. The DoD proposes this exemption because some of its records may contain classified national security information and notice, access, amendment and disclosure (to include accounting for those records) to an individual may cause damage to national security. The Privacy Act, pursuant to 5 U.S.C. 552a(k)(1), authorizes agencies to claim an exemption for systems of records that contain information properly classified pursuant to executive order. The DoD is proposing to claim an exemption from several provisions of the Privacy Act, including various access, amendment, disclosure of accounting, and certain record-keeping and notice requirements pursuant to 5 U.S.C. 552a(k)(1), to prevent disclosure of any information properly classified pursuant to executive order, as implemented by DoD Instruction 5200.01 and DoD Manual 5200.01, Volumes 1 and 3.

The DoD also proposes to exempt this system of records because these records support the conduct of criminal law enforcement activities, and certain requirements of the Privacy Act may interfere with the effective execution of these activities, and undermine good order and discipline. The Privacy Act, pursuant to 5 U.S.C. 552a(j)(2), authorizes agencies with a principal law enforcement function pertaining to the

enforcement of criminal laws (including activities of prosecutors, courts, etc.) to claim an exemption for systems of records that contain information identifying criminal offenders and alleged offenders, information compiled for the purpose of criminal investigation, or reports compiled during criminal law enforcement proceedings. Additionally, the Privacy Act, pursuant to 5 U.S.C. 552a(k)(2), authorizes agencies to compile investigatory material for law enforcement purposes, other than materials within the scope of 5 U.S.C. 552a(j)(2). The DoD is proposing to claim exemptions from several provisions of the Privacy Act, including various access, amendment, disclosure of accounting, and certain record-keeping and notice requirements, pursuant to 5 U.S.C. 552a(j)(2) and 552a(k)(2), to prevent the harms articulated in this rule from occurring.

In addition, records in this system of records are only exempt from the Privacy Act to the extent the purposes underlying the exemption pertain to the record. A notice of a new system of records for DoD 0006, ''Military Justice and Civilian Criminal Case Records,'' is published elsewhere in today's issue of the **Federal Register**.

**Regulatory Analysis**

*Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''*

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. It has been determined that this rule is not a significant regulatory action.

*Congressional Review Act*

This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

*Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6)*

It has been certified that Privacy Act rules for the DoD do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the DoD.

*Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)*

It has been determined that this rule does not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

*Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''*

It has been determined that this rule does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that it will not significantly or uniquely affect small governments.

*Executive Order 13132, ''Federalism''*

It has been determined that this rule does not have federalism implications. This rule does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

**List of Subjects in 32 CFR Part 310**

Privacy.

Accordingly, 32 CFR part 310 is proposed to be amended as follows:

## PART 310—[AMENDED]

■ 1. The authority citation for 32 CFR part 310 continues to read as follows:

**Authority:** 5 U.S.C. 552a.

■ 2. Section 310.13 is amended by adding paragraph (e)(3) to read as follows:

**§ 310.13 Exemptions for DoD-wide systems.**

* * * * *

(e) * * *

(3) *System identifier and name:* DoD 0006, ''Military Justice and Civilian Criminal Case Records''

(i) *Exemptions:* This system of records is exempt from 5 U.S.C. 552a(c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1); (e)(2); (e)(3); (e)(4)(G), (H), and (I); (e)(5); (e)(8); (f); and (g) of the Privacy Act to the extent the records are subject to exemption pursuant to 5 U.S.C. 552a(j)(2). This system of records is exempt from 5 U.S.C. 552a(c)(3); (d)(1), (2), (3), and (4); (e)(1); (e)(4)(G), (H), and (I); and (f) of the Privacy Act to the extent the records are subject to exemption pursuant to 5 U.S.C. 552a(k)(1) and (k)(2).

(ii) *Authority:* 5 U.S.C. 552a(j)(2), (k)(1), and (k)(2).

(iii) *Exemption from the particular subsections.* Exemption from the particular subsections is justified for the following reasons:

(A) *Subsection (c)(3), (d)(1), and (d)(2).*

(1) *Exemption (j)(2).* Records in this system of records may contain investigatory material compiled for criminal law enforcement purposes to include information identifying criminal offenders and alleged offenders, information compiled for the purpose of criminal investigation, or reports compiled during criminal law enforcement proceedings. Application of exemption (j)(2) may be necessary because access to, amendment of, or release of the accounting of disclosures of such records could inform the record subject of an investigation of the existence, nature, or scope of an actual or potential law enforcement or disciplinary investigation, and thereby seriously impede law enforcement or prosecutorial efforts by permitting the record subject and other persons to whom he might disclose the records to avoid criminal penalties or disciplinary measures; reveal confidential sources who might not have otherwise come forward to assist in an investigation and thereby hinder DoD's ability to obtain information from future confidential sources and result in an unwarranted invasion of the privacy of others.

(2) *Exemption (k)(1).* Records in this system of records may contain information concerning DoD personnel or disciplinary activities that is properly classified pursuant to executive order. Application of exemption (k)(1) may be necessary because access to and amendment of the records, or release of the accounting of disclosures for such records, could reveal classified information. Disclosure of classified records to an individual may cause damage to national security.

(3) *Exemption (k)(2).* Records in this system of records may contain investigatory material compiled for law enforcement purposes other than material within the scope of 5 U.S.C. 552a(j)(2). Application of exemption (k)(2) may be necessary because access to, amendment of, or release of the accounting of disclosures of such records could inform the record subject of an investigation of the existence, nature, or scope of an actual or potential law enforcement or disciplinary investigation, and thereby seriously impede law enforcement or prosecutorial efforts by permitting the record subject and other persons to whom he might disclose the records or

the accounting of records to avoid criminal penalties, civil remedies, or disciplinary measures; interfere with a civil or administrative action or investigation which may impede those actions or investigations; reveal confidential sources who might not have otherwise come forward to assist in an investigation and thereby hinder DoD's ability to obtain information from future confidential sources; and result in an unwarranted invasion of the privacy of others.

(B) *Subsection (c)(4), (d)(3) and (4).* These subsections are inapplicable to the extent that an exemption is being claimed from subsections (d)(1) and (2).

(C) *Subsection (e)(1).* In the collection of information for investigatory or law enforcement purposes, it is not always possible to conclusively determine the relevance and necessity of particular information in the early stages of the investigation or adjudication. In some instances, it will be only after the collected information is evaluated in light of other information that its relevance and necessity for effective investigation and adjudication can be assessed. Collection of such information permits more informed decision-making by the Department when making required disciplinary and prosecutorial determinations. Additionally, records within this system may be properly classified pursuant to executive order. Accordingly, application of exemptions (j)(2), (k)(1) and (k)(2) may be necessary.

(D) *Subsection (e)(2).* To collect information from the subject individual could serve notice that he or she is the subject of a criminal investigation and thereby present a serious impediment to such investigations. Collection of information only from the individual accused of criminal activity or misconduct could also subvert discovery of relevant evidence and subvert the course of justice. Accordingly, application of exemption (j)(2) may be necessary.

(E) *Subsection (e)(3).* To inform individuals as required by this subsection could reveal the existence of a criminal investigation and compromise investigative efforts. Accordingly, application of exemption (j)(2) may be necessary.

(F) *Subsections (e)(4)(G) and (H).* These subsections are inapplicable to the extent an exemption is claimed from subsections (d)(1) and (2).

(G) *Subsection (e)(4)(I).* To the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect the privacy and physical safety of witnesses and informants. Accordingly, application of exemptions (j)(2), (k)(1), and (k)(2) may be necessary.

(H) *Subsection (e)(5).* It is often impossible to determine in advance if investigatory records contained in this system are accurate, relevant, timely and complete, but, in the interests of effective law enforcement, it is necessary to retain this information to maintain an accurate record of the investigatory activity to preserve the integrity of the investigation and satisfy various Constitutional and evidentiary requirements, such as mandatory disclosure of potentially exculpatory information in the investigative file to a defendant. It is also necessary to retain this information to aid in establishing patterns of activity and provide investigative leads. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can only be determined through judicial processes. Accordingly, application of exemption (j)(2) may be necessary.

(I) *Subsection (e)(8).* To serve notice could give persons sufficient warning to evade investigative efforts. Accordingly, application of exemption (j)(2) may be necessary.

(J) *Subsection (f).* ''The agency's rules are inapplicable to those portions of the system that are exempt. Accordingly, application of exemptions (j)(2), (k)(1), and (k)(2) may be necessary.''

(K) *Subsection (g).* This subsection is inapplicable to the extent that the system is exempt from other specific subsections of the Privacy Act.

(iv) *Exempt records from other systems.* In the course of carrying out the overall purpose for this system, exempt records from other systems of records may in turn become part of the records maintained in this system. To the extent that copies of exempt records from those other systems of records are maintained in this system, the DoD claims the same exemptions for the records from those other systems that are entered into this system, as claimed for the prior system(s) of which they are a part, provided the reason for the exemption remains valid and necessary.

* * * * *

Dated: May 12, 2021.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2021–10366 Filed 5–24–21; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 100

**[Docket Number USCG–2021–0266]**

**RIN 1625–AA08**

## Special Local Regulation; Back River, Baltimore County, MD

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to establish temporary special local regulations for certain waters of Back River. This action is necessary to provide for the safety of life on these navigable waters located in Baltimore County, MD, during a high-speed power boat event on July 10, 2021, and July 11, 2021. This proposed rulemaking would prohibit persons and vessels from entering the regulated area unless authorized by the Captain of the Port Maryland-National Capital Region or the Coast Guard Event Patrol Commander. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before June 9, 2021.

**ADDRESSES:** You may submit comments identified by docket number USCG–2021–0266 using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email Mr. Ron Houck, U.S. Coast Guard Sector Maryland-National Capital Region; telephone 410–576–2674, email *D05-DG-SectorMD-NCR-MarineEvents@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

### I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
PATCOM Patrol Commander
§ Section
U.S.C. United States Code

### II. Background, Purpose, and Legal Basis

On April 16, 2021, the Chesapeake Bay Power Boat Association of

Edgewater, MD, notified the Coast Guard that it will be conducting the 1st Annual Shootout on the River 2021 from 10 a.m. to 5 p.m. on July 10, 2021, and from 10 a.m. to 5 p.m. on July 11, 2021. The individually-timed power boat speed runs event consists of approximately 50 participants competing on a designated, marked linear course located on Back River, between Lynch Point to the south and Walnut Point to the north. The event is being staged out of Tiki Lee's Dock Bar, 4309 Shore Road, Sparrows Point, in Baltimore County, MD. Details of the event were provided to the Coast Guard by the sponsoring organization on May 3, 2021. Hazards from the high-speed power boat competition include participants operating within and adjacent to the designated navigation channel and interfering with vessels intending to operate within that channel, as well as operating within approaches to local marinas and boat facilities and waterfront residents. The Captain of the Port (COTP) Maryland-National Capital Region has determined that potential hazards associated with the high-speed power boat competition would be a safety concern for anyone intending to operate within certain waters of Back River in Baltimore County, MD, operating in or near the event area.

The Coast Guard is requesting that interested parties provide comments within a shortened comment period of 15 days instead of the more typical 30 days for this notice of proposed rulemaking. The Coast Guard believes a shortened comment period is necessary and reasonable to ensure the Coast Guard has time to review and respond to any significant comments submitted by the public in response to the NPRM and has final rule in effect in time for the scheduled event.

The purpose of this rulemaking is to protect event participants, non-participants, and transiting vessels before, during, and after the scheduled event. The Coast Guard proposes this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

## III. Discussion of Proposed Rule

The COTP Maryland-National Capital Region is proposing to establish special local regulations from 9 a.m. on July 10, 2021, through 6 p.m. on July 11, 2021. There is no alternate date planned for this event. The regulated area would cover all navigable waters of Back River, within an area bounded by a line connecting the following points: From the shoreline at Lynch Point at latitude 39°14′46″ N, longitude 076°26′23'' W, thence northeast to Porter Point at latitude 39°15′13″ N, longitude 076°26′11″ W, thence north along the shoreline to Walnut Point at latitude 39°17′06″ N, longitude 076°27′04″ W, thence southwest to the shoreline at latitude 39°16′41″ N, longitude 076°27′31″ W, thence south along the shoreline to the point of origin, located in Baltimore County, MD. The regulated area is approximately 4,200 yards in length and 1,200 yards in width.

This proposed rule provides additional information about areas within the regulated area and their definitions. These areas include ''Course Area,'' ''Buffer Area,'' and ''Spectator Area.''

The proposed size of the regulated area is intended to ensure the safety of life on these navigable waters before, during, and after the high-speed power boat competition, scheduled from 10 a.m. to 5 p.m. on July 10, 2021, and from 10 a.m. to 5 p.m. on July 11, 2021. The COTP and the Coast Guard Event Patrol Commander (PATCOM) would have authority to forbid and control the movement of all vessels and persons, including event participants, in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area would be required to immediately comply with the directions given by the COTP or Event PATCOM. If a person or vessel fails to follow such directions, the Coast Guard may expel them from the area, issue them a citation for failure to comply, or both.

Except for 1st Annual Shootout on the River participants and vessels already at berth, a vessel or person would be required to get permission from the COTP or Event PATCOM before entering the regulated area. Vessel operators would be able to request permission to enter and transit through the regulated area by contacting the Event PATCOM on VHF–FM channel 16. Vessel traffic would be able to safely transit the regulated area once the Event PATCOM deems it safe to do so. A vessel within the regulated area must operate at safe speed that minimizes wake. A person or vessel not registered with the event sponsor as a participant or assigned as official patrols would be considered a spectator. Official Patrols are any vessel assigned or approved by the Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign. Official Patrols enforcing this regulated area can be contacted on VHF–FM channel 16 and channel 22A.

If permission is granted by the COTP or Event PATCOM, a person or vessel would be allowed to enter the regulated area or pass directly through the regulated area as instructed. Vessels would be required to operate at a safe speed that minimizes wake while within the regulated area. A spectator vessel must not loiter within the navigable channel while within the regulated area. Official patrol vessels would direct spectators to the designated spectator area. Only participant vessels and official patrol vessels would be allowed to enter the course area. The Coast Guard would publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF–FM marine band radio announcing specific event dates and times.

The regulatory text we are proposing appears at the end of this document.

## IV. Regulatory Analyses

We developed this proposed 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 NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the location, size and duration of the regulated area, which would impact a small designated area of Back River for 18 total enforcement hours. The Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the status of the regulated area. Moreover, the rule would allow vessels to seek permission to enter the regulated area, and vessel traffic would be able to safely transit the regulated area once the Event PATCOM deems it safe to do so.

### *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 proposed rule would not have a significant economic impact on a substantial number of small entities.

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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 proposed 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 call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

*C. Collection of Information*

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

*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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this proposed 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 made a preliminary 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. This proposed rule involves implementation of regulations within 33 CFR part 100 applicable to organized marine events on the navigable waters of the United States that could negatively impact the safety of waterway users and shore side activities in the event area lasting for 18 total enforcement hours. Normally such actions are categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

*G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email 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.

## V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Documents mentioned in this NPRM as being available in the docket, and public comments, will be in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive. If you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

**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 is proposing to amend 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. 70034;33 CFR 1.05–1.

■ 2. Add § 100.501T05–0266 to read as follows:

**§ 100.501T05–0266 1st Annual Shootout on the River, Back River, Baltimore County, MD.**

(a) *Locations.* All coordinates are based on datum WGS 1984.

(1) *Regulated area.* All navigable waters of Back River, within an area bounded by a line connecting the following points: From the shoreline at Lynch Point at latitude 39°14′46″ N, longitude 076°26′23″ W, thence northeast to Porter Point at latitude 39°15′13″ N, longitude 076°26′11″ W, thence north along the shoreline to Walnut Point at latitude 39°17′06″ N, longitude 076°27′04″ W, thence southwest to the shoreline at latitude 39°16′41″ N, longitude 076°27′31″ W, thence south along the shoreline to the point of origin, located in Baltimore County, MD. The course area, buffer area, and spectator area are within the regulated area.

(2) *Course Area.* The course area is a polygon in shape measuring approximately 2.2 statute miles in length by 500 feet in width. The area is bounded by a line commencing at position latitude 39°16′53.5″ N, longitude 076°26′53.4″ W, thence east to latitude 39°16′54.4″ N, longitude 076°26′47.1″ W, thence south to latitude 39°15′01.1″ N, longitude 076°26′33.8″ W, thence west to latitude 39°14′59.4″ N, longitude 076°26′39.4″ W, thence north to the point of origin.

(3) *Buffer Area.* The buffer area is a polygon in shape measuring approximately 300 feet in all directions surrounding the entire course area described in the preceding paragraph of this section. The area is bounded by a line commencing at position latitude 39°16′56.2″ N, longitude 076°26′57.7″ W, thence east to latitude 39°16′57.7″ N, longitude 076°26′43.7″ W, thence south to latitude 39°14′59.0″ N, longitude 076°26′29.7″ W, thence west to latitude 39°14′55.8″ N, longitude 076°26′42.7″ W, thence north to the point of origin.

(4) *Spectator Area.* The designated spectator area is a polygon in shape measuring approximately 1,000 yards in length by 500 feet in width. The area is bounded by a line commencing at position latitude 39°16′33.7″ N, longitude 076°26′40.7″ W, thence east to latitude 39°16′34.5″ N, longitude 076°26′34.7″ W, thence south to latitude 39°16′05.0″ N, longitude 076°26′31.1″ W, thence west to latitude 39°16′04.4″ N, longitude 076°26′37.4″ W, thence north to the point of origin.

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

*Buffer Area* is a neutral area that surrounds the perimeter of the Course Area within the regulated area described by this section. The purpose of a buffer area is to minimize potential collision conflicts with marine event participants or high-speed power boats and spectator vessels or nearby transiting vessels. This area provides separation between a Course Area and a specified Spectator Area or other vessels that are operating in the vicinity of the regulated area established by the special local regulations.

*Captain of the Port (COTP) Maryland-National Capital Region* means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region or any Coast Guard commissioned, warrant or petty officer who has been authorized by the COTP to act on his behalf.

*Course Area* is an area described by a line bound by coordinates provided in latitude and longitude that outlines the boundary of a course area within the regulated area defined by this section.

*Event Patrol Commander or Event PATCOM* means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Maryland-National Capital Region.

*Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

*Participant* means all persons and vessels registered with the event sponsor as participating in the ''1st Annual Shootout on the River'' speed runs event, or otherwise designated by the event sponsor as having a function tied to the event.

*Spectator* means a person or vessel not registered with the event sponsor as participants or assigned as official patrols.

*Spectator Area* is an area described by a line bound by coordinates provided in latitude and longitude that outlines the boundary of a spectator area within the regulated area defined by this part.

(c) *Special local regulations.* (1) The COTP Maryland-National Capital Region or Event PATCOM may forbid and control the movement of all vessels and persons, including event participants, in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area shall immediately comply with the directions given by the patrol. Failure to do so may result in the Coast Guard expelling the person or vessel from the area, issuing a citation for failure to comply, or both. The COTP Maryland-National Capital Region or Event PATCOM may terminate the event, or a participant's operations at any time the COTP Maryland-National Capital Region or Event PATCOM believes it necessary to do so for the protection of life or property.

(2) Except for participants and vessels already at berth, a person or vessel within the regulated area at the start of enforcement of this section must immediately depart the regulated area.

(3) A spectator must contact the Event PATCOM to request permission to either enter or pass through the regulated area. The Event PATCOM, and official patrol vessels enforcing this regulated area, can be contacted on marine band radio VHF–FM channel 16 (156.8 MHz) and channel 22A (157.1 MHz). If permission is granted, the spectator must enter the designated Spectator Area or pass directly through the regulated area as instructed by Event PATCOM. A vessel within the regulated area must operate at safe speed that minimizes wake. A spectator vessel must not loiter within the navigable channel while within the regulated area.

(4) Only participant vessels and official patrol vessels are allowed to enter the race area.

(5) A person or vessel that desires to transit, moor, or anchor within the regulated area must obtain authorization from the COTP Maryland-National Capital Region or Event PATCOM. A person or vessel seeking such permission can contact the COTP Maryland-National Capital Region at telephone number 410–576–2693 or on Marine Band Radio, VHF–FM channel 16 (156.8 MHz) or the Event PATCOM on Marine Band Radio, VHF–FM channel 16 (156.8 MHz).

(6) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF–FM marine band radio announcing specific event dates and times.

(d) Enforcement officials. The Coast Guard may be assisted with marine event patrol and enforcement of the regulated area by other federal, state, and local agencies.

(e) Enforcement period. This section will be enforced from 9 a.m. to 6 p.m. on July 10, 2021, and, from 9 a.m. to 6 p.m. on July 11, 2021.

Dated: May 19, 2021.

**David E. O'Connell,**

*Captain, U.S. Coast Guard, Captain of the Port Maryland-National Capital Region.*

[FR Doc. 2021–11016 Filed 5–24–21; 8:45 am]

**BILLING CODE 9110–04–P**

# Notices

Federal Register
Vol. 86, No. 99
Tuesday, May 25, 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.

## AGENCY FOR INTERNATIONAL DEVELOPMENT

### 30-Day Notice of Proposed Information Collection-Development Information Solution

**AGENCY:** Bureau for Management, Office of Acquisition and Assistance, Policy Division, United States Agency for International Development (USAID).

**ACTION:** Notice of request for public comment.

**SUMMARY:** The U.S. Agency for International Development (USAID) seeks Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, USAID requests public comment on this collection from all interested individuals and organizations. The proposed information collection was published in the **Federal Register** on December 21, 2020, allowing for a 60-day public comment period. The purpose of this notice is to allow an additional 30 days for public comment. Comments are requested concerning whether the proposed collection of information is necessary for the proper performance of functions of the agency, including the practical utility of the information; the accuracy of USAID's estimate of the burden of the proposed collection of information; 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 respondents.

**DATES:** Comments must be received no later than June 24, 2021.

**ADDRESSES:** Interested persons are invited to submit comments regarding the proposed information collection to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USAID.

**FOR FURTHER INFORMATION CONTACT:** Direct requests for additional information regarding the collection listed in this notice, including requests for a copy of the Development Information Solution System Access Request Form, AID 545–11 (11/2020), to Marcelle Wijesinghe at 202–916–2606 or via email at *mwijesinghe@usaid.gov.*

**SUPPLEMENTARY INFORMATION:** Notice regarding this proposed information collection was previously published at 85 FR 83027. Comments were received from four respondents. A discussion of the comments is provided below. The estimated burden was increased as the result of one comment. The Agency did not address comments unrelated to, or outside the scope of, the notice at 85 FR 83027.

**Discussion of Comments**

*Comment:* The Agency received several questions about the timeframe of the pilot.

*Response:* The pilot will start following OMB approval of the information collection. The pilot will terminate upon the effective date of the rulemaking to be conducted under RIN 0412–AA90. This information collection request will be updated in conjunction with the rulemaking to cover the full range of digital information for which submission will be required into DIS.

*Comment:* The Agency received two questions asking which contractors and recipients will be included in the pilot and the affected geographic locations.

*Response:* The Agency plans to require submission of indicator information into DIS under awards issued by the following Pilot missions: El Salvador Bilateral, El Salvador Regional, Ethiopia, Nepal, Peru, Rwanda, South Africa Bilateral, South Africa Regional, Vietnam, Guatemala, Libya, Ukraine, Bangladesh, Philippines and Zimbabwe. The Agency will provide guidance to permit contractors and recipients implementing awards issued by other missions to request access to DIS and submit indicator information on a voluntary basis. This guidance for the voluntary submission of indicator information will not have the force or effect of law. The burden estimates are based on the Agency's awards worldwide that are most likely to contain requirements for the submission of indicator information.

*Comment:* One comment asked how the success of the pilot would be measured.

*Response:* The success of the Pilot will be measured primarily by the ability of contractors and recipients to log in and enter data and whether the contracting officer's representative (COR)/agreement officer's representative (AOR) reviewed and approved the content.

*Comment:* One comment asked how USAID would ensure data quality of the information entered into DIS.

*Response:* CORs and AORs will be responsible for reviewing and approving the indicator information submitted by contractors and recipients.

*Comment:* One comment asked how implementers would know which activities to report to DIS.

*Response:* A special requirement will be added to new and existing awards that are issued by the pilot missions, if the award has requirements for indicator information. When award deliverables include relevant performance indicators of the activity's outputs and outcomes, the contractor or recipient will be required to submit the following indicator information into DIS: (1) Indicator data, disaggregated by key categories of interest, including geographic location at a level that is feasible and useful for management purposes; and (2) Indicator narratives, including when the deviation between the target and actual value is greater or less than 10 percent. If the award does not contain separate requirements for indicator information, then the requirement to submit such information to DIS is not applicable.

*Comment:* One comment asked if access is limited to two persons per award.

*Response:* While the Agency estimated that two persons per award would obtain access to DIS to submit indicator information, affected contractors and recipients may request access for the number of employees they determine necessary to meet the submission requirements.

*Comment:* Two comments asked how the Agency will determine which contractors and recipients are currently collecting indicator data and deviation narrative.

*Response:* The Agency has no centralized mechanism to determine which awards contain requirements for indicator data or deviation narrative, which are requirements unique to each award. The determination will therefore

be made by the relevant CO/AO on an award-by-award basis.

*Comment:* One comment questioned whether the burden hour is correct given all deliverable and other submission requirements imposed upon contractors and grantees.

*Response:* The burden hour is only taking into account the awards most likely to contain requirements for indicator information, since indicator information is the only information required to be submitted to DIS under the pilot.

*Comment:* One comment asked how many contractors and grantees are included in the pilot.

*Response:* We have not calculated the number of contractors and recipients in the Pilot, because the burden is calculated based on the number of awards.

*Comment:* One comment asked how many awards will be included in the pilot.

*Response:* The information collection has two components: The one-time DIS Access Request, and the quarterly Indicator Information Submission. We estimate that approximately 1,184 awards will be affected annually for the purpose of requesting DIS access. We estimate that approximately 2,809 awards will be impacted annually for the purpose of submitting indicator information. Approximately 400 of these awards are issued by the 15 missions participating in the Pilot. However, the burden estimates are based on the number of Agency awards worldwide that are most likely to contain requirements for the submission of indicator information, to allow contractors and recipients with awards issued by non-Pilot missions to request access to DIS and to submit indicator information to DIS on a voluntary basis.

*Comment:* Two commenters asked questions related to whether the requirement to submit indicator information into DIS would affect or supersede other requirements to submit indicator information and how the indicator data submitted into DIS would affect indicator data reported under other award terms and conditions.

*Response:* The pilot will not affect requirements related to USAID's Development Experience Clearinghouse (DEC) and the Development Data Library (DDL), nor will it supersede deliverable or reporting requirements in current awards. However, the initial design of DIS will contain links to the DEC and DDL systems so that contractors and recipients can fulfill DEC and DDL submission requirements while navigating the DIS interface. As these system development efforts mature, USAID ultimately intends to provide a single web address through which to submit digital information as required by their awards, rather than having to meet multiple submission requirements across multiple systems.

*Comment:* Two comments were received regarding the estimated reporting time per quarter. One comment asked how much time USAID estimated was required per award per quarter. The second comment advised that USAID had underestimated the burden hours required for indicator submission and recommended that the burden be revised to 150 minutes, rather than 15 minutes, per submission of indicator information. The recommendation was based on an estimated average of 10 indicators per award and an average response burden of 15 minutes per indicator (15 minutes $\times$ 10 indicators equals 150 minutes, or 2.5 hours).

*Response:* USAID agreed with the recommendation and revised the estimated burden from 15 minutes per quarter per award to 2.5 hours per quarter per award, increasing the annual burden hours from 2,809 to 28,090.

*Comment:* Several comments were submitted noting that the 60-day notice contained different information from information regarding DIS that USAID has made publicly available through its website.

*Response:* Most of these comments are beyond the scope of the 60-day notice because the Frequently Asked Questions are about the broader capabilities of DIS and planned future use, rather than the narrow subset of indicator information to be submitted under the pilot. Comments we determined relevant to the pilot have separate responses within this discussion.

*Comment:* One comment asked whether baselines and targets in DIS are the same as in the award.

*Response:* The targets and baselines are agreed between CORs/AORs and contractors/recipients, when the award requires an Activity Monitoring, Evaluation, and Learning Plan. The target and baseline data will be entered into DIS by USAID.

*Comment:* Two comments asked whether implementers will be required to load data associated with their activities.

*Response:* DIS already contains basic award information from USAID's Global Acquisition and Assistance System. Contractors and recipients will enter indicator data and narratives, including on the deviation between indicator targets and actuals during the pilot.

*Comment:* One comment asked what approvals AORs/CORs will provide through DIS and how this affects delegations in the AOR/COR delegation letter.

*Response:* It is the responsibility of CORs and AORs to review and approve the indicator data and narratives submitted by contractors and recipients. We do not anticipate any changes to the delegations in the AOR/COR delegation letters as this review and approval is within the scope of the delegated duties.

*Comment:* One comment asked whether partners would assign geographic locations for activities during the Pilot.

*Response:* For awards in the Pilot, when award deliverables and reporting include indicator data, the contractor or recipient may be requested to provide disaggregated results of geographic information at the national or, if collected, at the sub-national level.

*Comment:* One comment asked whether a DIS access form is relevant to the Pilot.

*Response:* Contractors and recipients will need to request access to DIS using either the Development Information Solution System Access Request Form, AID 545–11 (11/2020) or, when available, an electronic form integrated into DIS.

*Comment:* Two comments asked about the relationship between DIS and other data collections specific to missions, bureaus, and offices.

*Response:* USAID Operating Units will be required to migrate their data from current legacy systems into DIS as the new Agency-wide solution. Missions that have existing databases, data repositories, or applications used to manage their program Monitoring and Evaluation (M&E), may choose to migrate their data over to DIS. Plans for the decommissioning of any affected Mission legacy systems will be discussed as DIS is deployed to the Missions.

*Comment:* Two comments asked what other reporting systems will be eliminated or changed, and if there will be rulemaking for the changes in reporting systems.

*Response:* No USAID Agency-wide official reporting systems will be eliminated with the implementation of DIS. In tandem with the DIS pilot, USAID is pursuing the rulemaking process to reduce the total number of portals through which USAID contractors and recipients are required to submit digital information to USAID. USAID anticipates consolidating existing DEC and DDL submission requirements as part of this rulemaking process. More information on the proposed rule can be found at:

*https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201904&RIN=0412-AA90*.

*Comment:* One comment said that the RIN cited in the 60-day notice for future rulemaking had been withdrawn and asked about the status of the rulemaking.

*Response:* The rule with RIN: 0412–AA90 has not been withdrawn; it is still in the unified agenda.

*Comment:* Two comments asked for more information regarding the rulemaking under RIN 0412–AA90, including how the information collection would be updated during rulemaking.

*Response:* This information collection request will be updated in conjunction with the rulemaking to cover the full range of digital information for which submission will be required into DIS. Please see the forthcoming notice of proposed rulemaking for additional information about the rulemaking under RIN 0412–AA90 and submit comments or questions following the instructions in that notice.

*Comment:* One comment noted technical difficulty in setting up *login.gov* accounts.

*Response:* Contractors and recipients should contact their AORs/CORs regarding technical difficulties. The *login.gov* ''help center'' is also an available resource.

*Comment:* One comment noted poor alignment between DIS and the indicators contained in monitoring and evaluation plans required under awards, and recommended greater flexibility for input fields in DIS.

*Response:* DIS should align with the indicators contained in approved monitoring and evaluation plans, when such plans are required under awards. Contractors and recipients should contact their CORs/AORs regarding any disparities.

*Comment:* One comment noted character limitations for the input fields for deviation narrative were too restrictive.

*Response:* USAID's DIS team will consider this feedback for future system enhancement.

*Comment:* One comment noted that the reporting window in DIS to submit indicator data has not been long enough.

*Response:* Contractors and recipients should contact their CORs/AORs regarding access issues.

**Purpose**

USAID is implementing the Development Information Solution (DIS) Pilot to consolidate reporting, improve efficiencies, and facilitate evidence-based decision-making. The purpose of this information collection is to require USAID contractors and grant recipients who collect indicator data under their award terms to: (1) Submit information to request access to the DIS, and (2) to submit indicator information to the DIS, which is collected under special award requirements unique to each award. In order to request access to the DIS, contractors and recipients of grants and cooperation agreements will need to submit the following information to USAID using either the Development Information Solution System Access Request Form, AID 545–11 (11/2020) or, when available, an electronic form integrated into DIS: Name, contact telephone number, name of organization, *Login.gov* username (which is the address used for *Login.gov* access), award number, award expiration date, the activities for which access is requested, and a signature and date to acknowledge agreement to the listed Rules of Behavior. We estimate that two persons may request access for each award that requires the collection of indicator data.

Contractors and recipients will use the access to DIS during the pilot to submit indicator data and narratives, including on the deviation between targets and actuals, when required as a subset of performance reporting under special award requirements. We estimate that indicator information will be submitted to DIS quarterly. As the DIS pilot progresses, USAID will use information from the pilot to inform rulemaking under Regulation Identifier Number (RIN) 0412–AA90, which will require contractors and grant recipients to submit digital information required under awards through the DIS, replacing other current methods of submission. This information collection request will be updated in conjunction with the rulemaking to capture digital information submission requirements for information collected under other standard award terms.

**Overview of Information Collection**

*(1) Title of Information Collection:* USAID Development Information Solution Pilot.

*(2) Type of Review:* A New Information Collection.

*(3) Title of the Form:* Development Information Solution System Access Request Form, AID 545–11 (11/2020).

*(4) Respondents:* USAID contractors and grant and cooperative agreement recipients.

*(5) Estimated Number of Annual Responses-DIS Access:* 2,368.

*(6) Estimated Number of Annual Burden Hours-DIS Access:* 1,184.

*(7) Estimated Number of Annual Responses-Indicator Information:* 11,236.

*(8) Estimated Number of Annual Burden Hours-Indicator Information:* 28,090.

*(9) Total Estimated Number of Annual Responses:* 13,604.

*(10) Total Estimated Number of Annual Burden Hours:* 29,274.

**Instructions**

All comments must be in writing and submitted through the method(s) specified in the Addresses section above. All submissions must include the information collection title. Please include your name, title, organization, postal address telephone number, and email address in the text of the message. Please note that comments submitted in response to this Notice are public record. We recommend that you do not submit detailed personal information, Confidential Business Information, or any information that is otherwise protected from disclosure by statute.

Dated: May 19, 2021.

**Mark Walther,**

*Senior Procurement Executive.*

[FR Doc. 2021–10929 Filed 5–24–21; 8:45 am]

**BILLING CODE 6116–01–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

**[Doc No. AMS–FGIS–21–0035]**

### Request for Extension and Revision of a Currently Approved Information Collection

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Agricultural Marketing Service (AMS) is announcing our intention to request a 3-year extension and revision of a currently approved information collection for ''Export Inspection and Weighing Waiver for High Quality Specialty Grain Transported in Containers''.

**DATES:** Comments must be received by July 26, 2021.

**ADDRESSES:** Comments must be submitted through the Federal e-rulemaking portal at *http://www.regulations.gov* and should reference the document number and the date and page number of this issue of the **Federal Register**. All comments submitted in response to this notice will

be included in the record and made available to the public. Please be advised the identity of individuals or entities submitting comments will be made public on the internet at the address provided above.

**FOR FURTHER INFORMATION CONTACT:** Jessica Dreier, Compliance Officer, Quality Assurance and Compliance Division, Federal Grain Inspection Service, AMS, USDA; email: *FGISQACD@usda.gov.*

**SUPPLEMENTARY INFORMATION:** Congress enacted The United States Grain Standards Act (USGSA) (7 U.S.C. 71–87k) to facilitate the marketing of grain in interstate and foreign commerce. The USGSA, with few exceptions, requires all grain shipped from the United States to be officially inspected and weighed. The USGSA authorizes the Department of Agriculture to waive the mandatory inspection and weighing requirements in circumstances when the objectives of the USGSA would not be impaired.

Section 7 CFR 800.18 of the regulations waives the mandatory inspection and weighing requirements of the USGSA for high quality specialty grain exported in containers. This waiver was established to facilitate the marketing of high quality specialty grain exported in containers. This action is consistent with the objectives of the USGSA and promotes the continuing development of the high quality specialty grain export market.

FGIS requires exporters to maintain records pertaining to these shipments and to make them available upon request for review or copying purposes (76 FR 45397). These records shall be maintained for a period of 3 years. This information collection requirement is essential to ensure exporters who ship high quality specialty grain in containers comply with the waiver provisions. FGIS does not require exporters of high quality specialty grain to complete and submit new Federal government record(s), form(s), or report(s).

*Title:* Export Inspection and Weighing Waiver for High Quality Specialty Grains Transported in Containers.

*OMB Number:* 0581–0306.

*Expiration Date of Approval:* August 31, 2021.

*Type of Request:* Extension and revision of a currently approved information collection.

*Abstract:* The regulations under the USGSA waive the mandatory inspection and weighing requirements for high quality specialty grain exported in containers. FGIS established this waiver to facilitate the marketing of high quality specialty grain exported in containers. To ensure compliance with this waiver, FGIS required these exporters to maintain records generated during their normal course of business that pertain to these shipments and make these documents available to FGIS upon request, for review and copying purposes.

**Grain Contracts**

*Estimate of Burden:* Public reporting and recordkeeping burden for maintaining contract information is estimated to average 6 hours per exporter.

*Respondents:* Exporters of high quality specialty grain in containers.

*Estimated Number of Respondents:* 40.

*Estimated Total Annual Responses:* 40.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 240.

*Comments are invited on:* (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Jessica Dreier at *FGISQACD@usda.gov.*

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

**Erin Morris,**

*Associate Administrator, Agricultural Marketing Service.*

[FR Doc. 2021–11025 Filed 5–24–21; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request; Correction

May 19, 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 June 24, 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:* 7 CFR 1780, Water and Waste Disposal Loan and Grant Program.

*Action:* Notice; Correction.

*OMB Control Number:* 0572–0121.

*Summary of Collection:* The Department of Agriculture published a document in the **Federal Register** on May 19, 2021, Volume 86, page 27065 concerning a request for comments on the Information Collection ''7 CFR 1780, Water and Waste Disposal Loan and Grant Program'' OMB control number 0572–0121. The 156,339 total burden hours reported were incorrect. The correct figures are 163,203 total burden hours.

**Levi S. Harrell,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2021–10957 Filed 5–24–21; 8:45 am]

**BILLING CODE 3410–15–P**

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

May 20, 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 June 24, 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.

**Food and Nutrition Service**

*Title:* WIC Farmers' Market Nutrition Program (FMNP) Forms and Regulations.

*OMB Control Number:* 0584–0447.

*Summary of Collection:* The Farmers' Market Nutrition Program (FMNP) is associated with the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) and was established by Congress in 1992. The FMNP is authorized by Section 17(m) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(m)), as amended. The FMNP was established to provide fresh, nutritious, unprepared locally grown fruits and vegetables from farmers' markets and roadside stands to WIC participants; to expand the awareness and use of farmers' markets; and to increase sales at such markets. Women, infants (over 4 months old) and children that have been certified to receive WIC Program benefits or who are on a waiting list for WIC certification are eligible to participate in the WIC FMNP. The Food and Nutrition Service (FNS) will collect information from each state that receives a grant under the FMNP program in conjunction with the preparation of annual financial and recipient reports.

*Need and Use of the Information:* The respondents to this information collection are FMNP State and local agencies (including Indian Tribal Organizations, District of Columbia, and Territories), participants, local agencies that are for-profit or non-profit businesses, and FMNP authorized outlets (farmers, farmers' markets, and roadside stands). The State and local agencies collect and maintain information related to program operation and administration, while the participants and FMNP authorized outlets provide the eligibility information needed to participate in the program. Some of the information requirements in this collection are mandatory, while others are required to obtain or retain a benefit. FNS uses the information to assess how each FMNP State agency operates; to ensure the accountability of State agencies, local agencies, and farmers/farmers' markets/roadside stands; to make program management decisions; and to report to Congress as needed.

*Description of Respondents:* State, Local, or Tribal Government; Individuals or Households; Business or other-for-profit; Not-for-profit institutions; and Farms.

*Number of Respondents:* 1,581,402.

*Frequency of Responses:* Recordkeeping; Reporting: Annually; Semi-annually; Quarterly; and Other (every one to three years).

*Total Burden Hours:* 1,640,907.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2021–11012 Filed 5–24–21; 8:45 am]

**BILLING CODE 3410–30–P**

## COMMISSION ON CIVIL RIGHTS

### Notice of Public Meeting of the North Dakota Advisory Committee; Cancellation

**AGENCY:** Commission on Civil Rights.

**ACTION:** Notice; cancellation of meeting.

**SUMMARY:** The Commission on Civil Rights published a notice in the **Federal Register** concerning a meeting of the North Dakota Advisory Committee. The meeting scheduled for Wednesday, May 26, 2021 at 11:00 a.m. (ET) is cancelled. The notice is in the **Federal Register** of Tuesday, April 27, 2021, in FR Doc. 2021–08851, in the first, second and third columns of page 22134 and the second and third columns of page 22135.

**FOR FURTHER INFORMATION CONTACT:** Evelyn Bohor, (202) 921–2212, *ebohor@usccr.gov.*

Dated: May 20, 2021.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2021–11043 Filed 5–24–21; 8:45 am]

**BILLING CODE P**

## COMMISSION ON CIVIL RIGHTS

### Notice of Public Meeting of the West Virginia Advisory Committee

**AGENCY:** Commission on Civil Rights.

**ACTION:** Announcement of meeting.

**SUMMARY:** Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA) that meetings of the West Virginia Advisory Committee to the Commission will convene by conference call at 11:30 a.m. (ET) on

Tuesday, June 1, 2021
Tuesday, July 6, 2021
Tuesday, August 3, 2021
Tuesday, September 7, 2021

The purpose of the meeting is to discuss possible topics for the Committee's civil rights project.

*Public Call-In Information:* Conference call-in number: 1–800–367–2403 and conference call ID number: 7966318.

**FOR FURTHER INFORMATION CONTACT:** Ivy Davis at *ero@usccr.gov* or by phone at 202–376–7533.

**SUPPLEMENTARY INFORMATION:** Interested members of the public may listen to the discussion by calling the following toll-free conference call-in number: 1–800–367–2403 and conference call ID number: 7966318. Please be advised that

before being placed into the conference call, the conference call operator will ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free conference call-in number.

Individual who is deaf, deafblind and hard of hearing may also follow the discussion by first calling the Federal Relay Service at 1–888–364–3109 and providing the operator with the toll-free conference call-in number: 1–800–367–2403 and conference call ID number: 2629531.

Members of the public are invited to make statements during the Public Comments section of the Agenda. They are also invited to submit written comments, which must be received in the regional office approximately 30 days after the scheduled meeting. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425 or emailed to Corrine Sanders at *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at: *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzmCAAQ*; click the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone number, email or street address.

**Agenda**

*June 1 at 11:30 a.m. (EST)*

I. Rollcall
II. Welcome
III. Project Planning
IV. Other Business
V. Next Meeting
VI. Open Comments
VII. Adjourn

Dated: May 20, 2021.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2021–11041 Filed 5–24–21; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–533–843]**

## Certain Lined Paper Products From India: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2018–2019

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) determines that Navneet Education Ltd. (Navneet) and Super Impex did not make sales of certain lined paper products from India at prices below normal value during the period of review (POR) September 1, 2018, through August 28, 2019. In addition, Commerce determines that Marisa International had no shipments during the POR.

**DATES:** Applicable May 25, 2021.

**FOR FURTHER INFORMATION CONTACT:** Samuel Brummitt, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–7851.

**SUPPLEMENTARY INFORMATION:**

### Background

On January 19, 2021, Commerce published the *Preliminary Results*.[1] On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days.[2] On July 21, 2020, Commerce tolled all deadlines in administrative reviews by an additional 60 days.[3] The deadline for the final results of this review is now May 19, 2021. For a complete description of the events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[4]

### Scope of the Order

The products covered by this *Order* are certain lined paper products from India. For a full description of the scope, *see* the Issues and Decision Memorandum.

### Final Determination of No Shipments

In the *Preliminary Results,* we preliminarily found that Marisa International had no shipments of subject merchandise during the POR. Following the publication of the *Preliminary Results,* we received no comments from interested parties regarding Marisa International, nor has any party submitted record evidence which would call our preliminary determination of no shipments into question. Therefore, for the final results, we continue to find that Marisa International had no shipments of subject merchandise during the POR. Accordingly, consistent with Commerce's practice, we intend to instruct U.S. Customs and Border Protection (CBP) to liquidate any existing entries of merchandise produced by Marisa International, but exported by other parties, at the rate for the intermediate reseller, if available, or at the all-others rate.[5]

Regarding Lodha Offset Limited (Lodha), we received information from CBP indicating possible shipments from Lodha.[6] Lodha did not comment on the Entry Summary Memorandum. Therefore, for the final results, we continue to find that Lodha had shipments of subject merchandise during the POR. Accordingly, we are including Lodha among the group of companies that are subject to the non-selected rate.

### Analysis of Comments Received

All issues raised in the case and rebuttal briefs are addressed in the Issues and Decision Memorandum. A list of the issues that parties raised and to which we responded in the Issues

[1] *See Certain Lined Paper Products from India: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2018–2019,* 86 FR 5132 (January 19, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID–19,'' dated April 24, 2020.

[3] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,'' dated July 21, 2020.

[4] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Antidumping Duty Order on Certain Lined Paper Products from India; 2018–2019,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[5] *See, e.g., Magnesium Metal from the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 26922, 26923 (May 13, 2010), unchanged in *Magnesium Metal from the Russian Federation: Final Results of Antidumping Duty Administrative Review,* 75 FR 56989 (September 17, 2010).

[6] *See* Memorandum, ''Release of U.S. Customs and Border Protection Information Relating to December 20, 2019, Entry Document Request,'' dated January 29, 2020.

and Decision Memorandum is attached to this notice as an Appendix. 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 *https://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/*.

**Changes Since the Preliminary Results**

Based on a review of the record and comments received from interested parties, we made the following changes to the *Preliminary Results:*

- Navneet's interest expense ratio.[7]
- The calculation of the indirect selling expense ratio used in Super Impex's margin analysis.[8]

**Final Results of the Review**

As a result of this review, Commerce determines that the following weighted-average dumping margins exist for the period September 1, 2018, through August 31, 2019:

| Producer/exporter | Weighted-average dumping margin (percent) |
|---|---|
| Cellpage Ventures Private Limited | 0.00 |
| Goldenpalm Manufacturers PVT Limited | 0.00 |
| Kokuyo Riddhi Paper Products Pvt. Ltd | 0.00 |
| Lodha Offset Limited | 0.00 |
| Lotus Global Private Limited | 0.00 |
| Magic International Pvt. Ltd | 0.00 |
| Navneet Education Ltd | 0.00 |
| PP Bafna Ventures Private Limited | 0.00 |
| Pioneer Stationery Pvt. Ltd | 0.00 |
| SAB International | 0.00 |
| SGM Paper Products | 0.00 |
| Super Impex | 0.00 |

For the companies that were not selected for individual review, we assigned a rate based on the rates for the respondents that were selected for individual review, excluding rates that are zero, *de minimis,* or based entirely on facts available.[9] In accordance with the U.S. Court of Appeals for the Federal Circuit's decision in *Albemarle Corp.* v. *United States,* we are applying to the ten companies not selected for individual review the zero percent rates calculated for Navneet and Super Impex.[10] These are the only rates determined in this review for individual respondents and, thus, should be applied to the ten firms not selected for individual review under section 735(c)(5)(B) of the Act.

**Disclosure and Public Comment**

We intend to disclose the calculations performed to parties in this proceeding within five days after publication of these final results in the **Federal Register**, in accordance with section 751(a) of the Act and 19 CFR 351.224(b).

**Assessment Rates**

Upon completion of this administrative review, Commerce shall determine and U.S. Customs and Border Protection (CBP) shall assess antidumping duties on all appropriate entries. Because the weighted-average dumping margins of Navneet, Super Impex, and the ten firms not selected for individual examination have been determined to be zero within the meaning of 19 CFR 351.106(c), we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. In accordance with Commerce's practice, for entries of subject merchandise during the POR for which Navneet and Super Impex did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate such entries at the all-others rate if there is no company-specific rate for the intermediate company(ies) involved in the transaction.[11]

Consistent with its recent notice,[12] Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

**Cash Deposit Requirements**

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the companies listed above will be the rate established in the final results of this administrative review; (2) for merchandise exported by producers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 3.91 percent, the all-others rate established in the LTFV investigation.[13] These cash deposit requirements, when imposed, shall remain in effect until further notice.

**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 and/or countervailing duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Commerce's presumption that reimbursement of antidumping and/or countervailing duties has occurred and the subsequent assessment of double antidumping duties.

**Administrative Protective Order**

This notice also serves as a final 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(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials, or conversion to judicial protective order, is hereby requested.

[7] *See* Issues and Decision Memorandum at Comment 1.

[8] *Id.* at Comment 4.

[9] *See* section 735(c)(5)(A) of the Tariff Act of 1930, as amended (the Act).

[10] *See Albemarle Corp.* v. *United States,* 821 F.3d 1345 (Fed. Cir. 2016) (*Albemarle Corp.* v. *United States*).

[11] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[12] *See Notice of Discontinuation of Policy to Issue Liquidation Instructions After 15 Days in Applicable Antidumping and Countervailing Duty Administrative Proceedings,* 86 FR 3995 (January 15, 2021).

[13] *See Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Lined Paper Products from the People's Republic of China; Notice of Antidumping Duty Orders: Certain Lined Paper Products from India, Indonesia and the People's Republic of China; and Notice of Countervailing Duty Orders: Certain Lined Paper Products from India and Indonesia,* 71 FR 56949 (September 28, 2006) (Order).

Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

**Notification to Interested Parties**

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5) and 19 CFR 351.213(h)(1).

Dated: May 19, 2021.

**Christian Marsh,**

*Acting Assistant Secretary for Enforcement and Compliance.*

**Appendix**

**List of Topics Discussed in the Issues and Decision Memorandum**

I. Summary
II. Background
III. Scope of the Order
IV. Analysis of Comments
Comment 1: Whether Commerce Should Adjust Navneet's Interest Expense Ratio
Comment 2: Whether Commerce Should Allocate Certain Navneet Trust Expenses to Navneet Education Ltd.
Comment 3: Whether Commerce Should Use the Financial Statements of Arora Gifts Private Limited to Calculate Super Impex's Profit Ratio and Indirect Selling Expense Ratio
Comment 4: Whether Commerce Should Adjust the Calculation of Arora Gifts Private Limited's Indirect Selling Expense Ratio
V. Recommendation

[FR Doc. 2021–11027 Filed 5–24–21; 8:45 am]

**BILLING CODE 3510–DS–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; Commercial Operator's Annual Report (COAR)

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 January 11, 2021 (86 FR 1943), during a 60-day comment period. This notice allows for an additional 30 days for public comments.

*Agency:* National Oceanic and Atmospheric Administration (NOAA), Commerce.

*Title:* Commercial Operator's Annual Report (COAR).

*OMB Control Number:* 0648–0428.

*Form Number(s):* None.

*Type of Request:* Regular submission (extension of a current information collection).

*Number of Respondents:* 72.

*Average Hours per Response:* Commercial Operator's Annual Report: 8 hours.

*Total Annual Burden Hours:* 576 hours.

*Needs and Uses:* The National Marine Fisheries Service (NMFS), Alaska Regional Office, is requesting renewal of the currently approved information collection for the Commercial Operator's Annual Report (COAR).

The COAR is a State of Alaska report that is required to be completed and submitted by direct marketers, catcher processors, catcher exporters, buyer exporters, shore-based processors, and floating processor permit holders pursuant to Alaska Administrative Code (5 AAC 39.130) and Federal regulations at 50 CFR 679. Under 50 CFR 679.5(p), NMFS requires motherships and catcher processors that are issued a Federal fisheries permit to annually complete and submit the appropriate sections of the COAR.

The COAR is used to gather statewide fish and shellfish information describing buying (ex-vessel) and production (wholesale or retail) activities. The information collected in the COAR is used to determine the value of Alaska's fisheries resources and products. NMFS uses the COAR database in annual Federal publications on the value of U.S. commercial fisheries, in the annual NMFS Stock Assessment and Fishery Evaluation reports for the groundfish fisheries of the Bering Sea and Aleutian Islands and the Gulf of Alaska, and in periodic reports that describe the fisheries and that serve as reference documents to management agencies, the industry, and others.

The mothership and catcher processor data, when added to the COAR information collected from shoreside processors and stationary floating processors required under State of Alaska requirements, yield a complete database of equivalent annual product value information for all respective processing sectors. The information also provides a consistent time series according to which groundfish resources may be managed more efficiently. Use of the information generated by the COAR is coordinated between NMFS and the Alaska Department of Fish and Game (ADF&G).

The COAR must be submitted by April 1 to the ADF&G for the previous year's activity for all operations that are required to submit a COAR. NMFS requires the owner of a mothership or catcher processor to annually complete and submit the appropriate forms of the COAR, whether the processor operated that year or not. If no receipt or production took place for that year, the owner submits only the COAR certification page.

The COAR requires submission of information on seafood purchasing, production, and both ex-vessel and wholesale values of seafood products. The buying information is reported by species, harvest area, area of purchase, condition of fisheries resources at the time of purchase, type of gear used in the harvest, pounds purchased, and ex-vessel value. The ex-vessel value includes any post-season adjustments or bonuses paid after the fish was purchased. The production information is reported by species, area of processing, process type (*e.g.,* frozen, canned, smoked), product type (*e.g.,* fillets, surimi, sections), net weight of the processed product, and the first wholesale value.

*Affected Public:* Individuals or households; Business or other for-profit organizations.

*Frequency:* Annually.

*Respondent's Obligation:* Mandatory.

*Legal Authority:* Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*

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 0648–0428.

**Sheleen Dumas,**

*Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.*

[FR Doc. 2021–10985 Filed 5–24–21; 8:45 am]

**BILLING CODE 3510–22–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; Permits for Incidental Taking of Endangered or Threatened Species

**AGENCY:** National Oceanic & Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of information collection, request for comment.

**SUMMARY:** The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites 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. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

**DATES:** To ensure consideration, comments regarding this proposed information collection must be received on or before July 26, 2021.

**ADDRESSES:** Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *Adrienne.thomas@noaa.gov.* Please reference OMB Control Number 0648–0230 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or specific questions related to collection activities should be directed to Celeste Stout, Fisheries Management Specialist, NMFS, Office of Protected Resources, (301) 427–8436, and *Celeste.Stout@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. Abstract

This request is for an extension of a currently approved information collection.

The Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) imposed prohibitions against the taking of endangered species. In 1982, Congress revised the ESA to allow permits authorizing the taking of endangered species incidental to otherwise lawful activities. The corresponding regulations (50 CFR part 222.222) established procedures for persons to apply for such a permit. In addition, the regulations set forth specific reporting requirements for such permit holders.

The regulations contain three sets of information collections: (l) Applications for incidental take permits, (2) applications for certificates of inclusion, and (3) reporting requirements for permits issued. Certificates of inclusion are only required if a general permit is issued to a representative of a group of potential permit applicants, rather than requiring each entity to apply for and receive a permit.

The required information is used to evaluate the impacts of the proposed activity on endangered species, to make the determinations required by the ESA prior to issuing a permit, and to establish appropriate permit conditions.

When a species is listed as threatened, section 4(d) of the ESA requires the Secretary to issue whatever regulations are deemed necessary or advisable to provide for conservation of the species. In many cases, those regulations reflect blanket application of the section 9 take prohibition. However, the National Marine Fisheries Service (NMFS) recognizes certain exceptions to that prohibition, including habitat restoration actions taken in accord with approved state watershed action plans. While watershed plans are prepared for other purposes in coordination with or fulfillment of various state programs, a watershed group wishing to take advantage of the exception for restoration activities (rather than obtaining a section 10 permit) would have to submit the plan for NMFS review.

#### II. Method of Collection

Currently, most information is collected through email, but in some instances, paper applications are mailed in.

#### III. Data

*OMB Control Number:* 0648–0230.

*Form Number(s):* None.

*Type of Review:* Regular submission (extension of a currently approved information collection).

*Affected Public:* Individuals or households, business or other for-profit, not-for-profit institutions, and state, local, or tribal government.

*Estimated Number of Respondents:* 37.

*Estimated Time per Response:* 80 hours for a permit application (including Habitat Conservation Plans), 40 minutes for transfer of an incidental take permit; 8 hours for a permit report, 30 minutes for a Certificate of Inclusion and 10 hours for a watershed plan.

*Estimated Total Annual Burden Hours:* 408.

*Estimated Total Annual Cost to Public:* $1,000 in recordkeeping/reporting costs.

*Respondent's Obligation:* Required to Obtain or Retain Benefits.

#### IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may 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.

**Sheleen Dumas,**

*Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.*

[FR Doc. 2021–10987 Filed 5–24–21; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XA967]**

### Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys, Virginia and North Carolina

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

**ACTION:** Notice; proposed incidental harassment authorization; request for

comments on proposed authorization and possible renewal.

**SUMMARY:** NMFS has received a request from Kitty Hawk Wind for authorization to take marine mammals incidental to marine site characterization surveys offshore of North Carolina. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-time, one-year renewal that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision.

**DATES:** Comments and information must be received no later than June 24, 2021.

**ADDRESSES:** Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Written comments should be submitted via email to *ITP.Daly@noaa.gov.*

*Instructions:* NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at *www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

**FOR FURTHER INFORMATION CONTACT:** Jaclyn Daly, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

**SUPPLEMENTARY INFORMATION:**

## Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth.

## National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

## Summary of Request

On February 2, 2021, NMFS received a request from Kitty Hawk Wind, a subsidiary of Avangrid Renewables (Avangrid) for an IHA to take marine mammals incidental to conducting marine site characterization surveys off of the Atlantic Coast. Kitty Hawk Wind's overall lease area (OCS–A 0508) is located approximately 44 kilometers (km) offshore of Corolla, North Carolina, in Federal waters. The proposed survey activities will occur within the lease area and along potential submarine cable routes to landfall locations in Virginia. The application was deemed adequate and complete on April 27, 2021. Kitty Hawk Wind's request is for take of a small number of nine species of marine mammals, by Level B harassment only. Neither Kitty Hawk Wind nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

NMFS previously issued an IHA to Avangrid for similar work in the same geographic area on June 3, 2019 (84 FR 31032) with effectives dates from June 1, 2019 through May 31, 2020. Avangrid complied with all the requirements (*e.g.,* mitigation, monitoring, and reporting) of the previous IHA and information regarding their monitoring results may be found in the Estimated Take section. Avangrid's final marine mammal monitoring report, dated January 7, 2021, submitted pursuant to that IHA can be found at *https://www.fisheries.noaa.gov/action/incidental-take-authorization-avangrid-renewables-llc-marine-site-characterization-surveys.*

## Description of Proposed Activity

### *Overview*

Kitty Hawk Wind is requesting an IHA authorizing the take, by Level B harassment only, of nine species of marine mammals incidental to marine site characterization surveys, specifically in association with the use of high-resolution geophysical (HRG) survey equipment off North Carolina. We note surveys will also occur off Virginia; however, for reasons described below, take of marine mammals incidental to use of those surveys is not expected to occur. The surveys will support offshore wind development in 40 percent of the lease area (OCS–A 0508) in the northwest corner closest to the North Carolina shoreline (approximately 198 square kilometers ($km^2$)). Kitty Hawk Wind would use five

types of survey equipment; however, as described below, only the Fugro SRP EAH 2D sparker has the potential to harass marine mammals. Exposure to noise from the surveys may cause behavioral changes in marine mammals (*e.g.,* avoidance, increased swim speeds, etc.) rising to the level of take (Level B harassment) as defined under the MMPA.

*Dates and Duration*

Kitty Hawk Wind would commence the survey as soon as possible, with the objective of completing the work by September 2021. The surveys would cover approximately 3,300 km of survey trackline over 25 days, not including non-survey days likely needed for weather down time. The IHA would be effective for one year from the date of issuance. This schedule is based on 24-hour operations.

*Specific Geographic Region*

Kitty Hawk Wind's overall lease area is approximately 495 $km^2$ and is located approximately 44 km offshore of Corolla, North Carolina, in Federal waters. The proposed survey activities will occur within the lease area and along potential submarine cable routes to landfall locations in Virginia (Figure 1). Specifically, Kitty Hawk will conduct the 2021 HRG survey campaign in the wind development area (WDA defined as the northwestern 40 percent of the Lease Area) and offshore export cable corridor. The HRG surveys would occur in the WDA and an approximately 62 km long by 2 km wide export cable corridor. Water depths across the WDA range from approximately 27 to 38.5 meters (m). The offshore export cable corridor will extend from shallow water areas (0 m) near landfall to approximately 33 m depth.

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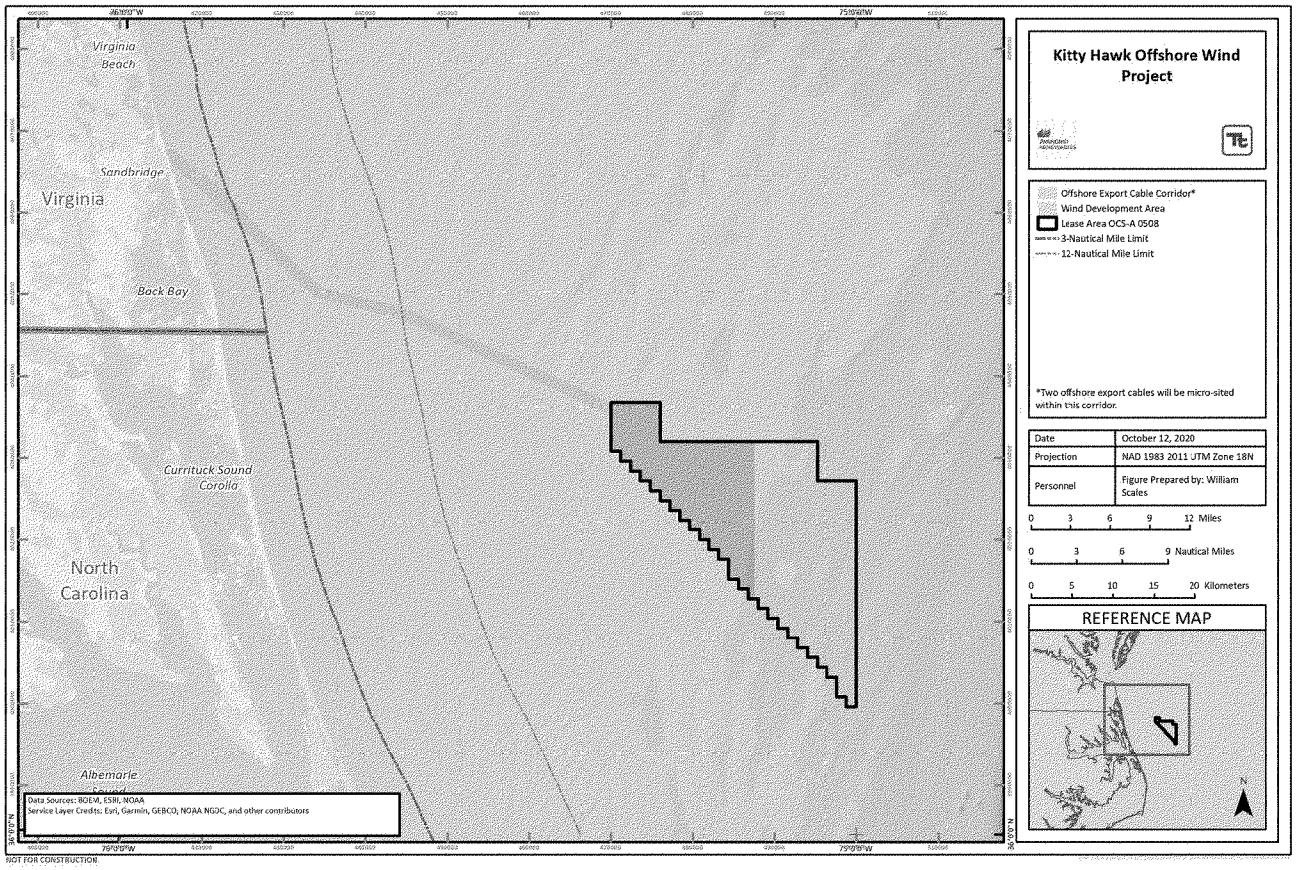


**Figure 1: Project Area for the marine site characterization surveys which include the WDA and the potential submarine cable route area**

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*Detailed Description of Specific Activity*

The purpose of Kitty Hawk Wind's marine site characterization surveys is to support the siting of the proposed wind turbine generators and offshore export cables, providing a more detailed understanding of the seabed and sub-surface conditions in the WDA and export cable corridor.

Kitty Hawk Wind anticipates that during most of the survey only two vessels would be necessary, with one vessel operating nearshore and another operating offshore. However, up to 3 vessels may operate at any given time with final vessel choices dependent on the final survey design, vessel availability, and survey contractor selection. Concurrently operating vessels would remain at least 1 km apart. The vessels will be capable of maintaining course and a survey speed of approximately 3 knots (5.6 km per hour (hr)) while transiting survey lines. Surveys will be conducted along track lines spaced 300 m apart, with tie lines perpendicular to the main transect lines also spaced 300 m apart.

Acoustic sources planned for use during HRG survey activities proposed by Kitty Hawk Wind include the following:

- Medium penetration, impulsive sources (*i.e.,* boomers and sparkers) are used to map deeper subsurface stratigraphy. A boomer is a broadband source operating in the 3.5 Hz to 10 kHz frequency range. Sparkers create omnidirectional acoustic pulses from 50 Hz to 4 kHz. These sources are typically towed behind the vessel.

Operation of the following survey equipment types is not expected to present reasonable risk of marine mammal take, and will not be discussed further beyond the brief summaries provided below.

- Non-impulsive, parametric SBPs are used for providing high data density in sub-bottom profiles that are typically required for cable routes, very shallow water, and archaeological surveys. These sources generate short, very narrow-beam (1° to 3.5°) signals at high frequencies (generally around 85–100 kHz). The narrow beamwidth significantly reduces the potential that a marine mammal could be exposed to the signal, while the high frequency of operation means that the signal is rapidly attenuated in seawater. These sources are typically deployed on a pole rather than towed behind the vessel.
- Ultra-short baseline (USBL) positioning systems are used to provide high accuracy ranges by measuring the time between the acoustic pulses transmitted by the vessel transceiver and a transponder (or beacon) necessary to produce the acoustic profile. It is a two-component system with a pole-mounted transceiver and one or several transponders mounted on other survey equipment. USBLs are expected to produce extremely small acoustic propagation distances in their typical operating configuration.
- Multibeam echosounders (MBESs) are used to determine water depths and general bottom topography. The proposed MBESs all have operating frequencies >180 kHz and are therefore outside the general hearing range of marine mammals.
- Side scan sonars (SSS) are used for seabed sediment classification purposes and to identify natural and man-made acoustic targets on the seafloor. The proposed SSSs all have operating frequencies >180 kHz and are therefore outside the general hearing range of marine mammals.

Table 1 identifies representative survey equipment with the expected potential to result in exposure of marine mammals and potentially result in take. The make and model of the listed geophysical equipment may vary depending on availability and the final equipment choices will vary depending upon the final survey design, vessel availability, and survey contractor selection.

All decibel (dB) levels included in this notice are referenced to 1 micoPascal. The root mean square decibel level ($dB_{rms}$) represents the square root of the average of the pressure of the sound signal over a given duration. The peak dB level ($dB_{peak}$) represents the range in pressure between zero and the greatest pressure of the signal. Operating frequencies are presented in kilohertz (kHz).

TABLE 1—SUMMARY OF REPRESENTATIVE HRG EQUIPMENT

| HRG system | Representative HRG survey equipment | Operating frequencies kilohertz (kHz) | Source level $dB_{peak}$ | Source level $dB_{rms}$ | Pulse duration (ms) | Beam width (degree) |
|---|---|---|---|---|---|---|
| Subsea Positioning/ultra-short baseline positioning system (USBL) [a]. | Sonardyne Ranger 2 USBL .... | 35–50 | 200 | 188 | 16 | 180 |
| Sidescan Sonar [a b] ..... | Klein 3900 Side Scan Sonar .. | 445/900 | 226 | 220 | 0.016 to 0.100 | 1 to 2 |
| Parametric Shallow penetration sub-bottom profiler [a]. | Innomar parametric SES–2000 Standard. | 85 to 115 | 247 | [c] 241 | 0.07 to 2 | 1 |
| Multibeam Echo Sounder [a b] ... | Reson T20–P ..... | 200/300/400 | 227 | 221 | 2 to 6 | 1.8 ± 0.2 |
| Multi-level Stacked Sparker .... | Fugro SPR EAH 2D Sparker (700 J). | 0.4 to 3.5 | [d] 223 | [d] 213 | [d] 0.5 to 3 | 180 |

[a] Potential harassment from operation of this device is not anticipated.
[b] Operating frequencies are above all relevant marine mammal hearing thresholds.
[c] The equipment specification sheets indicate a peak source level of 247 dB re 1 µPA m. The average difference between the peak and SPLRMS source levels for sub-bottom profilers measured by Crocker and Fratantonio (2016) was 6 dB. Therefore, the estimated SPLRMS sound level is 241 dB re 1 µPA m.
[d] Sound levels where not available from the manufacturer. Therefore, the source levels and pulse duration are based on data from Crocker and Fratantonio (2016) using the Applied Acoustics Dura-Spark as a comparable proxy. The source levels are based on an energy level of 1,000 J with 240 tips and a bandwidth of 3.2 kHz.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see Proposed Mitigation and Proposed Monitoring and Reporting).

**Description of Marine Mammals in the Area of Specified Activities**

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock

Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*https://www.fisheries.noaa.gov/find-species*).

Table 2 lists all species or stocks that may occur within the survey area and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2020). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS's U.S. Atlantic and Gulf of Mexico SARs (*e.g.,* Hayes *et al.,* 2019, 2020). All values presented in Table 2 are the most recent available at the time of publication and are available in the 2019 SARs and draft 2020 SARs (available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*).

TABLE 2—SUMMARY INFORMATION OF SPECIES WITHIN THE PROPOSED SURVEY AREA

| Common name | Scientific name | Stock | ESA/MMPA status; strategic (Y/N) [1] | Stock abundance (CV, $N_{min}$, most recent abundance survey) [2] | PBR | Annual M/SI [3] |
|---|---|---|---|---|---|---|
| **Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)** | | | | | | |
| Family Balaenidae: North Atlantic right whale. | *Eubalaena glacialis* | Western North Atlantic | E/D; Y | 368 (-; 356; 2020) [4] | 0.8 | 18.6 |
| Family Balaenopteridae (rorquals): | | | | | | |
| Humpback whale | *Megaptera novaeangliae* | Gulf of Maine | -/-; Y | 1,393 (0; 1,375; 2016) | 22 | 58 |
| Fin whale | *Balaenoptera physalus* | Western North Atlantic | E/D; Y | 6,802 (0.24; 5,573; 2016) | 11 | 2.35 |
| Sei whale | *Balaenoptera borealis* | Nova Scotia | E/D; Y | 6,292 (1.02; 3,098; 2016) | 6.2 | 1.2 |
| Minke whale | *Balaenoptera acutorostrata* | Canadian East Coast | -/-; N | 21,968 (0.31; 17,002; 2016). | 170 | 10.6 |
| **Superfamily Odontoceti (toothed whales, dolphins, and porpoises)** | | | | | | |
| Family Physeteridae: Sperm whale. | *Physeter macrocephalus* | NA | E; Y | 4,349 (0.28;3, 451; See SAR). | 3.9 | 0 |
| Family Delphinidae: | | | | | | |
| Long-finned pilot whale | *Globicephala melas* | Western North Atlantic | -/-; N | 39,215 (0.30; 30,627; See SAR). | 306 | 21 |
| Short finned pilot whale | *Globicephala macrorhynchus* | Western North Atlantic | -/-; Y | 28,924 (0.24; 23,637; 2016). | 236 | 160 |
| Bottlenose dolphin | *Tursiops truncatus* | Western North Atlantic Offshore | -/-; N | 62,851 (0.23; 51,914, 2016). | 519 | 28 |
| | | W.N.A. Northern Migratory Coastal. | -/-; Y | 6,639 (0.41, 4,759, 2016) | 48 | 12.2–21.5 |
| Common dolphin | *Delphinus delphis* | Western North Atlantic | -/-; N | 172,947 (0.21; 145,216; 2016). | 1,452 | 399 |
| Atlantic spotted dolphin | *Stenella frontalis* | Western North Atlantic | -/-; N | 39,921 (0.27; 32,032; 2012). | 320 | 0 |
| Risso's dolphin | *Grampus griseus* | Western North Atlantic | -/-; N | 35,493 (0.19; 30,289; 2016). | 303 | 54.3 |
| Family Phocoenidae (porpoises): Harbor porpoise. | *Phocoena phocoena* | Gulf of Maine/Bay of Fundy | -/-; N | 95,543 (0.31; 74,034; 2016). | 851 | 217 |
| **Order Carnivora—Superfamily Pinnipedia** | | | | | | |
| Family Phocidae (earless seals): Harbor seal. | *Phoca vitulina* | Western North Atlantic | -/-; N | 75,834 (0.15; 66,884, 2018). | 2,006 | 350 |

[1] ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region.* CV is coefficient of variation; $N_{min}$ is the minimum estimate of stock abundance. In some cases, CV is not applicable.

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

[4] Pace *et al.* 2021.

All species that could potentially occur in the proposed survey areas are included in Table 2. While North Atlantic right whales,sei and sperm whales, and harbor seals have been sighted within the survey area, the temporal occurrence of the surveys (summer/early fall) does not overlap with the time of year these species may be present in the survey area as most of these species are in northern latitudes during this time. For these reasons, along with the very short duration of the survey, we consider the potential for

take of these species *de minimus* and they will not be discussed further.

*Humpback Whale*

Humpback whales are found worldwide in all oceans. Humpback whales were listed as endangered under the Endangered Species Conservation Act (ESCA) in June 1970. In 1973, the ESA replaced the ESCA, and humpbacks continued to be listed as endangered. NMFS recently evaluated the status of the species, and on September 8, 2016, NMFS divided the species into 14 distinct population segments (DPS), removed the current species-level listing, and in its place listed four DPSs as endangered and one DPS as threatened (81 FR 62259; September 8, 2016). The remaining nine DPSs were not listed. The West Indies DPS, which is not listed under the ESA, is the only DPS of humpback whale that is expected to occur in the survey area.

Humpback whales have a global distribution and follow a migratory pattern of feeding in the high latitudes during summers and spending winters in the lower latitudes for calving and mating. The Gulf of Maine stock follows this pattern with winters spent in the Caribbean and West Indies, although acoustic recordings show a small number of males persisting in Stellwagen Bank throughout the year (Vu *et al.,* 2012). Barco *et al.* (2002) suggested that the mid-Atlantic region primarily represents a supplemental winter feeding ground used by humpbacks. However, with populations recovering, additional surveys that include photo identification and genetic sampling need to be conducted to determine which stocks are currently using the mid-Atlantic region.

Sightings of humpback whales in the Mid-Atlantic are common (Barco *et al.,* 2002), as are strandings (Wiley *et al.,* 1995). Barco *et al.* (2002) suggested that the Mid-Atlantic region primarily represents a supplemental winter feeding ground used by humpbacks. During Kitty Hawk Wind's 2019 and 2020 marine site characterization surveys (HRG and geotechnical surveys), no humpback whales were observed (Milne, 2020).

Since January 2016, elevated humpback whale mortalities have occurred along the Atlantic coast from Maine to Florida. Partial or full necropsy examinations have been conducted on approximately half of the 145 known cases. Of the whales examined, about 50 percent had evidence of human interaction, either ship strike or entanglement. While a portion of the whales have shown evidence of pre-mortem vessel strike, this finding is not consistent across all whales examined and more research is needed. NOAA is consulting with researchers that are conducting studies on the humpback whale populations, and these efforts may provide information on changes in whale distribution and habitat use that could provide additional insight into how these vessel interactions occurred. Three previous UMEs involving humpback whales have occurred since 2000, in 2003, 2005, and 2006. More information is available at: *www.fisheries.noaa.gov/national/marine-life-distress/2016-2021-humpback-whale-unusual-mortality-event-along-atlantic-coast.*

*Fin Whale*

Fin whales are common in waters of the U.S. Atlantic Exclusive Economic Zone (EEZ), principally from Cape Hatteras northward (Hayes *et al.,* 2020). Fin whales are present north of 35-degree latitude in every season and are broadly distributed throughout the western North Atlantic for most of the year, though densities vary seasonally (Hayes *et al.,* 2020). While fall is the season of lowest overall abundance of fin whales off Virginia and North Carolina, they do not depart the area entirely. Fin whales, much like humpback whales, seem to exhibit habitat fidelity (Hayes *et al.* 2020; NOAA Fisheries 2019). Fin whales accounted for 46 percent of the large whales sighted during aerial surveys along the continental shelf (CETAP, 1982) between Cape Hatteras and Nova Scotia from 1978 to 1982. During Kitty Hawk Wind's 2019 and 2020 marine site characterization surveys, five detections of 17 fin whales were recorded with a mean group size of 3.4 (Milne, 2020). However, these observations occurred during transit well north of the project area offshore Delaware and New Jersey (Milne, 2020; Figure 7). No fin whales were observed in the WDA or cable corridor. The main threats to fin whales are fishery interactions and vessel collisions (Hayes *et al.,* 2020).

*Minke Whale*

Minke whales can be found in temperate, tropical, and high-latitude waters. The Canadian East Coast stock can be found in the area from the western half of the Davis Strait (45° W) to the Gulf of Mexico (Hayes *et al.,* 2020). This species generally occupies waters less than 100 m deep on the continental shelf. Little is known about minke whales' specific movements through the mid-Atlantic region; however, there appears to be a strong seasonal component to minke whale distribution, with acoustic detections indicating that they migrate south in mid-October to early November, and return from wintering grounds starting in March through early April (Hayes *et al.,* 2020). Northward migration appears to track the warmer waters of the Gulf Stream along the continental shelf, while southward migration is made farther offshore (Risch *et al.,* 2014). During Kitty Hawk Wind's 2019 and 2020 marine site characterization surveys, one minke whale was detected. Similar to fin whales, this detection occurred while the vessel was in transit and located north of the project area off New Jersey.

Since January 2017, elevated minke whale mortalities have occurred along the Atlantic coast from Maine through South Carolina, with a total of 103 strandings recorded through January 2021. This event has been declared a UME. Full or partial necropsy examinations were conducted on more than 60 percent of the whales. Preliminary findings in several of the whales have shown evidence of human interactions or infectious disease, but these findings are not consistent across all of the whales examined, so more research is needed. More information is available at: *www.fisheries.noaa.gov/national/marine-life-distress/2017-2021-minke-whale-unusual-mortality-event-along-atlantic-coast.*

*Long-Finned Pilot Whale*

Long-finned pilot whales are found from North Carolina and north to Iceland, Greenland and the Barents Sea (Hayes *et al.,* 2020). In U.S. Atlantic waters the species is distributed principally along the continental shelf edge off the northeastern U.S. coast in winter and early spring and in late spring, pilot whales move onto Georges Bank and into the Gulf of Maine and more northern waters and remain in these areas through late autumn (Hayes *et al.,* 2020). Long-finned and short-finned pilot whales overlap spatially along the mid-Atlantic shelf break between Delaware and the southern flank of Georges Bank. Long-finned pilot whales have occasionally been observed stranded as far south as South Carolina, but sightings of long-finned pilot whales south of Cape Hatteras would be considered unusual (Hayes *et al.,* 2020). During Kitty Hawk Wind's 2019 and 2020 marine site characterization surveys, no pilot whales were observed (Milne, 2020). The main threats to this species include interactions with fisheries and habitat issues including exposure to high levels of polychlorinated biphenyls and chlorinated pesticides, and toxic metals

including mercury, lead, cadmium, and selenium (Hayes *et al.,* 2020).

*Short-Finned Pilot Whale*

As described above, long-finned and short-finned pilot whales overlap spatially along the mid-Atlantic shelf break between Delaware and the southern flank of Georges Bank. There is limited information on the distribution of short-finned pilot whales; they prefer warmer or tropical waters and deeper waters offshore, and in the northeastern United States, they are often sighted near the Gulf Stream (Hayes *et al.,* 2020). Short-finned pilot whales have occasionally been observed stranded as far north as Massachusetts but north of ~42° N short-finned pilot whale sightings would be considered unusual while south of Cape Hatteras most pilot whales would be expected to be short-finned pilot whales (Hayes *et al.,* 2020). In addition, short-finned pilot whales are documented along the continental shelf and continental slope in the northern Gulf of Mexico (Mullin and Fulling 2003), and they are also known from the wider Caribbean. During Kitty Hawk Wind's 2019 and 2020 marine site characterization surveys, no pilot whales were observed (Milne, 2020). As with long-finned pilot whales, the main threats to this species include interactions with fisheries and habitat issues including exposure to high levels of polychlorinated biphenyls and chlorinated pesticides, and toxic metals including mercury, lead, cadmium, and selenium (Hayes *et al.,* 2020).

*Atlantic White-Sided Dolphin*

White-sided dolphins are found in temperate and sub-polar waters of the North Atlantic, primarily in continental shelf waters to the 100-m depth contour from central West Greenland to North Carolina (Hayes *et al.,* 2020). The Gulf of Maine stock is most common in continental shelf waters from Hudson Canyon to Georges Bank, and in the Gulf of Maine and lower Bay of Fundy. Sighting data indicate seasonal shifts in distribution (Northridge *et al.,* 1997). During January to May, low numbers of white-sided dolphins are found from Georges Bank to Jeffreys Ledge (off New Hampshire), with even lower numbers south of Georges Bank, as documented by a few strandings collected on beaches of Virginia to South Carolina. The Virginia and North Carolina observations appear to represent the southern extent of the species range. From June through September, large numbers of white-sided dolphins are found from Georges Bank to the lower Bay of Fundy. From October to December, white-sided dolphins occur at intermediate densities from southern Georges Bank to southern Gulf of Maine (Payne and Heinemann 1990). Sightings south of Georges Bank, particularly around Hudson Canyon, occur year round but at low densities. During Kitty Hawk Wind's 2019 and 2020 marine site characterization surveys, one detection of white-sided dolphins comprised of six individuals were observed during geotechnical surveys; no detections occurred during HRG operations (Milne, 2020).

*Atlantic Spotted Dolphin*

Atlantic spotted dolphins are found in tropical and warm temperate waters ranging from southern New England, south to Gulf of Mexico and the Caribbean to Venezuela (Hayes *et al.,* 2020). This stock regularly occurs in continental shelf waters south of Cape Hatteras and in continental shelf edge and continental slope waters north of this region (Hayes *et al.,* 2020). Atlantic spotted dolphins regularly occur in the inshore waters south of Chesapeake Bay, and near the continental shelf edge and continental slope waters north of this region (Payne *et al.,* 1984; Mullin and Fulling, 2003). Atlantic spotted dolphins north of Cape Hatteras also associate with the north wall of the Gulf Stream and warm-core rings (Hayes *et al.,* 2020). There are 2 forms of this species, with the larger ecotype inhabiting the continental shelf and is usually found inside or near the 200 m isobaths (Hayes *et al.,* 2020).

During Kitty Hawk Wind's 2019 and 2020 marine site characterization surveys, 78 detections comprising 1,237 Atlantic spotted dolphins were recorded during HRG operations between 2012 and 2014 during the summer MABS surveys (Milne, 2020). An additional 14 detections comprising 203 individuals were reported during geotechnical work with a mean group size of 14.5 (Milne, 2020).

*Common Dolphin*

The common dolphin is found world-wide in temperate to subtropical seas. In the North Atlantic, common dolphins are commonly found over the continental shelf between the 100-m and 2,000-m isobaths and over prominent underwater topography and east to the mid-Atlantic Ridge (Hayes *et al.,* 2020). They are present in the western Atlantic from Newfoundland to Florida. The common dolphin is especially common along shelf edges and in areas with sharp bottom relief such as seamounts and escarpments (Reeves *et al.* 2002). They show a strong affinity for areas with warm, saline surface waters. Common dolphins belonging to the Western North Atlantic stock are distributed in waters off the eastern U.S. coast from Cape Hatteras northeast to Georges Bank (35° to 42° N) during mid-January to May and move as far north as the Scotian Shelf from mid-summer to autumn (CETAP, 1982; Hayes *et al.,* 2020; Hamazaki, 2002; Selzer and Payne, 1988).

During the 2019 and 2020 marine site characterization surveys, five detections of common dolphins comprising 82 individuals and mean group size of 16.4 were recorded (Milne, 2020). An additional 6 detections occurred during HRG survey work. Those detections comprised 25 individuals with a mean group size of 4 (Milne, 2020).

*Bottlenose Dolphin*

There are two distinct bottlenose dolphin morphotypes in the western North Atlantic: The coastal and offshore forms (Hayes *et al.,* 2020). The offshore form is distributed primarily along the outer continental shelf and continental slope in the Northwest Atlantic Ocean from Georges Bank to the Florida Keys. The coastal morphotype is morphologically and genetically distinct from the larger, more robust morphotype that occupies habitats further offshore. North of Cape Hatteras, there is separation of the offshore and coastal morphotypes across bathymetric contours during summer months. Aerial surveys flown from 1979 through 1981 indicated a concentration of common bottlenose dolphins in waters <25 m deep that corresponded with the coastal morphotype, and an area of high abundance along the shelf break that corresponded with the offshore stock (Hayes *et al.,* 2020). Torres *et al.* (2003) found a statistically significant break in the distribution of the morphotypes; almost all dolphins found in waters >34 m depth and >34 km from shore were of the offshore morphotype. The coastal stock is best defined by its summer distribution, when it occupies coastal waters from the shoreline to the 20-m isobath between Virginia and New York (Hayes *et al.,* 2020). This stock migrates south during late summer and fall, and during colder months it occupies waters off Virginia and North Carolina (Hayes *et al.,* 2020). Therefore, during the summer, dolphins found inside the 20-m isobath in the Project Area are likely to belong to the coastal stock, while those found in deeper waters or observed during cooler months belong to the offshore stock. HRG surveys using the sparker would occur in water depths greater than 20 m in the WDA; therefore, the offshore stock is likely to be the only stock observed during the surveys.

During the 2019 and 2020 surveys, 56 detections of bottlenose dolphins comprising 780 individuals were recorded during HRG surveys (Milne, 2020). Mean group size was 14. During geotechnical work, four detections comprising 25 individuals and a mean group size of 6.25 were reported (Milne, 2020). These detections occurred both offshore and nearshore; therefore, not all dolphins observed belonged to the offshore stock.

*Risso's Dolphin*

Risso's dolphins are large dolphins with a characteristic blunt head and light coloration, often with extensive scarring. They are widely distributed in tropical and temperate seas. In the Western North Atlantic they occur from Florida to eastern Newfoundland (Leatherwood *et al.,* 1976; Baird and Stacey, 1991). Off the Northeastern U.S. Coast, Risso's dolphins are primarily distributed along the continental shelf, but can also be found swimming in shallower waters to the mid-shelf (Hayes *et al.,* 2020).

Risso's dolphins occur along the continental shelf edge from Cape Hatteras to Georges Bank during spring, summer, and autumn. In winter, they are distributed in the Mid-Atlantic from the continental shelf edge outward (Hayes *et al.,* 2020). No Risso's dolphins were observed by Kitty Hawk Wind during previous marine site characterization surveys (Milne, 2020).

*Harbor Porpoise*

The harbor porpoise inhabits shallow, coastal waters, often found in bays, estuaries, and harbors. In the western Atlantic, they are found from Cape Hatteras north to Greenland. During summer (July to September), harbor porpoises are concentrated in the northern Gulf of Maine and southern Bay of Fundy region, generally in waters less than 150 m deep with a few sightings in the upper Bay of Fundy and on Georges Bank. During fall (October–December) and spring (April–June), harbor porpoises are widely dispersed from New Jersey to Maine, with lower densities farther north and south. They are seen from the coastline to deep waters (>1,800 m) although the majority of the population is found over the continental shelf. During winter (January to March), intermediate densities of harbor porpoises can be found in waters off New Jersey to North Carolina, and lower densities are found in waters off New York to New Brunswick, Canada. There does not appear to be a temporally coordinated migration or a specific migratory route to and from the Bay of Fundy region. However, during the fall, several satellite-tagged harbor porpoises did favor the waters around the 92-m isobaths (Hayes *et al.* 2018).

In the survey area, only the Gulf of Maine/Bay of Fundy stock may be present. This stock is found in U.S. and Canadian Atlantic waters and is concentrated in the northern Gulf of Maine and southern Bay of Fundy region, generally in waters less than 150 m deep (Hayes *et al.,* 2020). They are seen from the coastline to deep waters (>1,800 m; Westgate *et al.* 1998), although the majority of the population is found over the continental shelf (Hayes *et al.,* 2020). During Kitty Hawk Wind's 2019 and 2020 marine site characterization surveys, one harbor porpoise was detected during HRG surveys (Milne 2020).

The main threat to the species is interactions with fisheries, with documented take in the U.S. northeast sink gillnet, mid-Atlantic gillnet, and northeast bottom trawl fisheries and in the Canadian herring weir fisheries (Hayes *et al.* 2020).

Marine Mammal Habitat

The survey area includes the WDA, located offshore of North Carolina, and potential cable corridors extending from the WDA to Virginia waters. There are no rookeries, mating or calving grounds known to be biologically important to marine mammals within the planned survey area at the time of survey (the Biologically Important Area (BIA) for North Atlantic right whales is for a time period outside the proposed survey time period) and there are no primary feeding areas known to be biologically important to marine mammals within the planned survey area.

*Marine Mammal Hearing*

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 dB threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 3.

TABLE 3—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

| Hearing group | Generalized hearing range * |
|---|---|
| Low-frequency (LF) cetaceans (baleen whales) | 7 Hz to 35 kHz. |
| Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales) | 150 Hz to 160 kHz. |
| High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*). | 275 Hz to 160 kHz. |
| Phocid pinnipeds (PW) (underwater) (true seals) | 50 Hz to 86 kHz. |
| Otariid pinnipeds (OW) (underwater) (sea lions and fur seals) | 60 Hz to 39 kHz. |

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information. Nine marine mammal species (all cetaceans) have the reasonable potential to be taken by the survey activities (Table 5). Of the cetacean species that may be present, three are classified as low-frequency cetaceans (*i.e.,* all mysticete species), 5 are classified as mid-frequency cetaceans (*i.e.,* all delphinid species), and one is classified as a high-frequency cetacean (*i.e.,* harbor porpoise).

**Potential Effects of Specified Activities on Marine Mammals and Their Habitat**

This section includes a summary of the ways that Kitty Hawk Wind's specified activity may impact marine mammals and their habitat. Detailed descriptions of the potential effects of similar specified activities have been provided in other recent **Federal Register** notices, including for survey activities using the same methodology, over a similar amount of time, and occurring within the same specified geographical region (*e.g.,* 82 FR 20563, May 3, 2017; 85 FR 36537, June 17, 2020; 85 FR 37848, June 24, 2020; 85 FR 45578, July 29, 2020; 85 FR 48179, August 10, 2020; 86 FR 11239, February 24, 2021). No significant new information is available, and we refer the reader to these documents rather than repeating the details here. The Estimated Take section includes a quantitative analysis of the number of individuals that are expected to be taken by Kitty Hawk Wind's activity. The Negligible Impact Analysis and Determination section considers the potential effects of the specified activity, the Estimated Take section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

*Summary on Specific Potential Effects of Acoustic Sound Sources*

Underwater sound from active acoustic sources can include one or more of the following: Temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, stress, and masking. The degree of effect is intrinsically related to the signal characteristics, received level, distance from the source, and duration of the sound exposure. Marine mammals exposed to high-intensity sound, or to lower-intensity sound for prolonged periods, can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Finneran, 2015). TS can be permanent (PTS), in which case the loss of hearing sensitivity is not fully recoverable, or temporary (TTS), in which case the animal's hearing threshold would recover over time (Southall *et al.,* 2007).

Animals in the vicinity of Kitty Hawk Wind's proposed HRG survey activity are unlikely to incur even TTS due to the characteristics of the sound sources, which include relatively low source levels (176 to 205 dB re 1 µPa-m) and generally very short pulses and potential duration of exposure. These characteristics mean that instantaneous exposure is unlikely to cause TTS, as it is unlikely that exposure would occur close enough to the vessel for received levels to exceed peak pressure TTS criteria, and that the cumulative duration of exposure would be insufficient to exceed cumulative sound exposure level (SEL) criteria. Even for high-frequency cetacean species (*e.g.,* harbor porpoises), which have the greatest sensitivity to potential TTS, individuals would have to make a very close approach and also remain very close to vessels operating these sources in order to receive multiple exposures at relatively high levels, as would be necessary to cause TTS. Intermittent exposures—as would occur due to the brief, transient signals produced by these sources—require a higher cumulative SEL to induce TTS than would continuous exposures of the same duration (*i.e.,* intermittent exposure results in lower levels of TTS). Moreover, most marine mammals would more likely avoid a loud sound source rather than swim in such close proximity as to result in TTS. Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when a sub-bottom profiler emits a pulse is small—because if the animal was in the area, it would have to pass the transducer at close range in order to be subjected to sound levels that could cause TTS and would likely exhibit avoidance behavior to the area near the transducer rather than swim through at such a close range. Further, the restricted beam shape of many of HRG survey devices planned for use (Table 1) makes it unlikely that an animal would be exposed more than briefly during the passage of the vessel.

Behavioral disturbance may include a variety of effects, including subtle changes in behavior (*e.g.,* minor or brief avoidance of an area or changes in vocalizations), more conspicuous changes in similar behavioral activities, and more sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality habitat. Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors. Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal.

In addition, sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* shipping, sonar, seismic exploration) in origin. Marine mammal communications would not likely be masked appreciably by the acoustic signals signals given the directionality of the signals for most HRG survey equipment types planned for use (Table 1) and the brief period when an individual mammal is likely to be exposed.

Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.,* crustaceans, cephalopods, fish, zooplankton) (*i.e.,* effects to marine mammal habitat). Prey species exposed to sound might move away from the sound source, experience TTS, experience masking of biologically relevant sounds, or show no obvious direct effects. The most likely impacts (if any) for most prey species in a given area would be temporary avoidance of the area. Surveys using active acoustic sound sources move through an area relatively quickly, limiting exposure to multiple pulses. In all cases, sound levels would return to ambient once a

survey ends and the noise source is shut down and, when exposure to sound ends, behavioral and/or physiological responses are expected to end relatively quickly. Finally, the HRG survey equipment will not have significant impacts to the seafloor and does not represent a source of pollution.

*Vessel Strike*

Vessel collisions with marine mammals, or ship strikes, can result in death or serious injury of the animal. These interactions are typically associated with large whales, which are less maneuverable than are smaller cetaceans or pinnipeds in relation to large vessels. Ship strikes generally involve commercial shipping vessels, which are generally larger and of which there is much more traffic in the ocean than geophysical survey vessels. Jensen and Silber (2004) summarized ship strikes of large whales worldwide from 1975–2003 and found that most collisions occurred in the open ocean and involved large vessels (*e.g.,* commercial shipping). For vessels used in geophysical survey activities, vessel speed while towing gear is typically only 4–5 knots. At these speeds, both the possibility of striking a marine mammal and the possibility of a strike resulting in serious injury or mortality are so low as to be discountable. At average transit speed for geophysical survey vessels, the probability of serious injury or mortality resulting from a strike is less than 50 percent. However, the likelihood of a strike actually happening is again low given the smaller size of these vessels and generally slower speeds. Notably in the Jensen and Silber study, no strike incidents were reported for geophysical survey vessels during that time period.

The potential effects of Kitty Hawk Wind's specified survey activity are expected to be limited to Level B behavioral harassment. No permanent or temporary auditory effects, or significant impacts to marine mammal habitat, including prey, are expected.

**Estimated Take**

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to noise from certain HRG acoustic sources. Based primarily on the characteristics of the signals produced by the acoustic sources planned for use, Level A harassment is neither anticipated (even absent mitigation), nor proposed to be authorized. Consideration of the anticipated effectiveness of the mitigation measures (*i.e.,* exclusion zones and shutdown measures), discussed in detail below in the Proposed Mitigation section, further strengthens the conclusion that Level A harassment is not a reasonably anticipated outcome of the survey activity. As described previously, no serious injury or mortality is anticipated or proposed to be authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimates.

*Acoustic Thresholds*

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

*Level B Harassment for non-explosive sources*—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 160 dB re 1 μPa (rms) for the impulsive sources (*i.e.,* sparkers) evaluated here for Kitty Hawk Wind's proposed activity.

*Level A Harassment*—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). For more information, see NMFS' 2018 Technical Guidance, which may be accessed at *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

Kitty Hawk Wind's proposed activity includes the use of impulsive (*i.e.,* sparkers) sources. However, as discussed above, NMFS has concluded that Level A harassment is not a reasonably likely outcome for marine mammals exposed to noise through use of the sources proposed for use here, and the potential for Level A harassment is not evaluated further in this document. Please see Kitty Hawk Wind's application for details of a quantitative exposure analysis exercise, *i.e.,* calculated Level A harassment isopleths and estimated Level A harassment exposures. Maximum estimated Level A harassment isopleths ranged from 0 to 2 m m for all sources and hearing groups with the exception of the Furgo 2D Sparker). The Level A harassment isopleth for low frequency, mid-frequency, and high frequency cetaceans was 18, 0.5, and 120.5 m, respectively and 10 m for phocids. Kitty Hawk Wind did not request authorization of take by Level A

harassment, and no take by Level A harassment is proposed for authorization by NMFS.

*Ensonified Area*

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

The Fugro SPR EAH 2D sparker is the only source with the potential to result in marine mammal harassment; therefore, the 160 $dB_{rms}$ isopleth resulting from this source is applied in ensonified area calculations. As noted previously, Kitty Hawk Wind intends to survey a total track-line distance of 3,300 km over the course of 25 days. It is estimated that the sparker will be in operation for approximately 50 percent of this duration. During the remainder of survey days, only sources not expected to have the potential to result in take of marine mammals would be used. To be conservative, the sparker has been assigned a duration of 13 days (instead of 12.5 days). The distance to the 160 $dB_{rms}$ Level B harassment isopleth is calculated using the conservative practical spreading model and a source level of 213$dB_{rms}$ (Table 1). The resulting isopleth is 445 m.

Kitty Hawk then considered track line coverage and isopleth distance to estimate the maximum ensonified area over a 24-hr period, also referred to as the zone of influence (ZOI). The estimated distance of the daily vessel track line was determined using the estimated average speed of the vessel (3 knots [5.6 km/hr]) over a 24-hr operational period for a total daily track line coverage of 134.4 km. The ZOI was calculated by squaring the respective maximum distance to the Level B harassment threshold (445 m) and multiplying by the estimated daily vessel track line distance of approximately 134.4 km to obtain the area of a box (118.7 $km^2$). Then the ensonified area around the vessel at any given point (0.63) was added to that area to account for ½ of a circle at each end of the box. The resulting ZOI is 119.3 $km^2$ (Table 4).

The ZOI is a representation of the maximum extent of the ensonified area around a sound source over a 24-hr period. The ZOI was calculated per the following formula:

$ZOI = (Distance/day \times 2r) + \pi r^2$

TABLE 4—ENSONIFIED AREA DURING SPARKER USE

| Survey equipment | Number of active survey days [a] | Estimated total line distance (km) | Estimated distance per day (km) | ZOI per day ($km^2$) |
|---|---|---|---|---|
| Fugro SPR EAH 2D Sparker | 13 | 1,700 | 133.4 | 119.3 |

*Marine Mammal Occurrence*

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations.

Habitat-based density models produced by the Duke University Marine Geospatial Ecology Laboratory (Roberts *et al.,* 2016, 2017, 2018, 2020) represent the best available information regarding marine mammal densities in the survey area. The density data presented by Roberts *et al.* (2016, 2017, 2018, 2020) incorporates aerial and shipboard line-transect survey data from NMFS and other organizations and incorporates data from 8 physiographic and 16 dynamic oceanographic and biological covariates, and controls for the influence of sea state, group size, availability bias, and perception bias on the probability of making a sighting. These density models were originally developed for all cetacean taxa in the U.S. Atlantic (Roberts *et al.,* 2016). In subsequent years, certain models have been updated based on additional data as well as certain methodological improvements. More information is available online at *seamap.env.duke.edu/models/Duke-EC-GOM-2015/*. Marine mammal density estimates in the survey area (animals/$km^2$) were obtained using the most recent model results for all taxa (Roberts *et al.,* 2016, 2017, 2018, 2020). The updated models incorporate additional sighting data, including sightings from NOAA's Atlantic Marine Assessment Program for Protected Species (AMAPPS) surveys.

Monthly density grids (*e.g.,* rasters) for each species were overlain with the Survey Area and values from all grid cells that overlapped the Survey Area were averaged to determine monthly mean density values for each species. Monthly mean density values within the Survey Area were averaged by season (Winter [December, January, February], Spring [March, April, May], Summer [June, July, August], Fall [September, October, November]) to provide seasonal density estimates. Since the HRG surveys would only occur during summer and fall, only those values were used in the take estimation analysis. Within each survey segment (Wind Development Area and offshore export cable corridor), the highest seasonal density estimates during the duration of the proposed survey were used to estimate take.

*Take Calculation and Estimation*

Here we describe how the information provided above is brought together to produce a quantitative take estimate.

For most species, the proposed take amount is equal to the calculated take amount resulting from the following equation: $D \times ZOI \times 13$ days. We note the densities provided in Table 5 represent the number of animals/100 km; therefore, the density is normalized to 1 km in the equation. However, for some species, this equation does not reflect those species that can travel is large groups—an important parameter to consider that is not captured by density values. The equation also does not capture the propensity of some delphinid species to be attracted to the vessel and bowride. Therefore, to account for these real-world situations, the proposed take is a product of group size. For large groups of spotted and short beaked common dolphins knowing their affinity for bow riding (and therefore coming very close to the vessel), Kitty Hawk Wind assumed one group could be taken each day of sparker operations (13 days). Based on previous survey data, as described in previous monitoring reports, Kitty Hawk Wind assumes an average group size for spotted dolphins is 16 in the survey area. For common dolphins, the overall average reported group size was 4 in all survey areas but the average group size during the geotechnical surveys was 17 individuals. Therefore, in this case, Kitty Hawk Wind assumed a group of 17 common dolphins could be taken on any given day of sparker operation. For Risso's dolphin and pilot whales, one group is anticipated to be taken over the 13 days of sparker operations. Average group size for these species are 25 and 20, respectively (Reeves *et al.* 2002).

Take for all other species is a reflection of the calculated take. Given the timing and location of the surveys, Kitty Hawk Wind is not requesting, nor are we proposing to authorize, take of North Atlantic right whales or sei whales.

Table 5 provides the amount of take proposed to be authorized in the IHA.

TABLE 5—MARINE MAMMAL DENSITY AND TAKE ESTIMATES

| Species | Stock | Max average seasonal density (animals/100 km²) [1] | Calculated take | Proposed take | Percent of population |
|---|---|---|---|---|---|
| Humpback whale | Gulf of Maine | 0.084 | 1.297 | 1 | <1 |
| Fin whale | Western North Atlantic | 0.171 | 2.648 | 3 | <1 |
| Minke whale | Canadian East Coast | 0.105 | 1.634 | 2 | <1 |
| Pilot whales | Western North Atlantic | 0.073 | 1.139 | [3] 20 | <1 |
| Harbor porpoise | Gulf of Maine/Bay of Fundy | 0.033 | 0.510 | 1 | <1 |
| Bottlenose dolphin [b] | Western North Atlantic, offshore | 7.913 | 122.725 | 123 | <1 |
| Common dolphin | Western North Atlantic | 1.583 | 24.555 | [4] 221 | <1 |
| Atlantic spotted dolphin | Western North Atlantic | 7.669 | 118.937 | [4] 208 | <1 |
| Risso's dolphin | Western North Atlantic | 0.058 | 0.893 | [4] 25 | <1 |

[1] Density values from Duke University (Roberts *et al.* 2016b, 2017, 2018, 2020).
[2] Estimates based on bottlenose dolphin stock preferred water depths (Reeves *et al.* 2002; Waring *et al.* 2016).
[3] Roberts (2018) only provides density estimates for "generic" pilot whales and seals; therefore, an equal potential for takes has been assumed either for species or stocks within the larger group. The take adjusted from calculated value to account for encountering one group over the course of the 13 days of sparker use.
[4] Take adjusted from calculated take to account for encountering one group on each of the 13 days of sparker use.

**Proposed Mitigation**

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned); and

(2) The practicability of the measures for applicant implementation, which may consider such things as cost and impact on operations.

*Mitigation for Marine Mammals and Their Habitat*

NMFS proposes that the following mitigation measures be implemented during Kitty Hawk Wind's planned marine site characterization surveys.

*Marine Mammal Shutdown Zones*

An immediate shutdown of the Sparker would be required if a marine mammal is sighted entering or within its respective exclusion zone. The vessel operator must comply immediately with any call for shutdown by the Lead PSO. Any disagreement between the Lead PSO and vessel operator should be discussed only after shutdown has occurred. Subsequent restart of the survey equipment can be initiated if the animal has been observed exiting its respective exclusion zone or until an additional time period has elapsed (*i.e.,* 30 minutes for all other species). Table 6 provides the required shutdown zones.

TABLE 6—SHUTDOWN ZONES DURING SPARKER USE

| Species | Shutdown zone (m) |
|---|---|
| North Atlantic right whale | 500 |
| All other ESA-listed marine mammals | 450 |
| Non-ESA marine mammals [1] | 50 |

[1] If a delphinid from specified genera is visually detected approaching the vessel (*i.e.,* to bow ride) or towed equipment, shutdown is not required.

*Pre-Clearance of the Shutdown Zones*

Kitty Hawk Wind would implement a 30-minute pre-clearance period of the shutdown zones prior to the initiation of ramp-up of HRG equipment. During this period, the exclusion zone will be monitored by the PSOs, using the appropriate visual technology. Ramp-up may not be initiated if any marine mammal(s) is within its respective shutdown zone. If a marine mammal is observed within the shutdown zone during the pre-clearance period, ramp-up may not begin until the animal(s) has been observed exiting its respective shutdown zone or until an additional time period has elapsed with no further sighting (*i.e.,* 15 minutes for small odontocetes, and 30 minutes for all other species).

*Shutdown Procedures*

The vessel operator must comply immediately with any call for shutdown by the Lead PSO. Any disagreement between the Lead PSO and vessel operator should be discussed only after shutdown has occurred. Subsequent restart of the survey equipment can be initiated if the animal has been observed exiting its respective shutdown zone or the relevant time period has lapsed

without re-detection (15 minutes for small odontocetes and seals, and 30 minutes for all other species).

The shutdown requirement would be waived for small delphinids of the following genera: *Delphinus, Stenella* (*frontalis* only), and *Tursiops.* Specifically, if a delphinid from the specified genera s visually detected approaching the vessel (*i.e.,* to bow ride) or towed equipment, shutdown is not required. Furthermore, if there is uncertainty regarding identification of a marine mammal species (*i.e.,* whether the observed marine mammal(s) belongs to one of the delphinid genera for which shutdown is waived), PSOs must use best professional judgement in making the decision to call for a shutdown. Additionally, shutdown is required if a delphinid detected in the exclusion zone and belongs to a genus other than those specified.

If the acoustic source is shut down for reasons other than mitigation (*e.g.,* mechanical difficulty) for less than 30 minutes, it may be activated again only if the PSOs have maintained constant observation and the shutdown zone is clear of marine mammals. If the source is turned off for more than 30 minutes, it may only be restarted after PSOs have cleared the shutdown zones for 30 minutes.

If a species for which authorization has not been granted, or, a species for which authorization has been granted but the authorized number of takes have been met, approaches or is observed within the Level B harassment zone (445 m), shutdown would be required.

*Ramp-Up*

The Fugro SPR EAH 2D Sparker operates on a binary on/off switch and thus ramp-up is not technically feasible for this piece of equipment.

*Vessel Strike Avoidance*

Kitty Hawk Wind will ensure that vessel operators and crew maintain a vigilant watch for marine mammals and slow down or stop their vessels to avoid striking these species. All personnel responsible for navigation and marine mammal observation duties will receive site-specific training on marine mammals sighting/reporting and vessel strike avoidance measures. Vessel strike avoidance measures would include the following, except under circumstances when complying with these requirements would put the safety of the vessel or crew at risk:

- Vessel operators and crews must maintain a vigilant watch for all protected species and slow down, stop their vessel, or alter course, as appropriate and regardless of vessel size, to avoid striking any protected species. A visual observer aboard the vessel must monitor a vessel strike avoidance zone based on the appropriate separation distance around the vessel (distances stated below). Visual observers monitoring the vessel strike avoidance zone may be third-party observers (*i.e.,* PSOs) or crew members, but crew members responsible for these duties must be provided sufficient training to (1) distinguish protected species from other phenomena and (2) broadly to identify a marine mammal as a right whale, other whale (defined in this context as sperm whales or baleen whales other than right whales), or other marine mammal;
- All vessels (*e.g.,* source vessels, chase vessels, supply vessels), regardless of size, must observe a 10-knot speed restriction in the unlikely scenario a North Atlantic right whale dynamic management area (DMA) is in effect;
- All vessels must reduce their speed to 10 knots or less when mother/calf pairs, pods, or large assemblages of cetaceans are observed near a vessel underway;
- All vessels must maintain a minimum separation distance of 500 m from right whales. If a whale is observed but cannot be confirmed as a species other than a right whale, the vessel operator must assume that it is a right whale and take appropriate action;
- All vessels must maintain a minimum separation distance of 100 m from sperm whales and all other baleen whales;
- All vessels must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 50 m from all other marine mammals, with an understanding that at times this may not be possible (*e.g.,* for animals that approach the vessel);
- When marine mammals are sighted while a vessel is underway, the vessel shall take action as necessary to avoid violating the relevant separation distance (*e.g.,* attempt to remain parallel to the animal's course, avoid excessive speed or abrupt changes in direction until the animal has left the area). If marine mammals are sighted within the relevant separation distance, the vessel must reduce speed and shift the engine to neutral, not engaging the engines until animals are clear of the area. This does not apply to any vessel towing gear or any vessel that is navigationally constrained; and
- These requirements do not apply in any case where compliance would create an imminent and serious threat to a person or vessel or to the extent that a vessel is restricted in its ability to maneuver and, because of the restriction, cannot comply.

Project-specific training will be conducted for all vessel crew prior to the start of a survey and during any changes in crew such that all survey personnel are fully aware and understand the mitigation, monitoring, and reporting requirements. Prior to implementation with vessel crews, the training program will be provided to NMFS for review and approval. Confirmation of the training and understanding of the requirements will be documented on a training course log sheet. Signing the log sheet will certify that the crew member understands and will comply with the necessary requirements throughout the survey activities.

Based on our evaluation of Kitty Hawk Wind's proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

**Monitoring and Reporting**

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the planned action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life

history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);

- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

*Monitoring Measures*

Visual monitoring will be performed by qualified, NMFS-approved PSOs, the resumes of whom will be provided to NMFS for review and approval prior to the start of survey activities. Kitty Hawk Wind would employ independent, dedicated, trained PSOs, meaning that the PSOs must (1) be employed by a third-party observer provider, (2) have no tasks other than to conduct observational effort, collect data, and communicate with and instruct relevant vessel crew with regard to the presence of marine mammals and mitigation requirements (including brief alerts regarding maritime hazards), and (3) have successfully completed an approved PSO training course appropriate for their designated task.

The PSOs will be responsible for monitoring the waters surrounding each survey vessel to the farthest extent permitted by sighting conditions, including exclusion zones, during all HRG survey operations. PSOs will visually monitor and identify marine mammals, including those approaching or entering the established exclusion zones during survey activities. It will be the responsibility of the Lead PSO on duty to communicate the presence of marine mammals as well as to communicate the action(s) that are necessary to ensure mitigation and monitoring requirements are implemented as appropriate.

During all HRG survey operations (*e.g.,* any day on which use of an HRG source is planned to occur), a minimum of one PSO must be on duty during daylight operations on each survey vessel, conducting visual observations at all times on all active survey vessels during daylight hours (*i.e.,* from 30 minutes prior to sunrise through 30 minutes following sunset). Two PSOs will be on watch during nighttime operations. The PSO(s) would ensure 360° visual coverage around the vessel from the most appropriate observation posts and would conduct visual observations using binoculars and/or night vision goggles and the naked eye while free from distractions and in a consistent, systematic, and diligent manner. PSOs may be on watch for a maximum of four consecutive hours followed by a break of at least two hours between watches and may conduct a maximum of 12 hours of observation per 24-hour period. In cases where multiple vessels are surveying concurrently, any observations of marine mammals would be communicated to PSOs on all nearby survey vessels.

PSOs must be equipped with binoculars and have the ability to estimate distance and bearing to detect marine mammals, particularly in proximity to exclusion zones. Reticulated binoculars must also be available to PSOs for use as appropriate based on conditions and visibility to support the sighting and monitoring of marine mammals. During nighttime operations, night-vision goggles with thermal clip-ons and infrared technology would be used. Position data would be recorded using hand-held or vessel GPS units for each sighting.

During good conditions (*e.g.,* daylight hours; Beaufort sea state 3 or less), to the maximum extent practicable, PSOs would also conduct observations when the acoustic source is not operating for comparison of sighting rates and behavior with and without use of the active acoustic sources. Any observations of marine mammals by crew members aboard any vessel associated with the survey would be relayed to the PSO team.

Data on all PSO observations would be recorded based on standard PSO collection requirements. This would include dates, times, and locations of survey operations; dates and times of observations, location and weather; details of marine mammal sightings (*e.g.,* species, numbers, behavior); and details of any observed marine mammal behavior that occurs (*e.g.,* noted behavioral disturbances).

*Reporting Measures*

Within 90 days after completion of survey activities or expiration of this IHA, whichever comes sooner, a final technical report will be provided to NMFS that fully documents the methods and monitoring protocols, summarizes the data recorded during monitoring, summarizes the number of marine mammals observed during survey activities (by species, when known), summarizes the mitigation actions taken during surveys (including what type of mitigation and the species and number of animals that prompted the mitigation action, when known), and provides an interpretation of the results and effectiveness of all mitigation and monitoring. Any recommendations made by NMFS must be addressed in the final report prior to acceptance by NMFS. All draft and final marine mammal and acoustic monitoring reports must be submitted to *PR.ITP.MonitoringReports@noaa.gov* and *ITP.Daly@noaa.gov.* The report must contain at minimum, the following:

- PSO names and affiliations;
- Dates of departures and returns to port with port name;
- Dates and times (Greenwich Mean Time) of survey effort and times corresponding with PSO effort;
- Vessel location (latitude/longitude) when survey effort begins and ends; vessel location at beginning and end of visual PSO duty shifts;
- Vessel heading and speed at beginning and end of visual PSO duty shifts and upon any line change;
- Environmental conditions while on visual survey (at beginning and end of PSO shift and whenever conditions change significantly), including wind speed and direction, Beaufort sea state, Beaufort wind force, swell height, weather conditions, cloud cover, sun glare, and overall visibility to the horizon;
- Factors that may be contributing to impaired observations during each PSO shift change or as needed as environmental conditions change (*e.g.,* vessel traffic, equipment malfunctions);
- Survey activity information, such as type of survey equipment in operation, acoustic source power output while in operation, and any other notes of significance (*i.e.,* pre-clearance survey, ramp-up, shutdown, end of operations, etc.)

If a marine mammal is sighted, the following information should be recorded:

- Watch status (sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform);
- PSO who sighted the animal;
- Time of sighting;
- Vessel location at time of sighting;
- Water depth;
- Direction of vessel's travel (compass direction);
- Direction of animal's travel relative to the vessel;
- Pace of the animal;

- Estimated distance to the animal and its heading relative to vessel at initial sighting;
- Identification of the animal (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified); also note the composition of the group if there is a mix of species;
- Estimated number of animals (high/low/best);
- Estimated number of animals by cohort (adults, yearlings, juveniles, calves, group composition, etc.);
- Description (as many distinguishing features as possible of each individual seen, including length, shape, color, pattern, scars or markings, shape and size of dorsal fin, shape of head, and blow characteristics);
- Detailed behavior observations (*e.g.,* number of blows, number of surfaces, breaching, spyhopping, diving, feeding, traveling; as explicit and detailed as possible; note any observed changes in behavior);
- Animal's closest point of approach and/or closest distance from the center point of the acoustic source;
- Platform activity at time of sighting (*e.g.,* deploying, recovering, testing, data acquisition, other);
- Description of any actions implemented in response to the sighting (*e.g.,* delays, shutdown, ramp-up, speed or course alteration, etc.) and time and location of the action.

Although not anticipated, if a North Atlantic right whale is observed at any time by PSOs or personnel on any project vessels, during surveys or during vessel transit, Kitty Hawk Wind must immediately report sighting information to the NMFS North Atlantic Right Whale Sighting Advisory System: (866) 755–6622. North Atlantic right whale sightings in any location must also be reported to the U.S. Coast Guard via channel 16.

In the event that Kitty Hawk Wind personnel discover an injured or dead marine mammal, Kitty Hawk Wind would report the incident to the NMFS Office of Protected Resources (OPR) and the NMFS Southeast Marine Mammal Stranding Network within 24 hours. The report would include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

In the unanticipated event of a ship strike of a marine mammal by any vessel involved in the activities covered by the IHA, Kitty Hawk Wind would report the incident to the NMFS OPR and the NMFS Southeast Marine Mammal Stranding Network within 24 hours. The report would include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Species identification (if known) or description of the animal(s) involved;
- Vessel's speed during and leading up to the incident;
- Vessel's course/heading and what operations were being conducted (if applicable);
- Status of all sound sources in use;
- Description of avoidance measures/requirements that were in place at the time of the strike and what additional measures were taken, if any, to avoid strike;
- Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, visibility) immediately preceding the strike;
- Estimated size and length of animal that was struck;
- Description of the behavior of the marine mammal immediately preceding and following the strike;
- If available, description of the presence and behavior of any other marine mammals immediately preceding the strike;
- Estimated fate of the animal (*e.g.,* dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared); and
- To the extent practicable, photographs or video footage of the animal(s).

**Negligible Impact Analysis and Determination**

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, our analysis applies to all the species listed in Table 5, given that NMFS expects the anticipated effects of the planned survey to be similar in nature. NMFS does not anticipate that serious injury or mortality would occur as a result from HRG surveys, even in the absence of mitigation, and no serious injury or mortality is authorized. As discussed in the Potential Effects of Specified Activities on Marine Mammals and their Habitat section, non-auditory physical effects and vessel strike are not expected to occur. NMFS expects that all potential takes would be in the form of short-term Level B behavioral harassment in the form of temporary avoidance of the area or decreased foraging (if such activity was occurring), reactions that are considered to be of low severity and with no lasting biological consequences (*e.g.,* Southall *et al.,* 2007). Even repeated Level B harassment of some small subset of an overall stock is unlikely to result in any significant realized decrease in viability for the affected individuals, and thus would not result in any adverse impact to the stock as a whole. As described previously due to the nature of the operations, Level A harassment is not expected even in the absence of mitigation. The small size of the Level A harassment zones and the required shutdown zones for certain activities further bolster this conclusion. In addition to being temporary, the maximum expected Level B harassment zone around a survey vessel is 445 m, producing expected effects of particularly low severity. Therefore, the ensonified area surrounding each vessel is relatively small compared to the overall distribution of the animals in the

area and their use of the habitat. Feeding behavior is not likely to be significantly impacted as prey species are mobile and are broadly distributed throughout the survey area; therefore, marine mammals that may be temporarily displaced during survey activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the temporary nature of the disturbance and the availability of similar habitat and resources in the surrounding area, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations. There are no rookeries, mating or calving grounds known to be biologically important to marine mammals within the planned survey area at the time of survey (the BIA for North Atlantic right whales is for a time period outside the proposed survey time period) and there are no primary feeding areas known to be biologically important to marine mammals within the planned survey area. In addition, there is no designated critical habitat for any ESA-listed marine mammals in the planned survey area.

NMFS expects that takes would be in the form of short-term Level B behavioral harassment by way of brief startling reactions and/or temporary vacating of the area, or decreased foraging (if such activity was occurring)—reactions that (at the scale and intensity anticipated here) are considered to be of low severity, with no lasting biological consequences. Since both the sources and marine mammals are mobile, animals would only be exposed briefly to a small ensonified area that might result in take. Additionally, required mitigation measures (*e.g.,* shutdown) would further reduce exposure to sound that could result in more severe behavioral harassment. In summary, and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality or serious injury is anticipated or authorized;
- No Level A harassment (PTS) is anticipated, even in the absence of mitigation measures, or proposed to be authorized;
- Take is anticipated to be primarily Level B behavioral harassment consisting of brief startling reactions and/or temporary avoidance of the survey area and could occur over a very short time period (13 days);
- No areas of particular importance to marine mammals (*e.g.,* BIA, critical habitat) occur within the survey area; and
- Impacts on marine mammal habitat and species that serve as prey species for marine mammals are expected to be minimal and the alternate areas of similar habitat value for marine mammals are readily available.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

**Small Numbers**

As noted above, only small numbers of incidental take may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities. For this IHA, take of all species or stocks is below one third of the estimated stock abundance (in fact, take of individuals is less than 7 percent of the abundance for all affected stocks).

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

**Unmitigable Adverse Impact Analysis and Determination**

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

**Endangered Species Act**

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

NMFS is proposing to authorize take of fin whales, which are listed under the ESA. Therefore, we have requested initiation of Section 7 consultation with OPR's Interagency Cooperation Division for the issuance of this IHA. NMFS will conclude the ESA consultation prior to reaching a determination regarding the proposed issuance of the authorization.

**Proposed Authorization**

As a result of these preliminary determinations, NMFS proposes to issue an IHA to Kitty Hawk Wind for conducting marine site characterization surveys off the coast of North Carolina and Virginia, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.*

**Request for Public Comments**

We request comment on our analyses, the proposed authorization, and any other aspect of this notice of proposed IHA for the proposed marine site characterization surveys. We also request at this time comment on the potential Renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent Renewal IHA.

On a case-by-case basis, NMFS may issue a one-time, one-year Renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical, or nearly identical, activities as described in the Description of Proposed Activities section of this notice is planned or (2) the activities as described in the Description of Proposed Activities section of this notice would not be

completed by the time the IHA expires and a Renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed Renewal IHA effective date (recognizing that the Renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA);
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested Renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take); and

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

Upon review of the request for Renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: May 18, 2021.

**Catherine Marzin,**

*Acting Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2021–10955 Filed 5–24–21; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XG169]**

### Request for Information and Public Virtual Dialogues on Commercial Earth Observations and Geospatial Data and Services Practices

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of meeting; request for information.

**SUMMARY:** The United States Group on Earth Observations (USGEO) is preparing a document containing best practices for Federal government procurement of commercial Earth observation and geospatial data and services, per the 2019 National Plan for Civil Earth Observations. Information from private sector providers and users; academia, and the public is critical to that effort, and therefore USGEO is seeking public input. This notice invites the public to submit written comments on the topic generally and in response to specific questions outlined below, and to attend one of four virtual forums.

**DATES:** *Comments:* The agency must receive comments on or before June 30, 2021.

Virtual Public Meetings:

1. June 2, 2021, 11 a.m. to 12:30 p.m., Eastern Daylight Time.

2. June 9, 2021, 1 p.m. to 2:30 p.m., Eastern Daylight Time.

3. June 16, 2021, 11 a.m. to 12:30 p.m., Eastern Daylight Time.

4. June 23, 2021, 1 p.m. to 2:30 p.m., Eastern Daylight Time.

Registration is limited to 250 individuals per session. All sessions will present the same content so you only need to attend one session. Information on how to join the virtual meetings will be available upon registration at the following links. Please register for the session you plan to attend.

June 2, 2021, 11 a.m.–12:30 p.m. EDT: *https://usgeo2jun.eventbrite.com.*

June 9, 2021, 1–2:30 p.m. EDT: *https://usgeo9jun.eventbrite.com.*

June 16, 2021, 11 a.m.–12:30 p.m. EDT: *https://usgeo16jun.eventbrite.com.*

June 23, 2021, 1–2:30 p.m. EDT: *https://usgeo23jun.eventbrite.com.*

For questions on registration, please contact *Wade.Price@noaa.gov.*

**ADDRESSES:** You may submit comments on this request for information (RFI), identified by NOAA–NESDIS–2021–0051, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NESDIS–2021–0051 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by USGEO. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. USGEO will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

This is a request for information only. This RFI is not a request for proposals (RFP) or a promise to issue an RFP or a notice inviting applications. This RFI does not commit the Department or Federal Agencies to contract for any supply or service whatsoever. Further, we are not seeking proposals and will not accept unsolicited proposals. The Department or Federal Agencies will not pay for any information or administrative costs that you may incur in responding to this RFI. The documents and information submitted in response to this RFI become the property of the U.S. Government and will not be returned.

**FOR FURTHER INFORMATION CONTACT:** Wade Price, USGEO Executive Secretariat, telephone (202) 419–5409; Email: *Wade.Price@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** USGEO is chartered as a subcommittee under the National Science and Technology Council (NSTC)—Subcommittee on Environment. The USGEO subcommittee's purpose is to plan and coordinate Federal Earth observations, research, and activities; foster improved Earth system data management and interoperability; identify high-priority user needs for Earth observation data; and engage international stakeholders by formulating the U.S. positions for, and coordinating U.S. participation in, the intergovernmental Group on Earth Observations (GEO). Its membership consists of 13 Federal Agencies and components of the Executive Office of the President.

#### A. The National Plan for Civil Earth Observation

The USGEO developed the 2019 National Plan for Civil Earth Observations that was released by the Office of Science and Technology Policy in 2019. Read the full plan at *https://usgeo.gov/uploads/Natl-Plan-for-Civil-Earth-Obs.pdf.* The National Plan includes the following two actions:

- Work with commercial data providers and analytics companies to develop a set of best practices for commercial data buys.

- Work with commercial providers to understand issues, agency practices, and policies that foster develo p.m.ent of small and medium businesses and start-ups.

**B. United States Earth Observation Enterprise**

The 2019 National Plan for Civil Earth Observations notes the U.S. Earth Observation Enterprise is comprised of Federal agencies; State, local, tribal, and territorial governments; world-leading colleges and universities; private industries; non-profit organizations; and Federal and National Laboratories. Together, the Earth Observations Enterprise, as it will hereafter be referred, is collectively involved in the acquisition, analysis, dissemination and use of Earth observations; the operation of enabling infrastructure; sustaining and advancing the creation of data and information products; maintaining routine uses; and developing innovative applications for societal, environmental, and economic progress.

**C. Best Practices Guide**

New observational technologies and analytics from a broad array of entities calls for a new way of doing business. USGEO, representing all the Departments and Federal Agencies, is seeking input from all components of the Earth Observation Enterprise on the development of best practices to understand the opportunities for and barriers to the Federal government's acquisition of commercial Earth observation and geospatial data and services. USGEO also seeks to understand the opportunities and impacts of the Departments and Federal Agencies moving to commercial Earth observation and/or geospatial data, analytics and services. Through the RFI and public dialogues, USGEO will use the inputs to develop a public document intended to inform Federal agencies about best practices they could consider when purchasing commercial Earth observations and/or geospatial data, analytics and/or services.

A background document that has more information about providing inputs to this best practices guide is provided at *https://usgeo.gov/public_engagement.html.* In additional to general comments, USGEO is seeking comments on the following areas:

1. Using a consistent set of definitions in solicitations and contracts will aide in acquisition of Earth observation and geospatial information. Please comment on definitions for Commercial Environmental Data; Commercial Environmental Data Buys; Commercial Earth observation services; Commercial Geospatial Data and Information Acquisition; and derived products. (page 4 of the background document)

2. Data sharing (redistribution) rights are a critical factor in these procurements. The government has different Licensing frameworks, please provide comments as to the feasibility of a single framework across all purchases. Please provide information on barriers associated with the various licensing frameworks. Specifically:

a. When considering data sharing rights, how should the Federal government consider the best value and return on investment for the taxpayer?

b. What are useful categories of data sharing rights, both within the Federal government and externally? Categories could be defined by user type (*e.g.,* sharing with other Federal Government agencies, foreign agency partners, academia, the general public), by use cases (*e.g.,* commercial, non-commercial, scientific/research, operational), others?

c. What are creative options for expanding data sharing rights without significantly increasing costs to the Federal government? For example, permitting sharing of data at a coarser spatial resolution, at full resolution with a time delay using sunsetting dates after which data reverts to the public domain, by permitting only non-commercial reuse, or permitting public release data used in scientific studies and reproduction of scientific information?

d. How can contracts address the Federal government's use of products derived from commercial data, including for products for public release?

e. If a contract allows some or all data to be shared outside the Federal government, are there challenges with sharing such data under a standard open license (such as those described at *https://resources.data.gov/open-licenses/*), to ensure those third parties understand their use rights?

f. How should the Federal government solicit information about the cost of different data sharing rights in the context of a specific procurement?

3. If you have responded to Federal government commercial Earth observation and/or geospatial data requests for proposal, please comment on challenges faced in responding to the requests.

4. Please identify acquisition processes that would facilitate your ability to respond to Earth observation and/or geospatial information business opportunities.

5. Are you aware of the various Departmental and Agency roles related to Federal Earth imagery acquisition? What types of information would help clarify those roles?

6. Do you prefer to work individual procurements with multiple agencies and programs of would you prefer to interact through larger coordinated multiple agency contracts?

7. The Departments and Agencies increase their reliance on commercial Earth observations and geospatial data, services and analytics there may be technical, scientific, legal, and other impacts.

a. What are the ramifications for academic researchers?

b. What are the ramifications for the private sector, both provider and downstream?

c. What are the ramifications for the public?

d. What are the ramifications for the international community?

8. Legal Issues.

a. Many standard commercial end user license agreements include terms that the Federal government is unable to accept, including indemnification, choice of law, dispute resolution, etc., many of which are replaced by applicable parts of the Federal Acquisition Regulations (FAR). Does this create any legal issues for data providers?

b. What is the industry perspective on certification and validation of commercial data?

c. What are the legal issues companies are facing when providing commercial data, analytics, information and services to meet Federal agencies operational missions? For example, regarding liability?

9. What are the main, non-technical barriers to increasing the Federal government's procurement of commercial data? This could be barriers due to acquisition practices, licensing agreements, Federal government's need for technical information to understand how data are collected and processed, and/or needs/constraints of vendors.

a. Of these barriers, which would be feasible to resolve in the near- or mid-term?

b. How do these barriers or the Federal government's requirements compare to non-governmental customers? If significantly different, does that make diversifying your customer base more difficult, and/or increase the prices offered to the Federal government?

10. What can the Federal government do to better foster the development of businesses and start-ups that provide commercial data or derived products?

11. What trends do you see in commercial Earth observations and/or geospatial information?

**D. Public Comment**

Every effort will be made to hear from as many registered individuals during the public dialogues. Individuals or

groups making remarks during the public comment period will be limited to 3 minutes for each intervention. Individuals or groups may attend more than one dialogue session. These sessions will be recorded for use in writing the document. Submission of written comments are also encouraged.

Dated: May 18, 2021.

**Ajay N. Mehta,**

*Director, Office of Satellite Ground Services, NOAA Satellite and Information Service, Co-chair, U.S. Group on Earth Observations.*

[FR Doc. 2021–10774 Filed 5–24–21; 8:45 am]

**BILLING CODE 3510–40–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XB124]**

### Western Pacific Fishery Management Council; Public Meeting

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

**ACTION:** Notice of public meetings.

**SUMMARY:** The Western Pacific Fishery Management Council (Council) will hold meetings of its American Samoa Archipelago Fishery Ecosystem Plan (FEP) Advisory Panel (AP), Mariana Archipelago FEP-Guam AP, Non-commercial Fisheries Advisory Committee (NCFAC), Fishing Industry Advisory Committee (FIAC), Hawaii Archipelago FEP AP, and Mariana Archipelago FEP-Commonwealth of the Northern Mariana Islands (CNMI) AP to discuss and make recommendations on fishery management issues in the Western Pacific Region.

**DATES:** The American Samoa Archipelago FEP AP will meet on Tuesday, June 8, 2021 from 5 p.m.–7 p.m.; The NCFAC will meet on Wednesday, June 9, 2021 from 1 p.m.–4 p.m.; the Mariana Archipelago FEP-Guam AP will meet on Thursday, June 10, 2021, from 6:30 p.m. and 8:30 p.m.; the FIAC will meet on Thursday, June 10, 2021 from 1 p.m.–4 p.m.; the Hawaii Archipelago FEP AP will meet on Friday, June 11, 2021 from 9 a.m.–12 noon; and the Mariana Archipelago FEP–CNMI AP will meet on Saturday, June 12, 2021 from 9 a.m.–12 noon. All times listed are local island times except for the NCFAC and FIAC are Hawaii Standard Time.

For specific times and agendas, see **SUPPLEMENTARY INFORMATION**.

**ADDRESSES:** Each of the meetings will be held by web conference via Webex. Instructions for connecting to the web conference and providing oral public comments will be posted on the Council website at *www.wpcouncil.org.* For assistance with the web conference connection, contact the Council office at (808) 522–8220.

**FOR FURTHER INFORMATION CONTACT:** Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council; telephone: (808) 522–8220.

**SUPPLEMENTARY INFORMATION:** Public comment periods will be provided in the agendas. The order in which agenda items are addressed may change. The meetings will run as late as necessary to complete scheduled business.

#### Schedule and Agenda for the American Samoa FEP AP Meeting

*Wednesday, June 8, 2021 from 5 p.m.–7 p.m. (American Samoa Standard Time)*

1. Welcome and Introductions
2. Review of the Last AP Meeting and Recommendations
3. Council Issues
   - A. American Samoa bottomfish Update
   - B. Territory Bigeye Specifications
   - C. Gear and Release Requirements to Improve Post-Hooking Survivorship of Oceanic Whitetip Sharks in Longline Fisheries
4. American Samoa Reports
   - A. 2020 Annual Stock Assessment and Fishery Evaluation (SAFE) Report
   - B. Fisheries Research and Priorities
5. Report on American Samoa Archipelago FEP AP Plan Activities
6. Fishery Issues and Activities
7. Public Comment
8. Discussion and Recommendations
9. Other Business

#### Schedule and Agenda for the NCFAC Meeting

*Wednesday, June 9, 2021 from 1 p.m.–4 p.m. (Hawaii Standard Time)*

1. Welcome and Introductions
2. Review of Last NCFAC Meeting
3. Regional/National Non-Commercial Fishing Efforts
   - A. Regional Roundtable
   - B. National Recreational Fishing Summit 2022
   - C. Western Pacific Initiatives
4. 2020 Annual SAFE Report Non-Commercial Modules
   - A. Pelagic Fisheries
   - B. Update on Development of Non-Pelagic Non-Commercial MUS Module
   - C. Ecosystem Component Non-Commercial Species
5. Legislative Update
6. Monitoring and Management of Hawaii Non-Commercial Uku Fishery
7. Cultural Take of Green Sea Turtles
8. Public Comment
9. Discussion and Recommendations
10. Other Business

#### Schedule and Agenda for the Mariana Archipelago FEP-Guam AP Meeting

*Thursday, June 10, 2021, 6:30 p.m.–8:30 p.m. (Marianas Standard Time)*

1. Welcome and Introductions
2. Review of the Last AP Meeting and Recommendations
3. Council Issues
   - A. Guam Bottomfish Update
   - B. Territory Bigeye Specifications
4. Guam Reports
   - A. 2020 Annual SAFE Report
   - B. Fisheries Research and Priorities
   - C. Shark Depredation Project Update
5. Report on Mariana Archipelago FEP Advisory Panel Plan Activities
6. Fishery Issues and Activities
7. Public Comment
8. Discussion and Recommendations
9. Other Business

#### Schedule and Agenda for the FIAC Meeting

*Thursday, June 10, 2021 from 1 p.m.–4 p.m. (Hawaii Standard Time)*

1. Welcome and Introductions
2. Status Report on March 2021 FIAC Recommendations
3. Hawaii Offshore Wind Energy
4. Offshore Aquaculture
   - A. Ewa Beach Offshore Aquaculture Proposal
   - B. Federal Offshore Aquaculture Management
5. Council Actions for 186th Meeting
   - A. Gear and Release Requirements to Improve Post-Hooking Survivorship of Oceanic Whitetip Sharks in the Longline Fisheries
   - B. Bigeye Tuna Catch Limit and Allocation
   - C. Hawaii Update to the Deep 7 Bottomfish Annual Catch Limits
   - D. Developing Draft Tori Line Specifications for the Hawaii Deep-Set Longline Fishery
6. Hawaii Legislative Report
7. Marianas Shark Depredation Project
8. MAFAC Seafood Recommendations
9. ESA Issues
   - A. Consultations Updates
   - B. Shortfin Mako ESA Listing Petition
10. Other Issues
11. Public Comment
12. Discussion and Recommendations

#### Schedule and Agenda for the Hawaii Archipelago FEP AP Meeting

*Friday, June 11, 2021, 9 a.m.–12 noon (Hawaii Standard Time)*

1. Welcome and Introductions

2. Review of the Last AP Meeting and Recommendations
3. Council Issues
   A. Main Hawaiian Islands Deep 7 Bottomfish ACL Specification
   B. Monitoring the Hawaii Uku Fishery
   C. Gear and Release Requirements to Improve Post-Hooking Survivorship of Oceanic Whitetip Sharks in the Longline Fisheries
   D. Developing Draft Tori Line Specifications for the Hawaii Deep-Set Longline Fishery
   E. Pelagic Issues Updates
4. Offshore Wind Energy
   A. Progression Energy Fact Finding
   B. Discussion on Fishery Impacts from Offshore Wind Energy
5. Hawaii Reports
   A. 2020 Annual SAFE Reports
   B. Fisheries Research and Priorities
   C. Potential Native Hawaiian Fisheries Training and Cultural Sea Turtle Take
6. Report on Hawaii Archipelago FEP AP Plan Activities
7. Fishery Issues and Activities
8. Public Comment
9. Discussion and Recommendations
10. Other Business

**Schedule and Agenda for the Mariana Archipelago FEP–CNMI AP Meeting**

*Saturday, June 12, 2021, 9 a.m.–12 noon (Marianas Standard Time)*

1. Welcome and Introductions
2. Review of the Last AP Meeting and Recommendations
3. Council Issues
   A. Guam Bottomfish Update
   B. Territory Bigeye Specifications
4. CNMI Reports
   A. 2020 Annual SAFE Report
   B. Fisheries Research and Priorities
   C. Shark Depredation Project Update
5. Report on Mariana Archipelago FEP AP Plan Activities
6. Fishery Issues and Activities
7. Public Comment
8. Discussion and Recommendations
9. Other Business

**Special Accommodations**

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: May 20, 2021.

**Diane M. DeJames-Daly,**

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

[FR Doc. 2021–10980 Filed 5–24–21; 8:45 am]

**BILLING CODE 3510–22–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; Seafood Inspection and Certification Requirements

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of information collection, request for comment.

**SUMMARY:** The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites 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. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

**DATES:** To ensure consideration, comments regarding this proposed information collection must be received on or before July 26, 2021.

**ADDRESSES:** Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *Adrienne.thomas@noaa.gov.* Please reference OMB Control Number 0648–0266 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or specific questions related to collection activities should be directed to Jeff Weir, Director, Operations and Administration Division (OMI), Office of International Affairs and Seafood Inspection, (301) 427–8377 or *Jeff.Weir@noaa.gov*.

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

This request is for extension of a currently approved information collection.

The National Marine Fisheries Service (NMFS) operates a voluntary fee-for-service seafood inspection program (Program) under the authorities of the Agricultural Marketing Act of 1946, as amended, the Fish and Wildlife Act of 1956, and the Reorganization Plan No. 4 of 1970. The regulations for the Program are contained in 50 CFR part 260. The program offers inspection grading and certification services, including the use of official quality grade marks which indicate that specific products have been federally inspected. The NMFS inspection program is the only federal entity which establishes quality grade standards for seafood marketed in the United States (U.S.). Qualified participants are permitted to use the program's official quality grade marks on their products to facilitate trade of fishery products.

In July 1992, NMFS announced new inspection services, which were fully based on guidelines recommended by the National Academy of Sciences, known as Hazard Analysis Critical Control Point (HACCP). The information collection requirements fall under § 260.15 of the regulations. These guidelines required that a facility's quality control system have a written plan of the operation, identification of control points with acceptance criteria and a corrective action plan, as well as identified personnel responsible for oversight of the system.

Those wishing to participate in the program must request the services and submit specific compliance information. Participants in the program include all segments of the seafood industry, from harvesters to retailers. Applicants provide information regarding the type of products to be inspected, the quantity, the location of the product, and the date when the inspection is needed. Participants interested in using official grade marks are required to submit product labels and specifications for review and approval to ensure compliance with mandatory labeling regulations established by the U.S. Food and Drug Administration (FDA), as well as proper use of the Program's marks.

**II. Method of Collection**

Respondents have a choice of either electronic or paper forms. Methods of submittal include email of electronic forms, and mail and facsimile transmission of paper forms.

**III. Data**

*OMB Control Number:* 0648–0266.

*Form Numbers:* 89–800, 89–814, 89–819.

*Type of Review:* Regular submission (extension of a currently approved information collection).

*Affected Public:* Business or other for-profit organizations; Not-for-profit institutions; State, Local, or Tribal government.

*Estimated Number of Respondents:* 8,200.

*Estimated Time per Response:* Inspection Request, 5 minutes; Appeals, 30 minutes; Contract Completion, 1

hour; Label and Specification Submission, 30 minutes; HACCP application new respondents, 10 hours; HACCP application current respondents, 30 minutes.

*Estimated Total Annual Burden Hours:* 3,138.

*Estimated Total Annual Cost to Public:* $1,273,470 in recordkeeping/reporting costs.

*Respondent's Obligation:* Required to Obtain or Retain Benefits.

**IV. Request for Comments**

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may 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.

**Sheleen Dumas,**

*Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.*

[FR Doc. 2021–10989 Filed 5–24–21; 8:45 am]

**BILLING CODE 3510–22–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; Pacific Islands Logbook Family of Forms

**AGENCY:** National Oceanic & Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of information collection, request for comment.

**SUMMARY:** The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites 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. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

**DATES:** To ensure consideration, comments regarding this proposed information collection must be received on or before July 26, 2021.

**ADDRESSES:** Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *adrienne.thomas@noaa.gov.* Please reference OMB Control Number 0648–0214 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or specific questions related to collection activities should be directed to Walter Ikehara, Fishery Information Specialist, NOAA Fisheries Service, Pacific Islands Region, *walter.ikehara@noaa.gov* or (808) 725–5175.

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

This request is for extension of a currently approved information collection.

Vessel operators or owners in Federally-managed fisheries in the Pacific Islands Region (PIR) are required to provide certain information about their fishing activities, catch, and interactions with protected species by submitting reports to National Marine Fisheries Service, per 50 CFR part 665.14. These data are needed to determine the condition of fish stocks and whether current management measures are having the intended effects, to evaluate the benefits and costs of changes in management measures, and to monitor and respond to accidental takes of endangered and threatened species, including seabirds, sea turtles, and marine mammals.

The reports are submitted using paper logbooks or electronic logbooks (computer tablets or other devices) to the National Marine Fisheries Service (NMFS) Fisheries Pacific Islands Fisheries Science Center. The Hawaii and American Samoa pelagic longline fisheries will submit reports using electronic logbooks, although paper logbooks will be used if there are equipment or transmission failures. Electronic logbooks collect the same information as paper logbooks. All other PIR fisheries use paper logbooks only.

Longline vessel operators are also required to submit pre-trip notifications, including information on trip type, departure time, and transit through a protected species zone per 50 CFR 665.803. Other fisheries are required to submit notifications of trip return, unloading, or sales reports per regulations in multiple Subparts of 50 CFR 665.

**II. Method of Collection**

Respondents will report their catch using paper logbooks or electronic logbooks. Methods of submittal include submission by mail or facsimile for paper logbooks, and via the vessel monitoring system or online for electronic logbook data. Notifications may be made by phone or email.

**III. Data**

*OMB Control Number:* 0648–0214.

*Form Number(s):* None.

*Type of Review:* Regular (extension of a currently approved collection of information).

*Affected Public:* Individuals or households, and small businesses.

*Estimated Number of Respondents:* 561.

*Estimated Time per Response:* From 5 to 35 minutes per report or notification, depending on type; average 16 minutes per response.

*Estimated Total Annual Burden Hours:* 6,870.

*Estimated Total Annual Cost to Public:* $112,318.

*Respondent's Obligation:* Mandatory.

*Legal Authority:* 50 CFR 665.

**IV. Request for Comments**

We are soliciting public comments to permit the Department to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including

whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this information collection request. 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 may 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.

**Sheleen Dumas,**

*Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.*

[FR Doc. 2021–10988 Filed 5–24–21; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XB123]**

### New England Fishery Management Council; Public Meeting

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

**ACTION:** Notice of public meeting via webinar.

**SUMMARY:** The New England Fishery Management Council (Council) is scheduling a public meeting of its Herring Committee Meeting via webinar to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

**DATES:** This webinar will be held on Friday, June 4, 2021 at 9 a.m. Webinar registration URL information: *https://attendee.gotowebinar.com/register/6006190433932284939.*

**ADDRESSES:** *Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

**FOR FURTHER INFORMATION CONTACT:** Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

**SUPPLEMENTARY INFORMATION:**

#### Agenda

The Committee will meet to continue development of Framework 9, an action to implement a rebuilding plan for Atlantic herring that was declared overfished, and potentially adjust herring accountability. The Committee will also continue development of Framework 7, an action to protect spawning Atlantic herring on Georges Bank. They will discuss 2020–2024 herring research priority recommendations for Council consideration. They will discuss other business, as necessary.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

#### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at 978–465–0492, at least 5 days prior to the meeting date.

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

Dated: May 20, 2021.

**Diane M. DeJames-Daly,**

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

[FR Doc. 2021–10984 Filed 5–24–21; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Telecommunications and Information Administration

### Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; NTIA Internet Use Survey

**AGENCY:** National Telecommunications and Information Administration (NTIA), Department of Commerce.

**ACTION:** Notice of information collection, request for comment.

**SUMMARY:** The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites 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. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

**DATES:** To ensure consideration, comments regarding this proposed information collection must be received on or before July 26, 2021.

**ADDRESSES:** Interested persons are invited to submit written comments to Rafi Goldberg, Telecommunications Policy Analyst, NTIA, via email at *rgoldberg@ntia.gov.* Please reference OMB Control Number 0660–0021 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or specific questions related to collection activities should be directed to Rafi Goldberg, Telecommunications Policy Analyst, NTIA, at (202) 482–4375 or *rgoldberg@ntia.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. Abstract

NTIA seeks approval under the Paperwork Reduction Act (PRA) to add 67 questions to the November 2021 edition of the U.S. Census Bureau's Current Population Survey (CPS). This collection of questions is known as the NTIA Internet Use Survey, and is also referred to as the CPS Computer and Internet Use Supplement. NTIA has sponsored fifteen such surveys since 1994.

Secretary of Commerce Gina Raimondo recently observed that ''high-quality, affordable broadband isn't a luxury, but it's a necessity for

education, jobs, and healthcare.'' [1] Digitally connected Americans provide the modern workforce, creative innovation, and growing customer base to help sustain our nation's global competitiveness; data from the NTIA Internet Use Survey will inform policies aimed at achieving digital equity so that the internet's benefits are accessible to all Americans. The research and policy analysis enabled by this data collection are particularly important as the nation recovers from a pandemic that has further highlighted the importance of the internet in daily life.

NTIA is working with Congress, the Federal Communications Commission (FCC), other federal agencies, state and local governments, as well as with industry and nonprofits to develop and promote policies that foster ubiquitous broadband deployment, adoption, and effective use. These policies help to ensure that families and businesses can obtain competitively priced high-speed internet service, and that everyone is able to gain the skills necessary to use the technology. Collecting current, systematic, and comprehensive information on internet use and non-use by U.S. households is critical to enabling policymakers to gauge progress made to date, and also to identify specific areas and demographic groups in which adoption is a concern with a specificity that permits carefully targeted and cost-effective responses.

The U.S. Census Bureau is widely regarded as a premier data collector based on centuries of experience and rigorous scientific methods. Collection of NTIA's requested internet usage data will occur in conjunction with a future edition of the U.S. Census Bureau's CPS, thereby significantly reducing the potential burdens on the U.S. Census Bureau and on surveyed households.

The U.S. government has an increasingly pressing need for comprehensive data in this area. The U.S. Government Accountability Office (GAO), NTIA, and the FCC have issued reports noting the importance of useful broadband data for policymakers. Moreover, Congress passed legislation—the Broadband Data Improvement Act in 2008, the American Recovery and Reinvestment Act in 2009, the Broadband DATA Act, and the Consolidated Appropriations Act, 2021—wholly or in part to address this deficiency. Modifying the CPS to include NTIA's requested internet use questions will enable the Commerce Department and NTIA to respond to congressional concerns and directives.

NTIA has made a copy of the proposed information collection instrument available at *https://www.ntia.gov/other-publication/2021/request-comments-ntias-draft-internet-use-survey.*

## II. Method of Collection

The NTIA Internet Use Survey will be administered by the U.S. Census Bureau as a supplement to the CPS. Data will be collected through personal visits and live telephone interviews using computer-assisted telephone interviewing and computer-assisted personal interviewing.

## III. Data

*OMB Control Number:* 0660–0021.
*Form Number(s):* None.
*Type of Review:* Regular submission (Revision of a current information collection).
*Affected Public:* Individuals and households.
*Estimated Number of Respondents:* 54,000 households.
*Estimated Time per Response:* 10 minutes.
*Estimated Total Annual Burden Hours:* 9,000.
*Estimated Total Annual Cost to Public:* $0.
*Respondent's Obligation:* Voluntary.
*Legal Authority:* 47 U.S.C. 902(b)(2)(M), (P).

## IV. Request for Comments

We are soliciting public comments to permit NTIA to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may 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.

**Sheleen Dumas,**

*Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.*

[FR Doc. 2021–10986 Filed 5–24–21; 8:45 am]

**BILLING CODE 3510–60–P**

[1] ''Press Briefing by Press Secretary Jen Psaki and Secretary of Commerce Gina Raimondo, April 7, 2021,'' *available at https://www.whitehouse.gov/briefing-room/press-briefings/2021/04/07/press-briefing-by-press-secretary-jen-psaki-and-secretary-of-commerce-gina-raimondo-april-7-2021/.*

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

**[Docket No. PTO–C–2021–0031]**

### Patent and Trademark Public Advisory Committees

**AGENCY:** United States Patent and Trademark Office, Commerce.

**ACTION:** Request for nominations for the Patent and Trademark Public Advisory Committees.

**SUMMARY:** On November 29, 1999, the President signed into law the Patent and Trademark Office Efficiency Act (1999 Act), which, among other things, established two Public Advisory Committees to review the policies, goals, performance, budget, and user fees of the United States Patent and Trademark Office (USPTO) with respect to patents, in the case of the Patent Public Advisory Committee (PPAC), and trademarks, in the case of the Trademark Public Advisory Committee (TPAC), and to advise the Director of the USPTO on these matters (now codified in the United States Code). The America Invents Act Technical Corrections Act made several amendments to the 1999 Act, including the requirement that the terms of the USPTO Public Advisory Committee members be realigned by 2014, so that December 1 will be used as the start and end date, with terms staggered so that each year, three existing terms expire and three new terms begin on December 1. With this current notice, the USPTO is requesting nominations for up to three members of the PPAC and up to three members of the TPAC, for terms of three years that will begin on December 1, 2021.

**DATES:** Nominations must be electronically transmitted on or before July 9, 2021.

**ADDRESSES:** Persons wishing to submit nominations will be required to electronically complete the appropriate Public Advisory Committee application

form by entering detailed information and qualifications at: *https://tinyurl.com/ynae4a67* for the Patent Public Advisory Committee, or *https://tinyurl.com/hcux6462* for the Trademark Public Advisory Committee.

**FOR FURTHER INFORMATION CONTACT:** Cordelia Zecher, Acting Chief of Staff, Office of the Under Secretary of Commerce for Intellectual Property and Director of the USPTO, at 571–272–8600.

**SUPPLEMENTARY INFORMATION:** The PPAC and TPAC members shall:

- Advise the Under Secretary of Commerce for Intellectual Property and Director of the USPTO on matters relating to policies, goals, performance, budget, and user fees of the USPTO relating to patents and trademarks, respectively (35 U.S.C. 5); and
- *Within 60 days after the end of each fiscal year:* (1) Prepare an annual report on matters listed above; (2) transmit the report to the Secretary of Commerce (Secretary), the President, and the Committees on the Judiciary of the Senate and the House of Representatives; and (3) publish the report in the Official Gazette of the USPTO. *Id.*

**Public Advisory Committees**

The Public Advisory Committees are each composed of nine voting members who are appointed by the Secretary and serve at the pleasure of the Secretary for three-year terms. Members are eligible for reappointment for a second consecutive three-year term. The Public Advisory Committee members must be citizens of the United States and are chosen to represent the interests of diverse users of the USPTO with respect to patents, in the case of the PPAC, and trademarks, in the case of the TPAC. Members must represent small and large entity applicants located in the United States in proportion to the number of applications filed by such applicants. The Committees must include individuals with a ''substantial background and achievement in finance, management, labor relations, science, technology, and office automation.'' 35 U.S.C. 5(b)(3). Each of the Public Advisory Committees also includes three non-voting members representing each labor organization recognized by the USPTO. Administration policy discourages the appointment of federally registered lobbyists to agency advisory boards and commissions (Lobbyists on Agency Boards and Commissions, *https://obamawhitehouse.archives.gov/blog/2009/09/23/lobbyists-agency-boards-and-commissions* (Sept. 23, 2009); cf. E.O. 13490, 74 FR 4673 (Jan. 21, 2009) (While Executive Order 13490 does not specifically apply to federally registered lobbyists appointed by agency or department heads, it sets forth the administration's general policy of decreasing the influence of special interests in the Federal Government.)

**Procedures and Guidelines of the PPAC and TPAC**

Each newly appointed member of the PPAC and TPAC will serve for a three-year term that begins on December 1, 2021, and ends on December 1, 2024. As required by the 1999 Act, members of the PPAC and TPAC will receive compensation for each day (including travel time) they attend meetings or engage in the business of their Advisory Committee. The enabling statute states that members are to be compensated at the daily equivalent of the annual rate of basic pay in effect for level III of the Executive Schedule under 5 U.S.C. 5314. Committee members are compensated on an hourly basis, calculated at the daily rate. While away from home or their regular place of business, each member shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by 5 U.S.C. 5703.

**Applicability of Certain Ethics Laws**

Public Advisory Committee members are Special Government Employees within the meaning of 18 U.S.C. 202. The following additional information includes several, but not all, of the ethics rules that apply to members, and assumes that members are not engaged in Public Advisory Committee business more than 60 days during any period of 365 consecutive days.

- Each member will be required to file a confidential financial disclosure form within 30 days of appointment. 5 CFR 2634.202(c), 2634.204, 2634.903, and 2634.904(b).
- Each member will be subject to many of the public integrity laws, including criminal bars against representing a party in a particular matter that comes before the member's committee and that involves at least one specific party. 18 U.S.C. 205(c); *see also* 18 U.S.C. 207 for post-membership bars. Also, a member must not act on a matter in which the member (or any of certain closely related entities) has a financial interest. 18 U.S.C. 208.
- Representation of foreign interests may also raise issues. 35 U.S.C. 5(a)(1) and 18 U.S.C. 219.

**Meetings of the PPAC and TPAC**

Meetings of each Public Advisory Committee will take place at the call of the respective Committee Chair to consider an agenda set by that Chair. Meetings may be conducted in person, telephonically, online, or by other appropriate means. The meetings of each Public Advisory Committee will be open to the public, except each Public Advisory Committee may, by majority vote, meet in an executive session when considering personnel, privileged, or other confidential information. Nominees must have the ability to participate in Public Advisory Committee business through the internet.

**Andrew Hirshfeld,**

*Commissioner for Patents, Performing the Functions and Duties of the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

[FR Doc. 2021–11047 Filed 5–24–21; 8:45 am]

**BILLING CODE 3510–16–P**

## COMMODITY FUTURES TRADING COMMISSION

### Agricultural Advisory Committee

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of meeting.

**SUMMARY:** The Commodity Futures Trading Commission (CFTC) announces that on June 9, 2021 from 10:00 a.m. to 12:00 p.m. (Eastern Daylight Time), the Agricultural Advisory Committee (AAC) will hold a public meeting via teleconference. At this meeting, the AAC will receive a report from the Subcommittee to Evaluate Commission Policy with Respect to Implementation of Amendments to Enumerated Agricultural Futures Contracts with Open Interest (Ag-OI). The meeting will also include a discussion on global agricultural commodity derivatives contracts and other agricultural risk management issues.

**DATES:** The meeting will be held on June 9, 2021 from 10:00 a.m. to 12:00 p.m. (Eastern Daylight Time). Please note that the teleconference may end early if the AAC has completed its business. Members of the public who wish to submit written statements in connection with the meeting should submit them by June 16, 2021.

**ADDRESSES:** The meeting will be held via teleconference. You may submit public comments on the CFTC website: *http://comments.cftc.gov.* Follow the instructions for submitting comments through the Comments Online process on the website.

If you are unable to submit comments online, please contact Summer

Mersinger, Designated Federal Officer, via the contact information listed below to discuss alternate means of submitting your comments. Any statements submitted in connection with the committee meeting will be made available to the public, including publication on the CFTC website, *http://www.cftc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Summer Mersinger, AAC Designated Federal Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581; *SMersinger@cftc.gov;* (202) 418–6074.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public. Members of the public may listen to the meeting by telephone by calling a domestic toll-free telephone or international toll or toll-free number to connect to a live, listen-only audio feed. Call-in participants should be prepared to provide their first name, last name, and affiliation.

*Domestic Toll Free:* 1–877–951–7311.

*International Toll and Toll Free:* Will be posted on the CFTC's website, *http://www.cftc.gov,* on the page for the meeting, under Related Links.

*Pass Code/Pin Code:* 3514459.

The meeting agenda may change to accommodate other AAC priorities. For agenda updates, please visit the AAC committee site at: *https://www.cftc.gov/About/CFTCCommittees/AgriculturalAdvisory/index.htm.*

All written submissions provided to the CFTC in any form will also be published on the CFTC's website. Persons requiring special accommodations to attend the meeting because of a disability should notify the contact person above.

(Authority: 5 U.S.C. app. 2 section 10(a)(2)).

Dated: May 20, 2021.

**Robert Sidman,**

*Deputy Secretary of the Commission.*

[FR Doc. 2021–11031 Filed 5–24–21; 8:45 am]

**BILLING CODE 6351–01–P**

## DEPARTMENT OF DEFENSE

**[Docket ID: DoD–2021–OS–0003]**

## Privacy Act of 1974; System of Records

**AGENCY:** Department of Defense (DoD).

**ACTION:** Notice of a new system of records.

**SUMMARY:** In accordance with the Privacy Act of 1974, the DoD is establishing a new system of records covering all DoD components titled, ''Military Justice and Civilian Criminal Case Records,'' DoD 0006. This system of records describes DoD's collection, use, and maintenance of records for the administration of the Uniform Code of Military Justice (UCMJ) and disciplinary cases under the authority of the DoD. These records include legal information and filings used to facilitate public access to the Department's court docket. This system of records also includes records created when DoD legal practitioners in support of the U.S. Department of Justice, prosecute in U.S. District Courts crimes that occurred on military installations or property. This system of records will apply enterprise-wide for the furtherance of good order and discipline. Individuals covered by this system of records includes armed forces members and others as identified in Article 2 of the UCMJ, as well as civilians who are alleged to have engaged in criminal acts on DoD installations and properties. Additionally, the DoD is issuing a Notice of Proposed Rulemaking, which proposes to exempt this system of records from certain provisions of the Privacy Act, elsewhere in today's issue of the **Federal Register**.

**DATES:** This new system of records is effective upon publication; however, comments on the Routine Uses will be accepted on or before June 24, 2021. The Routine Uses are effective at the close of the comment period.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: https://www.regulations.gov.*

Follow the instructions for submitting comments.

* *Mail:* DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

*Instructions:* All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *https://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Ms. Lyn Kirby, Defense Privacy, Civil Liberties, and Transparency Division, Directorate for Oversight and Compliance, Department of Defense, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700; *OSD.DPCLTD@mail.mil;* (703) 571–0070.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The ''Military Justice and Civilian Criminal Case Records'' system of records is being established as a DoD-wide Privacy Act system of records for use by all DoD offices and components. A DoD-wide system of records notice (SORN) supports multiple DoD paper or electronic recordkeeping systems operated by more than one DoD component that maintain the same kind of information about individuals for the same purpose. Establishment of DoD-wide SORNs helps DoD standardize the rules governing the collection, maintenance, use, and sharing of personal information in key areas across the enterprise. DoD-wide SORNs also reduce duplicative and overlapping SORNs published by separate DoD components. The creation of DoD-wide SORNs is expected to make locating relevant SORNs easier for DoD personnel and the public, and create efficiencies in the operation of the DoD privacy program.

In Section 5504 of the National Defense Authorization Act of 2017, Congress mandated the Secretary of Defense prescribe and implement uniform standards and criteria for the conduct of each of the following functions at all stages of the military justice system, including pretrial, trial, post-trial, and appellate processes: (1) Collection and analysis of data concerning substantive offenses and procedural matters in a manner that facilitates case management and decision making within the military justice system, and that enhances the quality of periodic reviews; (2) case processing and management; (3) timely, efficient, and accurate production and distribution of records of trial within the military justice system; and (4) facilitation of access to docket information, filings, and records, taking into consideration restrictions appropriate to judicial proceedings and military records. In response, the DoD has been modifying its information systems to implement uniform standards and criteria to allow for improved management and analysis of these military justice records and activities across the DoD. In association with this effort, this DoD-wide SORN also is being published to unify and standardize the management of this data in accordance with the Privacy Act of 1974.

The purpose of this system of records is to support the collection, maintenance, use, and dissemination of

records compiled by the DoD for the adjudication and litigation of cases under the UCMJ, as well as criminal proceedings brought in U.S. District Courts for offenses occurring on DoD installations or property. This system will contain the information, records, and filings publicly accessible on the Department's court docket. It also supports the compilation of internal statistics and reports related to these activities.

The DoD is issuing a Notice of Proposed Rulemaking to exempt this system of records from certain provisions of the Privacy Act elsewhere in today's issue of the **Federal Register**.

The DoD SORNs have been published in the **Federal Register** and are available from the address in the **FOR FURTHER INFORMATION CONTACT** section or at the Defense Privacy, Civil Liberties, and Transparency Division website at *https://dpcld.defense.gov.*

## II. Privacy Act

Under the Privacy Act, a ''system of records'' is a group of records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined as a U.S. citizen or lawful permanent resident.

In accordance with 5 U.S.C. 552a(r) and Office of Management and Budget (OMB) Circular No. A–108, the DoD has provided a report of this system of records to the OMB and to Congress.

Dated: May 12, 2021.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**SYSTEM NAME AND NUMBER:**

''Military Justice and Civilian Criminal Case Records,'' DoD 0006.

**SECURITY CLASSIFICATION:**

Unclassified; Classified.

**SYSTEM LOCATION:**

Department of Defense (Department or DoD), located at 1000 Defense Pentagon, Washington, DC 20301–1000, and other Department installations, offices, or mission locations. Information may also be stored within a government-certified cloud, implemented and overseen by the Department's Chief Information Officer (CIO), 6000 Defense Pentagon, Washington, DC 20301–6000.

**SYSTEM MANAGER(S):**

The system managers are the Judge Advocates Generals of the Army, Navy, Air Force and the Staff Judge Advocate General to the Commandant of the U.S. Marine Corps. Their addresses will vary according to the location where the actions described in this notice are conducted. The Privacy Act responsibilities concerning access, amendment, and disclosure of the records within this system of records have been delegated to the DoD components. DoD components include the Military Departments of the Army, Air Force (including the U.S. Space Force), and Navy (including the U.S. Marine Corps), field operating agencies, major commands, field commands, installations, and activities. To contact the system manager at the DoD component with oversight of the records, go to *www.FOIA.gov* to locate the contact information for each component's Freedom of Information Act (FOIA) office.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. Chapter 47, §§ 801–946a, Uniform Code of Military Justice (UCMJ); 10 U.S.C. 2683, Relinquishment of Legislative jurisdiction-—minimum drinking age on military installations; 10 U.S.C. 7037, Judge Advocate General, Deputy Judge Advocate General, and general officers of Judge Advocate General's Corps: appointment; duties; 10 U.S.C. 8046, Staff Judge Advocate to the Commandant of the Marine Corps; 10 U.S.C. 8088, Judge Advocate General's Corps: Office of the Judge Advocate General; Judge Advocate General; appointment, term, emoluments, duties; 10 U.S.C. 9037, Judge Advocate General, Deputy Judge Advocate General: Appointment and duties; 18 U.S.C. 13, Laws of States adopted for areas within Federal jurisdiction; 18 U.S.C. 3401, Misdemeanors; application of probation laws; 28 U.S.C. Chapter 43, United States Magistrate Judges; 28 U.S.C. 515, Authority for legal proceedings; commission, oath, and salary for special attorneys; 28 U.S.C. 543, Special attorneys; 28 U.S.C. 636, Jurisdiction, powers, and temporary assignment; 28 U.S.C. 3008, Proceedings before United States magistrate judges; 40 U.S.C. 3112, Federal jurisdiction; 32 CFR 634.32, Traffic violation reports; 32 CFR 634.25, Installation traffic codes; Executive Order (E.O.) 11835, Prescribing Amendments to the Manual for Courts-Martial, United States, 1969 (Revised Edition); E.O. 12473, Manual for Courts-Martial, United States, 1984; E.O. 13825, 2018 Amendments to the Manual for Courts-Martial, United States; and E.O. 9397 (SSN), as amended.

**PURPOSE(S) OF THE SYSTEM:**

a. To support adjudication and litigation by military judges, convening authorities, prosecutors, and defense counsel of disciplinary cases, hearings, courts-martial and adverse administrative actions under the UCMJ.

b. To support litigation of civilian criminal cases before Federal magistrate judges for offenses conducted on DoD installations and property.

c. To manage disciplinary case processes, reviews and appeals, from the complaint filing through adjudication, review, and when applicable, appeals; including tracking, managing, and storing case-related information and documents; facilitating case research and reporting; and creating statistics on key business functions and metrics.

d. To facilitate the public access to docket information, filings, and hearings appropriate to UCMJ judicial proceedings as authorized by law and policy.

e. To share information that supports the enforcement and administration of laws for individuals within the jurisdiction of the DoD, including violations of law occurring on and off military installations.

f. To verify, validate, and report professional activities for attorneys, legal service professionals, and other professionals associated with legal proceedings, to licensing organizations as required, and to support the administration of background checks in support of employment and licensing of such personnel as authorized by law.

g. To provide appropriate notification to victims in accordance with Federal victim protection laws.

h. To identify and address conduct by DoD Service members that may warrant criminal or disciplinary action, and conduct by civilians on DoD military property; to uphold and enforce the law; and to ensure public safety.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals within the DoD's jurisdiction who are the subjects of current or previous law enforcement actions; adverse administrative actions under the UCMJ or Federal criminal code; investigations, and/or prosecutions. Victims, witnesses, informants, and third parties who may have knowledge of offenses under the UCMJ or other criminal activities. Attorneys, military judges, legal personnel, and DoD personnel involved in UCMJ and Federal criminal court functions (to include investigations and legal prosecutions).

*Note*: DoD jurisdiction applies to individuals subject to the UCMJ (*see* 10 U.S.C. 802, Article 2, UCMJ). This system also extends to civilians who are alleged to have engaged in criminal acts on military installations or military property.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Categories of Records within this system support prosecutors, defense counsel, military judges and legal personnel in the administration of the Uniform Code of Military Justice and in the prosecution of civilian criminal offenses, within the DoD's jurisdiction, litigated in coordination with the Department of Justice.

a. *Personal Information such as*: Name and aliases; DoD ID number; Social Security Number; date of birth; physical, mailing, and email addresses; phone numbers; place of birth; citizenship/immigration status; race/ethnicity; medical information/medical records; biometric data; driver's license number; vehicle registration information; marital status; gender/gender identification; biographical data; property information.

b. *Employment Information such as*: Position/title, rank/grade, duty station; work address, email address, supervisor's name and contact information; military records, personnel records, financial information, education and training records.

c. *Legal Information such as*: Trial transcripts, records of trial, charge sheets, exhibits (*e.g.* documents and recordings attached to records of trial), evidentiary data in any form (including papers, photographs, electronic recordings, electronic data, or video records that were obtained, seized, or otherwise lawfully acquired from any source,) pleadings, sentencing reports, court motions, correspondence, filings, and supporting documents; forms, evidentiary data, supporting documents, investigatory data associated with non-judicial punishment under Article 15 of the UCMJ and adverse actions or administrative actions; victim and witness statements; notifications, recordings, and elections of victim rights and investigative data (including investigative findings and reports); criminal history; information received from other governmental agencies, confidential sources and other sources pertaining to an investigation, as well as investigatory referrals from other agencies, tips, and leads pertaining to potential criminal activities.

**RECORD SOURCE CATEGORIES:**

The DoD may receive information in the course of the law enforcement activities described in this system of records from nearly any source. Sources of information include: Courts and tribunals, domestic and foreign governmental and quasi-governmental agencies and data systems, public records and other publicly available sources, commercial data aggregators, subjects of investigation, victims, witnesses, confidential sources, attorneys and other legal personnel, DoD employees participating in disciplinary functions, investigators, and law enforcement entities.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, all or a portion of the records or information contained herein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

a. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal government when necessary to accomplish an agency function related to this system of records.

b. To the appropriate Federal, State, local, territorial, tribal, foreign, or international law enforcement authority or other appropriate entity where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether criminal, civil, or regulatory in nature.

c. To any component of the Department of Justice for the purpose of representing the United States, the DoD, or its components, officers, employees, or members in pending or potential litigation to which the record is pertinent.

d. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body or official, when the DoD or other Agency representing the DoD determines that the records are relevant and necessary to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

e. To the Department of Justice (including Offices of the United States Attorneys) or other federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when necessary to assist in the development of the DoD or such agency's legal and/or policy position.

f. To the National Archives and Records Administration for the purpose of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

g. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

h. To appropriate agencies, entities, and persons when (1) the DoD suspects or confirms a breach of the system of records; (2) the DoD determines as a result of the suspected or confirmed breach there is a risk of harm to individuals, the DoD (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the DoD's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

i. To another Federal agency or Federal entity, when the DoD determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) 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.

j. To such recipients and under such circumstances and procedures as are mandated by Federal statute or treaty.

k. To a Federal, state, local, tribal, foreign, or international agency, where such agency has requested information relevant or necessary for the hiring or retention of an individual, or the issuance of a security clearance, license, contract, grant, or other benefit, or if necessary to obtain information relevant to a DoD decision concerning the hiring or retention of an individual, the issuance of a security clearance, license, contract, grant, or other benefit.

l. To a public or professional licensing authority, organization, board, agency or society (to include a medical or legal professional society, organization, or licensing authority), if such information is needed to perform functions related to licensing or professional standards monitoring or compliance, or when the information indicates, either by itself or in combination with other information, a violation or potential violation of

professional standards, or reflects on the moral, educational, or professional qualifications of an individual who is licensed or who is seeking to become licensed.

m. To foreign or international law enforcement, security, or investigatory authorities to comply with requirements imposed by, or to claim rights conferred in, international agreements and arrangements, including those regulating the stationing and status in foreign countries of DoD military and civilian personnel.

n. To the Department of State when it requires information to consider and/or provide an informed response to a request for information from a foreign, international, or intergovernmental agency, authority, or organization about a pending legal action or prosecution with transnational implications.

o. To unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114, the Merit Systems Protection Board, arbitrators, the Federal Labor Relations Authority, and other parties responsible for the administration of the Federal labor-management program for the purpose of processing any corrective actions, or grievances, or conducting administrative hearings or appeals.

p. To the Merit Systems Protection Board and the Office of the Special Counsel for the purpose of litigation, including administrative proceedings, appeals, special studies of the civil service and other merit systems; review of Office of Personnel Management or component rules and regulations; investigation of alleged or possible prohibited personnel practices, including administrative proceedings involving any individual subject of a DoD investigation.

q. To state and local taxing authorities with which the Secretary of the Treasury has entered into agreements under 5 U.S.C. 5516, 5517, or 5520 and only to those state and local taxing authorities for which an employee or Service member is or was subject to tax, regardless of whether tax is or was withheld. The information to be disclosed is information normally contained in Internal Revenue Service (IRS) Form W–27.

r. To the Office of Personnel Management (OPM) for the purpose of addressing civilian pay and leave, benefits, retirement deduction, and any other information necessary for the OPM to carry out its legally authorized government-wide personnel management functions and studies.

s. To the general public in order to provide access to docket information, filings, and records in compliance with Article 140a, UCMJ or other Federal statutes, and corresponding DoD or Service implementing guidance, regulations, or policies.

t. To a confinement facility or prison, if confinement is adjudged, and the facility is outside the jurisdiction of the DoD.

u. To the U.S. Department of Veterans Affairs (VA) to assist the Department in determining the individual's entitlement to benefits administered by the VA.

v. To other Federal, State, tribal, and local government law enforcement and regulatory agencies and foreign governments, individuals and organizations during the course of an investigation or the processing of a matter, or during a proceeding within the purview of the local, state, federal or host-country specific laws, to elicit information required by the Department to carry out its functions and statutory mandates.

**POLICIES AND PRACTICES FOR STORAGE OF RECORDS:**

Records may be stored electronically or on paper in secure facilities in a locked drawer behind a locked door. Electronic records may be stored locally on digital media; in agency-owned cloud environments; or in vendor Cloud Service Offerings certified under the Federal Risk and Authorization Management Program (FedRAMP).

**POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:**

Individual's name, DoD ID number and/or SSN, or aliases.

**POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:**

Records are maintained and disposed in accordance with National Archives and Records Administration Schedules. The Military Departments retain records in accordance with their individual Records and Information Management retention schedules. The retention period may be obtained by contacting the system manager for the Military Department.

**ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:**

DoD safeguards records in this system of records according to applicable rules, policies, and procedures, including all applicable DoD automated systems security and access policies. DoD policies require the use of controls to minimize the risk of compromise of personally identifiable information (PII) in paper and electronic form and to enforce access by those with a need to know and with appropriate clearances. Additionally, the DoD has established security audit and accountability policies and procedures which support the safeguarding of PII and detection of potential PII incidents. The DoD routinely employs safeguards such as the following to information systems and paper recordkeeping systems: Multifactor log-in authentication including CAC authentication and password; SIPR token as required; physical and technological access controls governing access to data; network encryption to protect data transmitted over the network; disk encryption securing disks storing data; key management services to safeguard encryption keys; masking of sensitive data as practicable; mandatory information assurance and privacy training for individuals who will have access; identification, marking, and safeguarding of PII; physical access safeguards including multifactor identification physical access controls, detection and electronic alert systems for access to servers and other network infrastructure; and electronic intrusion detection systems in DoD facilities.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to their records should address written inquiries to the DoD office with oversight of the records. The public may identify the appropriate DoD office through the following website: *www.FOIA.gov.* Signed written requests should contain the name and number of this system of records notice along with the full name, identifier (*i.e.,* DoD ID Number or Defense Benefits Number), date of birth, current address, and telephone number of the individual. In addition, the requester must provide either a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the appropriate format:

If executed outside the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

**CONTESTING RECORD PROCEDURES:**

The DoD rules for accessing records, contesting contents, and appealing initial agency determinations are contained in 32 CFR part 310, or may be obtained from the appropriate system manager.

**NOTIFICATION PROCEDURES:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the appropriate system mangers(s). Signed written requests should contain the full name, identifier (*i.e.* DoD ID Number or DoD Benefits Number), date of birth, and current address and telephone number of the individual. In addition, the requester must provide either a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the appropriate format:

If executed outside the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

**EXEMPTIONS PROMULGATED FOR THE SYSTEM:**

The DoD has exempted records maintained in this system from 5 U.S.C. 552a(c)(3) and (4), (d)(1), (2), (3), and (4); (e)(1), (2) (3), (4)(G)–(I), (5), and (8); and (g) of the Privacy Act, pursuant to 5 U.S.C. 552a(k)(1), (k)(2) and (j)(2), as applicable. An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), and (c), and published in 32 CFR part 310. In addition, when exempt records received from other systems of records become part of this system, the DoD also claims the same exemptions for those records that are claimed for the prior systems of records from which they originated and claims any additional exemptions set forth here.

**HISTORY:**

None.

[FR Doc. 2021–10367 Filed 5–24–21; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

**[Docket ID: USN–2021–HQ–0004]**

### Submission for OMB Review; Comment Request

**AGENCY:** The United States Marine Corps, Department of Defense (DoD).

**ACTION:** Information collection notice.

**SUMMARY:** Consistent with the Paperwork Reduction Act of 1995 and its implementing regulations, this document provides notice DoD is submitting an Information Collection Request to the Office of Management and Budget (OMB) to collect information on active-duty military members, DoD civilians, and contractors, inform COVID–19 vaccine status and return to in-person work. DoD requests emergency processing and OMB authorization to collect the information.

**DATES:** Comments must be received by June 1, 2021.

**ADDRESSES:** The Department has requested emergency processing from OMB for this information collection request by 5 days after publication of this notice. Interested parties can access the supporting materials and collection instrument as well as submit comments and recommendations to OMB at *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 5-day Review—Open for Public Comments'' or by using the search function.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

**FOR FURTHER INFORMATION CONTACT:** Angela Duncan, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

**SUPPLEMENTARY INFORMATION:** This study will examine gender integration at USMC recruit training from the perspective of the recruits, training cadre and senior leaders. The study will also observe training events that occur throughout the conduct of recruit training. These surveys and interviews will also be conducted with a smaller population of non USMC service members.

*Title; Associated Form; and OMB Number:* USMC Gender Integration Study; 0703–UGIS.

*Type of Request:* New.

*Number of Respondents:* 770.

*Responses per Respondent:* 1.

*Annual Responses:* 770.

*Average Burden per Response:* 45 Minutes.

*Annual Burden Hours:* 577.5 Hours.

*Affected Public:* DoD Service Members.

*Frequency:* One time.

*Respondent's Obligation:* Voluntary.

**Request for Comments**

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information collected has practical utility; (2) the accuracy of DoD's estimate of the burden (including hours and cost) 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 automated collection techniques or the use of other forms of information technology.

Dated: May 19, 2021.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2021–10949 Filed 5–24–21; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF EDUCATION

**[Docket No.: ED–2021–SCC–0078]**

### Agency Information Collection Activities; Comment Request; Statewide Longitudinal Data System (SLDS) Survey 2021–2023

**AGENCY:** Institute of Education Sciences (IES), National Center for Education Statistics (NCES), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of a currently approved collection.

**DATES:** Interested persons are invited to submit comments on or before July 26, 2021.

**ADDRESSES:** To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2021–SCC–0078. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the PRA Coordinator of the

Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W208B, Washington, DC 20202–8240.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Carrie Clarady, (202) 245–6347.

**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:* Statewide Longitudinal Data System (SLDS) Survey 2021–2023.

*OMB Control Number:* 1850–0933.

*Type of Review:* Revision of a currently approved collection.

*Respondents/Affected Public:* State, Local, and Tribal Governments.

*Total Estimated Number of Annual Responses:* 112.

*Total Estimated Number of Annual Burden Hours:* 140.

*Abstract:* The National Center for Education Statistics (NCES), of the Institute of Education Sciences (IES), within the U.S. Department of Education, is requesting clearance to continue the Statewide Longitudinal Data System (SLDS) Survey collection, which is intended to provide insight on State and U.S. territory SLDS capacity for automated linking of K–12, teacher, postsecondary, workforce, career and technical education (CTE), adult education, and early childhood data. The SLDS Survey will continue to be collected annually from State Education Agencies (SEAs), and will help inform NCES ongoing evaluation and targeted technical assistance efforts to enhance the quality of the SLDS Program's support to States regarding systems development, enhancement, and use. The request to conduct all activities related to SLDS 2020–22, including materials and procedures, was approved by OMB in May 2020 (OMB#1859–0933 v.8), with a nonsubstantive change request (OMB#1859–0933 v.9) approved in August 2020. The SLDS 2020–22 package included a new data collection tool, a Google Form developed for an electronic data collection. That tool was not as successful in the 2020 data collection as NCES would like (see section A.3 for a richer discussion of this). This revised request is to conduct all activities related to SLDS 2021–23. It submits enhancements to the OMB-approved Survey, intended to bring consistency to questions across sectors, provide greater definition and clarity to terminology and questions used within the SLDS Survey, and address pandemic-related response across states. In addition, this request submits screenshots of the new Qualtrics information collection tool that will replace the Google Form introduced for SLDS 2020 and which will be used in the 2021 SLDS Data Collection (for proposed changes, see Appendix E) and is planned for use in subsequent collections. Finally, this request submits screenshots of the updated webinar, as the SLDS Program proposes the option to host one or two SLDS Survey webinars to familiarize respondents with the collection tool and completion process. All proposed changes are captured within these documents, including accompanying appendices.

Dated: May 20, 2021.

**Stephanie Valentine,**

*PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.*

[FR Doc. 2021–11057 Filed 5–24–21; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### Electricity Advisory Committee

**AGENCY:** Department of Energy, Office of Electricity.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a virtual meeting of the Electricity Advisory Committee. The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Wednesday, June 9, 2021; 11:45 a.m.–4:45 p.m. EST; Thursday, June 10, 2021; 11:45 a.m.–5:00 p.m. EST.

**ADDRESSES:** Due to ongoing precautionary measures surrounding the spread of COVID–19, the June meeting of the EAC will be held via WebEx video and teleconference. In order to track all participants, the Department is requiring that those wishing to attend register for the meeting here: *https://www.energy.gov/oe/june-9-10-2021-meeting-electricity-advisory-committee.* Please note, you must register for each day you would like to attend.

**FOR FURTHER INFORMATION CONTACT:** Christopher Lawrence, Designated Federal Officer, Office of Electricity, U.S. Department of Energy, Washington, DC 20585; Telephone: (202) 586–5260 or Email: *Christopher.Lawrence@hq.doe.gov.*

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Committee:* The Electricity Advisory Committee (EAC) was established in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, to provide advice to the U.S. Department of Energy (DOE) in implementing the Energy Policy Act of 2005, executing certain sections of the Energy Independence and Security Act of 2007, and modernizing the nation's electricity delivery infrastructure. The EAC is composed of individuals of diverse backgrounds selected for their technical expertise and experience, established records of distinguished professional service, and their knowledge of issues that pertain to the electric sector.

**Tentative Agenda**

*June 9, 2021*

11:45 a.m.–12:00 p.m.–WebEx Attendee Sign-On
12:00 p.m.–12:20 p.m.—Welcome, Introductions, Developments since the April 2021 Meeting
12:20 p.m.–1:00 p.m.—Update on Office of Electricity Programs and Initiatives
1:00 p.m.–2:30 p.m.—Panel Presentation: *Working Together Towards a Sustainable and Resilient Zero Carbon Emission Future: Hydrogen, Batteries, & Natural Gas*
2:30 p.m.–2:45 p.m.—Break
2:45 p.m.–3:45 p.m.—Open Discussion Among Members Regarding the Storage Panel Presentation
3:45 p.m.–4:00 p.m.—Energy Storage Subcommittee Report

4:00 p.m.–4:15 p.m.—Subcommittee Update: Smart Grid
4:15 p.m.–4:30 p.m.—Subcommittee Update: *Grid Resilience for National Security*
4:30 p.m.–4:45 p.m.—Wrap-up and Adjourn Day 1

*June 10, 2021*

11:45 a.m.–12:00 p.m.—WebEx Attendee Sign-On
12:00 p.m.–12:10 p.m.—Day 2 Opening Remarks
12:10 p.m.–1:00 p.m.—Panel: *Electric Vehicle Integration Report*
1:00 p.m.–2:00 p.m.—Discussion Between EAC Member and Panelists Regarding Electric Vehicle Integration Report
2:00 p.m.–2:15 p.m.—Break
2:15 p.m.–4:00 p.m.—Resilience Panel Metrics Panel and Discussion
4:00 p.m.–4:30 p.m.—Discussion of Pathway Development Project
4:30 p.m.–4:50 p.m.—Public Comments
4:50 p.m.–5:00 p.m.—Wrap-up and Adjourn June 2021 Meeting of the EAC

The meeting agenda may change to accommodate EAC business. For EAC agenda updates, see the EAC website at: *http://energy.gov/oe/services/electricity-advisory-committee-eac.*

*Public Participation:* The EAC welcomes the attendance of the public at its meetings. Individuals who wish to offer public comments at the EAC meeting may do so on June 10, but must register in advance. Approximately 20 minutes will be reserved for public comments. Time allotted per speaker will depend on the number who wish to speak but is not expected to exceed three minutes. Anyone who is not able to attend the meeting, or for whom the allotted public comments time is insufficient to address pertinent issues with the EAC, is invited to send a written statement identified by ''Electricity Advisory Committee June 2021 Meeting,'' to Mr. Christopher Lawrence at *Christopher.lawrence@hq.doe.gov.*

*Minutes:* The minutes of the EAC meeting will be posted on the EAC web page at *http://energy.gov/oe/services/electricity-advisory-committee-eac.* They can also be obtained by contacting Mr. Christopher Lawrence at the address above.

Signed in Washington, DC, on May 19, 2021.

**LaTanya R. Butler,**

*Deputy Committee Management Officer.*

[FR Doc. 2021–10952 Filed 5–24–21; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Northern New Mexico

**AGENCY:** Office of Environmental Management, Department of Energy.

**ACTION:** Notice of open virtual meeting.

**SUMMARY:** This notice announces an online virtual combined meeting of the Consent Order Committee and Risk Evaluation and Management Committee of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico. The Federal Advisory Committee Act requires that public notice of this online virtual meeting be announced in the **Federal Register**.

**DATES:** Wednesday, June 23, 2021; 1:00 p.m.–4:00 p.m.

**ADDRESSES:** This meeting will be held virtually via Webex. To attend, please contact Menice Santistevan by email, *Menice.Santistevan@em.doe.gov*, no later than 5:00 p.m. MT on Monday, June 21, 2021.

*To Sign Up for Public Comment:* Please contact Menice Santistevan by email, *Menice.Santistevan@em.doe.gov,* no later than 5:00 p.m. MT on Monday, June 21, 2021.

**FOR FURTHER INFORMATION CONTACT:** Menice Santistevan, Northern New Mexico Citizens' Advisory Board (NNMCAB), 94 Cities of Gold Road, Santa Fe, NM 87506. Phone (505) 995–0393 or Email: *Menice.Santistevan@em.doe.gov.*

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

*Purpose of the Consent Order Committee (COC):* It is the mission of the COC to review the Consent Order, evaluate its strengths and weaknesses, and make recommendation as to how to improve the Consent Order. It is also within the mission of this committee to review and ensure implementation of NNMCAB Recommendation 2019–02, Improving the Utility of the Consent Order with Supplementary Information. The COC will work with the NNMCAB Risk Evaluation and Management Committee to review the risk-based approaches used to determine the prioritization of cleanup actions, as well as the ''relative risk ranking'' of the campaigns, targets, and milestones by the NNMCAB, to be recommended for use by the DOE EM Los Alamos Field Office (EM–LA) both within and outside of those activities covered by the Consent Order.

*Purpose of the Risk Evaluation and Management Committee (REMC):* The REMC provides external citizen-based oversight and recommendations to the DOE EM–LA on human and ecological health risk resulting from historical, current, and future hazardous and radioactive legacy waste operations at Los Alamos National Laboratory (LANL). The REMC will, to the extent feasible, stay informed of DOE EM–LA and LANL's environmental restoration and long-term environmental stewardship programs and plans. The REMC will also work with the NNMCAB COC to provide DOE EM–LA and LANL with the public's desires in determining cleanup priorities. The REMC will prepare recommendations that represent to the best of committee's knowledge and ability to determine, the public's position on human and ecological health risk issues pertaining to direct radiation or contaminant exposure to soils, air, surface and groundwater quality, or the agricultural and ecological environment.

**Tentative Agenda**

- Approval of Agenda and Meeting Minutes of April 14, 2021
- Old Business
- New Business
- Public Comment Period
  - Presentation on Integrated Response to COVID–19 for a Multi-Faceted Environmental Restoration and Waste Management Enterprise
  - Presentation on Legacy Transuranic Waste Challenges for EM at the Los Alamos National Laboratory's TA–54, including Difficult Waste Streams
  - Update from Deputy Designated Federal Officer
- Presentation Requests for Future Meetings

*Public Participation:* The online virtual meeting is open to the public. Written statements may be filed with the Committees either before or within five days after the meeting by sending them to Menice Santistevan at the aforementioned email address. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

*Minutes:* Minutes will be available by writing or calling Menice Santistevan at the address or telephone number listed above. Minutes and other Board

documents are on the internet at: *http://energy.gov/em/nnmcab/meeting-materials.*

Signed in Washington, DC, on May 19, 2021.

**LaTanya Butler,**

*Deputy Committee Management Officer.*

[FR Doc. 2021–10951 Filed 5–24–21; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

*Docket Numbers:* RP21–324–001.

*Applicants:* Midship Pipeline Company, LLC.

*Description:* Compliance filing RP21–324 Compliance of Gulfport Amended Non-Conf/Neg Rate Agreement to be effective 5/17/2021.

*Filed Date:* 5/17/21.

*Accession Number:* 20210517–5119.

*Comments Due:* 5 p.m. ET 6/1/21.

*Docket Numbers:* RP21–827–000.

*Applicants:* Alliance Pipeline L.P.

*Description:* § 4(d) Rate Filing: Discount Conditions Tariff Filing to be effective 6/17/2021.

*Filed Date:* 5/17/21.

*Accession Number:* 20210517–5039.

*Comments Due:* 5 p.m. ET 6/1/21.

*Docket Numbers:* RP21–828–000.

*Applicants:* Cove Point LNG, LP.

*Description:* § 4(d) Rate Filing: Cove Point—Modification of Request for Service Form to be effective 6/16/2021.

*Filed Date:* 5/17/21.

*Accession Number:* 20210517–5047.

*Comments Due:* 5 p.m. ET 6/1/21.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 18, 2021.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2021–10947 Filed 5–24–21; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG21–148–000.

*Applicants:* BRP Ranchtown Bess LLC.

*Description:* Notice of Self-Certification of Exempt Wholesale Generator Status of BRP Ranchtown Bess LLC.

*Filed Date:* 5/13/21.

*Accession Number:* 20210513–5182.

*Comments Due:* 5 p.m. ET 6/3/21.

*Docket Numbers:* EG21–149–000.

*Applicants:* RWE Renewables Americas, LLC.

*Description:* Self-Certification of EWG for Hickory Park Solar, LLC.

*Filed Date:* 5/19/21.

*Accession Number:* 20210519–5090.

*Comments Due:* 5 p.m. ET 6/9/21.

*Docket Numbers:* EG21–150–000.

*Applicants:* Priddy Wind Project, LLC.

*Description:* Notice of Self-Certification of Exempt Wholesale Generator Status of Priddy Wind Project, LLC.

*Filed Date:* 5/19/21.

*Accession Number:* 20210519–5116.

*Comments Due:* 5 p.m. ET 6/9/21.

*Docket Numbers:* EG21–151–000.

*Applicants:* Iron Star Wind Project, LLC.

*Description:* Notice of Self-Certification of Exempt Wholesale Generator Status of Iron Star Wind Project, LLC.

*Filed Date:* 5/19/21.

*Accession Number:* 20210519–5118.

*Comments Due:* 5 p.m. ET 6/9/21.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER20–1237–002.

*Applicants:* Ameren Illinois Company.

*Description:* Compliance Filing of Ameren Illinois Company.

*Filed Date:* 5/17/21.

*Accession Number:* 20210517–5259.

*Comments Due:* 5 p.m. ET 6/7/21.

*Docket Numbers:* ER20–2316–002.

*Applicants:* Hillcrest Solar I, LLC.

*Description:* Notice of Change in Status of Hillcrest Solar I, LLC.

*Filed Date:* 5/18/21.

*Accession Number:* 20210518–5183.

*Comments Due:* 5 p.m. ET 6/8/21.

*Docket Numbers:* ER21–1910–000.

*Applicants:* California Independent System Operator Corporation.

*Description:* § 205(d) Rate Filing: 2021–05–14 Certificate of Concurrence—Yellow Pine to be effective 4/30/2021.

*Filed Date:* 5/14/21.

*Accession Number:* 20210514–5118.

*Comments Due:* 5 p.m. ET 6/4/21.

*Docket Numbers:* ER21–1944–000.

*Applicants:* NTE Ohio, LLC.

*Description:* § 205(d) Rate Filing: Ohio Power Partners, LLC—Notice of Succession MBR to be effective 4/19/2021.

*Filed Date:* 5/19/21.

*Accession Number:* 20210519–5013.

*Comments Due:* 5 p.m. ET 6/9/21.

*Docket Numbers:* ER21–1945–000.

*Applicants:* NTE Ohio, LLC.

*Description:* § 205(d) Rate Filing: Ohio Power Partners, LLC—Notice of Succession Reactive Rate Schedules to be effective 4/19/2021.

*Filed Date:* 5/19/21.

*Accession Number:* 20210519–5024.

*Comments Due:* 5 p.m. ET 6/9/21.

*Docket Numbers:* ER21–1946–000.

*Applicants:* Southwest Power Pool, Inc.

*Description:* § 205(d) Rate Filing: Revisions to Update Definitions in the Western Energy Imbalance Service Tariff to be effective 7/19/2021.

*Filed Date:* 5/19/21.

*Accession Number:* 20210519–5036.

*Comments Due:* 5 p.m. ET 6/9/21.

*Docket Numbers:* ER21–1947–000.

*Applicants:* NedPower Mount Storm LLC.

*Description:* § 205(d) Rate Filing: Market-Based Rate Tariff to be effective 5/20/2021.

*Filed Date:* 5/19/21.

*Accession Number:* 20210519–5084.

*Comments Due:* 5 p.m. ET 6/9/21.

*Docket Numbers:* ER21–1948–000.

*Applicants:* Alabama Power Company.

*Description:* § 205(d) Rate Filing: Washington County Solar Amended and Restated LGIA Filing to be effective 5/6/2021.

*Filed Date:* 5/19/21.

*Accession Number:* 20210519–5106.

*Comments Due:* 5 p.m. ET 6/9/21.

*Docket Numbers:* ER21–1949–000.

*Applicants:* Virginia Electric and Power Company, PJM Interconnection, L.L.C.

*Description:* § 205(d) Rate Filing: VEPCO submits Interconnection Agreement, SA No. 3453 with Duke Energy to be effective 5/19/2021.

*Filed Date:* 5/19/21.

*Accession Number:* 20210519–5107.

*Comments Due:* 5 p.m. ET 6/9/21.

*Docket Numbers:* ER21–1950–000.

*Applicants:* Alabama Power Company.

*Description:* § 205(d) Rate Filing: Origis Holdings USA Subco (Villa Rica I Storage) LGIA Filing to be effective 5/7/2021.

*Filed Date:* 5/19/21.

*Accession Number:* 20210519–5108.

*Comments Due:* 5 p.m. ET 6/9/21.

*Docket Numbers:* ER21–1951–000.

*Applicants:* Alabama Power Company.

*Description:* § 205(d) Rate Filing: Origis Holdings USA Subco (Villa Rica II Storage) LGIA Filing to be effective 5/7/2021.

*Filed Date:* 5/19/21.

*Accession Number:* 20210519–5110.

*Comments Due:* 5 p.m. ET 6/9/21.

*Docket Numbers:* ER21–1952–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* § 205(d) Rate Filing: Amendment to ISA, Service Agreement No. 5258; Queue No. AC1–085 to be effective 1/7/2019.

*Filed Date:* 5/19/21.

*Accession Number:* 20210519–5145.

*Comments Due:* 5 p.m. ET 6/9/21.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 19, 2021.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2021–11019 Filed 5–24–21; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 10853–022]**

### Otter Tail Power Company; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the application for a new license for the Otter Tail River Hydroelectric Project, which consists of five developments on the Otter Tail River that begins in the Township of Friberg, Minnesota and extends downstream (south) of the City of Fergus Falls in Otter Tail County, Minnesota. The project does not occupy federal land.

The EA contains staff's analysis of the potential environmental effects of the project and concludes that licensing the project, with appropriate environmental measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

The Commission provides all interested persons with an opportunity to view and/or print the EA via the internet through the Commission's Home Page (*http://www.ferc.gov/*) using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659.

You may also register online at *https://ferconline.ferc.gov/eSubscription.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 45 days from the date of this notice.

The Commission strongly encourages electronic filings. Please file comments using the Commission's eFiling system at *https://ferconline.ferc.gov/eFiling.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–10853–022.

For further information, contact Patrick Ely at *patrick.ely@ferc.gov* or (202) 502–8570.

Dated: May 18, 2021.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2021–10940 Filed 5–24–21; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EL21–74–000]**

### Nevada Power Company, Sierra Pacific Power Company v. California Independent System, Operator Corporation; Notice of Complaint

Take notice that on May 17, 2021, pursuant to sections 206, of the Federal Power Act, 16 U.S.C. 824e and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206 (2020), Nevada Power Company and Sierra Pacific Power Company (Complainants) filed a formal complaint against California Independent System Operator Corporation (CAISO or Respondent) alleging that the CAISO's proposal to modify the curtailment practices under the CAISO Tariff and over the CAISO Controlled Grid by means of changes to certain penalty price parameters in a business practice manual is unjust, unreasonable and unduly discriminatory, as more fully explained in the complaint.

The Complainants certifies that copies of the complaint were served on the contacts listed for Respondents in the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of

the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondents' answer and all interventions, or protests must be filed on or before the comment date. The Respondents' answer, motions to intervene, and protests must be served on the Complainant.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov,* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

*Comment Date:* 5:00 p.m. Eastern Time on May 28, 2021.

Dated: May 18, 2021.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2021–10946 Filed 5–24–21; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC21–95–000.
*Applicants:* Saavi Energy Solutions, LLC, Baja California Power, Inc.
*Description:* Application for Authorization Under Section 203 of the Federal Power Act of Saavi Energy Solutions, LLC, et al.
*Filed Date:* 5/17/21.
*Accession Number:* 20210517–5209.
*Comments Due:* 5 p.m. ET 6/7/21.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER17–1320–002.
*Applicants:* Odyssey Solar, LLC.
*Description:* Compliance filing: Odyssey Solar, LLC Notice of Change in Status to be effective 5/19/2021.
*Filed Date:* 5/18/21.
*Accession Number:* 20210518–5105.
*Comments Due:* 5 p.m. ET 6/8/21.

*Docket Numbers:* ER17–1370–006; ER11–4535–005; ER16–2271–006; ER16–581–007; ER16–582–007; ER21–1254–001.
*Applicants:* ENGIE Energy Marketing NA, Inc., ENGIE Portfolio Management, LLC, ENGIE Resources LLC, ENGIE Retail, LLC, ENGIE Power & Gas LLC, Genbright LLC.
*Description:* Notice of Change in Status of ENGIE Energy Marketing NA, Inc., et al.
*Filed Date:* 5/17/21.
*Accession Number:* 20210517–5234.
*Comments Due:* 5 p.m. ET 6/7/21.

*Docket Numbers:* ER17–2281–001.
*Applicants:* Swamp Fox Solar, LLC.
*Description:* Compliance filing: Swamp Fox Solar, LLC Notice of Change in Status to be effective 5/19/2021.
*Filed Date:* 5/18/21.
*Accession Number:* 20210518–5102.
*Comments Due:* 5 p.m. ET 6/8/21.

*Docket Numbers:* ER17–2282–001.
*Applicants:* Champion Solar, LLC.
*Description:* Compliance filing: Champion Solar, LLC Notice of Change in Status to be effective 5/19/2021.
*Filed Date:* 5/18/21.
*Accession Number:* 20210518–5104.
*Comments Due:* 5 p.m. ET 6/8/21.

*Docket Numbers:* ER19–135–001.
*Applicants:* Peony Solar LLC.
*Description:* Compliance filing: Peony Solar, LLC Notice of Change in Status to be effective 5/19/2021.
*Filed Date:* 5/18/21.
*Accession Number:* 20210518–5099.
*Comments Due:* 5 p.m. ET 6/8/21.

*Docket Numbers:* ER20–64–001.
*Applicants:* PGR Lessee L, LLC.
*Description:* Compliance filing: PGR Lessee L, LLC Notice of Change in Status to be effective 5/19/2021.
*Filed Date:* 5/18/21.
*Accession Number:* 20210518–5108.
*Comments Due:* 5 p.m. ET 6/8/21.

*Docket Numbers:* ER20–65–001.
*Applicants:* TWE Bowman Solar Project, LLC.
*Description:* Compliance filing: TWE Bowman Solar Project, LLC Notice of Change in Status to be effective 5/19/2021.
*Filed Date:* 5/18/21.
*Accession Number:* 20210518–5107.
*Comments Due:* 5 p.m. ET 6/8/21.

*Docket Numbers:* ER20–2528–002.
*Applicants:* Airport Solar LLC.
*Description:* Compliance filing: Updated Tariff Records in Docket No. ER20–2528 to be effective 9/28/2020.
*Filed Date:* 5/18/21.
*Accession Number:* 20210518–5131.
*Comments Due:* 5 p.m. ET 6/8/21.

*Docket Numbers:* ER21–653–001.
*Applicants:* Centerfield Cooper Solar, LLC.
*Description:* Compliance filing: Centerfield Cooper Solar, LLC Notice of Change in Status to be effective 5/19/2021.
*Filed Date:* 5/18/21.
*Accession Number:* 20210518–5109.
*Comments Due:* 5 p.m. ET 6/8/21.

*Docket Numbers:* ER21–654–001.
*Applicants:* PGR Lessee O, LLC.
*Description:* Compliance filing: PGR Lessee O, LLC Notice of Change in Status to be effective 5/19/2021.
*Filed Date:* 5/18/21.
*Accession Number:* 20210518–5112.
*Comments Due:* 5 p.m. ET 6/8/21.

*Docket Numbers:* ER21–856–001.
*Applicants:* PGR Lessee P, LLC.
*Description:* Compliance filing: PGR Lessee P, LLC Notice of Change in Status to be effective 5/19/2021.
*Filed Date:* 5/18/21.
*Accession Number:* 20210518–5116.
*Comments Due:* 5 p.m. ET 6/8/21.

*Docket Numbers:* ER21–857–001.
*Applicants:* Trent River Solar, LLC.
*Description:* Compliance filing: Trent River Solar, LLC Notice of Change in Status to be effective 5/19/2021.
*Filed Date:* 5/18/21.
*Accession Number:* 20210518–5114.
*Comments Due:* 5 p.m. ET 6/8/21.

*Docket Numbers:* ER21–1933–000.
*Applicants:* ENGIE Power & Gas LLC.
*Description:* § 205(d) Rate Filing: Notice of Succession to be effective 5/17/2021.

*Filed Date:* 5/17/21.
*Accession Number:* 20210517–5165.
*Comments Due:* 5 p.m. ET 6/7/21.

*Docket Numbers:* ER21–1934–000.
*Applicants:* Northern States Power Company, a Minnesota corporation.
*Description:* § 205(d) Rate Filing: CAPX2020–Fargo–OMA–307–0.1.0 to be effective 7/17/2021.
*Filed Date:* 5/17/21.
*Accession Number:* 20210517–5168.
*Comments Due:* 5 p.m. ET 6/7/21.

*Docket Numbers:* ER21–1935–000.
*Applicants:* Arizona Public Service Company.
*Description:* § 205(d) Rate Filing: Service Agreement No. 390—Transmission Service Agreement with CSE to be effective 5/15/2021.
*Filed Date:* 5/17/21.
*Accession Number:* 20210517–5176.
*Comments Due:* 5 p.m. ET 6/7/21.

*Docket Numbers:* ER21–1936–000.
*Applicants:* Tri-State Generation and Transmission Association, Inc.
*Description:* § 205(d) Rate Filing: Amendment to Service Agreement No. 873 to be effective 5/14/2021.
*Filed Date:* 5/17/21.
*Accession Number:* 20210517–5180.
*Comments Due:* 5 p.m. ET 6/7/21.

*Docket Numbers:* ER21–1937–000.
*Applicants:* Altavista Solar, LLC.
*Description:* § 205(d) Rate Filing: Reactive Supply Service as Rate Schedule FERC No. 1 to be effective 6/1/2021.
*Filed Date:* 5/17/21.
*Accession Number:* 20210517–5183.
*Comments Due:* 5 p.m. ET 6/7/21.

*Docket Numbers:* ER21–1938–000.
*Applicants:* Northern Indiana Public Service Company.
*Description:* § 205(d) Rate Filing: Filing of a CIAC Agreement to be effective 5/18/2021.
*Filed Date:* 5/18/21.
*Accession Number:* 20210518–5044.
*Comments Due:* 5 p.m. ET 6/8/21.

*Docket Numbers:* ER21–1939–000.
*Applicants:* Duke Energy Progress, LLC.
*Description:* § 205(d) Rate Filing: DEP—Revised Depreciation Rates in Rate Schedule No. 199 to be effective 6/1/2021.
*Filed Date:* 5/18/21.
*Accession Number:* 20210518–5069.
*Comments Due:* 5 p.m. ET 6/8/21.

*Docket Numbers:* ER21–1940–000.
*Applicants:* Duke Energy Carolinas, LLC.
*Description:* § 205(d) Rate Filing: DEC—Revised Depreciation Rates to be effective 6/1/2021.
*Filed Date:* 5/18/21.
*Accession Number:* 20210518–5125.
*Comments Due:* 5 p.m. ET 6/8/21.

*Docket Numbers:* ER21–1941–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* Tariff Cancellation: Notice of Cancellation of WMPA Service Agreement No. 5624, AE2–229 re: withdrawal to be effective 6/22/2021.
*Filed Date:* 5/18/21.
*Accession Number:* 20210518–5127.
*Comments Due:* 5 p.m. ET 6/8/21.

*Docket Numbers:* ER21–1942–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* Tariff Cancellation: Notice of Cancellation of WMPA Service Agreement No.5613, AE2–225 re: withdrawal to be effective 6/22/2021.
*Filed Date:* 5/18/21.
*Accession Number:* 20210518–5142.
*Comments Due:* 5 p.m. ET 6/8/21.

*Docket Numbers:* ER21–1943–000.
*Applicants:* Southern California Edison Company.
*Description:* Notice of Termination of Interconnection Agreement of Southern California Edison Company.
*Filed Date:* 5/18/21.
*Accession Number:* 20210518–5167.
*Comments Due:* 5 p.m. ET 6/8/21.

Take notice that the Commission received the following electric securities filings:

*Docket Numbers:* ES21–47–000.
*Applicants:* GridLiance West LLC.
*Description:* Application under Section 204 of the Federal Power Act for Authorization to Issue Securities for GridLiance West LLC under ES21–47.
*Filed Date:* 5/17/21.
*Accession Number:* 20210517–5212.
*Comments Due:* 5 p.m. ET 6/7/21.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 18, 2021.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2021–10942 Filed 5–24–21; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Effectiveness of Exempt Wholesale Generator and Foreign Utility Company Status

| | |
|---|---|
| Coso Battery Storage, LLC | EG21–88–000 |
| Chisholm Grid, LLC | EG21–89–000 |
| Cool Springs Solar, LLC | EG21–90–000 |
| Dodge Flat Solar, LLC | EG21–91–000 |
| Prairie State Solar, LLC | EG21–92–000 |
| Dressor Plains Solar, LLC | EG21–93–000 |
| Elora Solar, LLC | EG21–94–000 |
| Fish Springs Ranch Solar, LLC | EG21–95–000 |
| Quitman II Solar, LLC | EG21–96–000 |
| Iris Solar, LLC | EG21–97–000 |
| St. James Solar, LLC | EG21–98–000 |
| Conrad (Benfleet) Limited | FC21–2–000 |

Take notice that during the month of April 2021, the status of the above-captioned entities as Exempt Wholesale Generators or Foreign Utility Companies became effective by operation of the Commission's regulations. 18 CFR 366.7(a) (2020).

Dated: May 19, 2021.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2021–11020 Filed 5–24–21; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP21–829–000]**

### Coalition for Fair Fuel Rates v. Columbia Gulf Transmission, LLC; Notice of Complaint

Take notice that on May 17, 2021, pursuant to Section 5 of the Natural Gas Act [1] and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206 (2020), Coalition for Fair Fuel Rates [2] (Complainants) filed a formal complaint against Columbia Gulf Transmission, LLC (Respondent), alleging that the Respondent's methodology for deriving and assessing fuel retainage on its Market Zone-

[1] 15 U.S.C. 717d.

[2] The Coalition for Fair Fuel Rates consists of: Marubeni Natural Gas and LNG America Corp., Mitsui & Co. Cameron LNG Sales LLC, Sabine Pass Liquefaction, LLC, and Total Gas & Power North America, Inc.

Mainline is unjust and unreasonable and inconsistent with Section 5 of the Natural Gas Act, Commission regulations, and Commission policy and precedent, all as more fully explained in its complaint.

The Complainants certify that copies of the complaint were served on the contacts listed for Respondent in the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainant.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov,* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

*Comment Date:* 5:00 p.m. Eastern Time on June 7, 2021.

Dated: May 18, 2021.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2021–10941 Filed 5–24–21; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2009–0136; FRL–10023–41]**

## Pesticide Registration Review; Sulfuryl Fluoride Draft Interim Re-Entry Mitigation Measures and Registration Review Draft Risk Assessments for Sulfuryl Fluoride; Notice of Availability

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the availability of EPA's Sulfuryl Fluoride Draft Interim Re-Entry Mitigation Measures and several registration review draft risk assessments for sulfuryl fluoride. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, that the pesticide can perform its intended function without causing unreasonable adverse effects on human health or the environment. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment. EPA may pursue mitigation at any time during the registration review process if it finds that a pesticide poses unreasonable adverse effects to human health or the environment. To address human health incidents and in response to EPA's Office of Inspector General 2016 (OIG) Report, *Additional Measures Can Be Taken to Prevent Deaths and Serious Injuries From Residential Fumigations* (No. 17–P–0053), the EPA believes that the mitigation measures outlined in this Sulfuryl Fluoride Draft Interim Re-Entry Mitigation Measures are necessary to address identified human health risk concerns. The scope of this interim mitigation is focused on the use of sulfuryl fluoride as a structural fumigant in residential use sites. The Agency is also publishing several registration review risk assessments on sulfuryl fluoride for public comment.

**DATES:** Comments must be received on or before July 26, 2021.

**ADDRESSES:** Submit your comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, are available at *http://www.epa.gov/dockets.*

Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Public Reading Room are closed to visitors with limited exceptions. The EPA/DC staff continue to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

**FOR FURTHER INFORMATION CONTACT:** *For pesticide specific information contact:* Moana Appleyard, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 308–8175; email address: *appleyard.moana@epa.gov.*

*For general questions on the registration review program, contact:* Melanie Biscoe, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 305–7106; email address: *biscoe.melanie@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this action apply to me?*

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental and human health advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the Chemical Review Manager listed under **FOR FURTHER INFORMATION CONTACT**.

*B. What should I consider as I prepare my comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

## II. Background

Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. As part of the registration review process, the Agency has completed the Sulfuryl Fluoride Draft Interim Re-Entry Mitigation Measures. This decision document is in response to the EPA Office of the Inspector General's (OIG) 2016 report entitled *Additional Measures Can Be Taken to Prevent Deaths and Serious Injuries From Residential Fumigations* (available at: *https://www.epa.gov/sites/production/files/2016-12/documents/_epaoig_20161212-17-p-0053.pdf).* The OIG conducted this report to determine the extent and nature of adverse impacts caused by structural fumigation, after two incidents in 2015, including one with the chemical sulfuryl fluoride. The OIG report sought to determine whether regulatory, program execution (*e.g.,* training, funding, inspections, enforcement, etc.), or other factors were associated with adverse impacts. The focus of the audit with regards to the chemical sulfuryl fluoride, is residential fumigation use. The OIG report detailed several recommendations that fall under the purview of the Office of Pesticide Programs (OPP), including:

- Implement a process to evaluate label changes for all three brands of sulfuryl fluoride to require secured tenting and fumigation management plans.
- Clearly define the criteria for meeting the applicator stewardship training requirement.
- Conduct an assessment of clearance devices to validate their effectiveness.

The purpose of the Sulfuryl Fluoride Draft Interim Re-Entry Mitigation Measures is to propose risk mitigation measures to address these recommendations from the OIG report ahead of the typical mitigation phase of Registration Review. EPA expects that the implementation of the mitigation measures described in this risk mitigation document will allow sulfuryl fluoride products to remain available to users while addressing the recommendations from the OIG report.

The Agency has also completed several registration review draft human health and ecological risk assessments for sulfuryl fluoride. After reviewing comments received during the public comment period, EPA may then issue the Sulfuryl Fluoride Final Interim Re-Entry Mitigation Measures, revised risk assessments, explain any changes to the mitigation measures and draft risk assessments, and respond to comments. The Agency is only proposing mitigation to address the OIG audit at this time. Once all the risk assessments are completed for all the uses of sulfuryl fluoride, EPA may propose additional mitigation to address potential risks, as part of the normal registration review process. At that time, EPA may request public input on additional risk mitigation before completing a Proposed Interim Decision (PID). Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

## III. Authority

EPA is conducting its registration review of the sulfuryl fluoride documents listed in Unit IV pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5) (7 U.S.C. 136a(c)(5)). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

## IV. What action is the Agency taking?

Pursuant to 40 CFR 155.58, this notice announces the availability of EPA's Sulfuryl Fluoride Draft Interim Re-Entry Mitigation Measures and several human health and ecological risk assessments for sulfuryl fluoride and opens a 60-day public comment period on the Sulfuryl Fluoride Draft Interim Re-Entry Mitigation Measures and the risk assessments. Additional support documents will be available in the public docket, which the Agency is not taking comment on.

*Documents to publish in response to the OIG audit and open for public comment:*

- Sulfuryl Fluoride Draft Interim Re-Entry Mitigation Measures.
- Sulfuryl Fluoride: Tier I Review of Human Incidents for Draft Risk Assessment.

*Support documents to publish in response to the OIG audit that are not open for public comment:*

- Memorandum: Assessment of Portable Devices for Their Effectiveness in Detecting Sulfuryl Fluoride (SF) at Clearance Level.
- Laboratory Testing of Portable Clearance Devices with Sulfuryl Fluoride Standard, Analytical Chemistry Branch (ACB), Office of Pesticide Programs.

The Agency is also publishing the following documents to the sulfuryl fluoride docket as part of the Registration Review of sulfuryl fluoride. These documents will publish for a 60-day comment period. After the dietary risk assessment for sulfuryl fluoride is

completed and publishes for comment, the Agency will issue a Proposed Interim Decision (PID) to address all the uses of sulfuryl fluoride.

*Registration Review documents available for publication and open for public comment:*

- Sulfuryl Fluoride. Residential Post-application Exposure and Risk Assessment.
- Sulfuryl Fluoride. Occupational and Residential Exposure Assessment in Support of Registration Review.
- Sulfuryl Fluoride—Draft Risk Assessment in Support of Office of Registration Review Part I: Occupational and Residential Exposure.
- Six Structural and Commodity Fumigants: Combined Draft Risk Assessment (DRA) and Drinking Water Assessment (DWA) for Registration Review.
- Overview of Application Methods and Factors, Use, Usage, and Benefits of Commodity and Structural Fumigants: Phosphine [(066500) including Aluminum Phosphide (066501) and Magnesium Phosphide (066504)], Propylene Oxide (042501), Sulfur Dioxide (077601), Sodium Metabisulfite (111409), Sulfuryl Fluoride, (078003), Ethylene Oxide (042301), and Methyl Bromide (053201).

Pursuant to 40 CFR 155.53(c), EPA is providing an opportunity, through this notice of availability, for interested parties to provide comments and input concerning the Agency's Sulfuryl Fluoride Draft Interim Re-Entry Mitigation Measures and the draft human health and ecological risk assessments for sulfuryl fluoride. The Agency will consider all comments received during the public comment period and make changes, as appropriate, to these documents. EPA may then issue the Sulfuryl Fluoride Final Interim Re-Entry Mitigation Measures, revised risk assessments, explain any changes to the mitigation measures and draft risk assessments, and respond to comments.

*Information submission requirements.* Anyone may submit data or information in response to this document. To be considered during a pesticide's registration review, the submitted data or information must meet the following requirements:

- To ensure that EPA will consider data or information submitted, interested persons must submit the data or information during the comment period. The Agency may, at its discretion, consider data or information submitted at a later date.
- The data or information submitted must be presented in a legible and useable form. For example, an English translation must accompany any material that is not in English and a written transcript must accompany any information submitted as an audio-graphic or video-graphic record. Written material may be submitted in paper or electronic form.
- Submitters must clearly identify the source of any submitted data or information.
- Submitters may request the Agency to reconsider data or information that the Agency rejected in a previous review. However, submitters must explain why they believe the Agency should reconsider the data or information in the pesticide's registration review.

As provided in 40 CFR 155.58, the registration review docket for each pesticide case will remain publicly accessible through the duration of the registration review process; that is, until all actions required in the final decision on the registration review case have been completed.

**Authority:** 7 U.S.C. 136 *et seq.*

Dated: May 5, 2021.

**Mary Reaves,**

*Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.*

[FR Doc. 2021–10519 Filed 5–24–21; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OAR–2021–0289; FRL–10024–34–OAR]**

## Notice of Data Availability Relevant To Petition Submissions Under the American Innovation and Manufacturing Act of 2020

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of data availability.

**SUMMARY:** This Notice of Data Availability is to alert stakeholders of petitions submitted to the Environmental Protection Agency under subsection (i) of the American Innovation and Manufacturing Act of 2020, and to provide notice of a new docket where these petitions and others submitted under subsection (i) will be made publicly available. The docket will provide the public the opportunity to view petitions submitted under this subsection and to submit any supplemental relevant data to the petitions. The Agency may consider relevant information submitted to the docket in its determinations of whether to grant or deny subsection (i) petitions.

**DATES:** The Environmental Protection Agency (EPA) is interested in receiving comments on the data in this notice of data availability (NODA) to inform the Agency's regulatory process. To ensure that your supplemental data may be considered in upcoming EPA determinations regarding petitions received on April 13, 2021, please submit information to the Agency by June 8, 2021.

**ADDRESSES:** You may send data identified by Docket ID No. EPA–HQ–OAR–2021–0289, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Air and Radiation Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery or Courier (by scheduled appointment only):* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays).

*Instructions:* All submissions received must include the Docket ID No. for this notice. Data received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. 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 data 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:** Joshua Shodeinde, U.S. Environmental Protection Agency, Stratospheric Protection Division, telephone number: 202–564–7037; or email address: *shodeinde.joshua@epa.gov.* You may also visit EPA's website at *https://www.epa.gov/climate-hfcs-reduction* for further information.

**SUPPLEMENTARY INFORMATION:**

### I. What should I consider as I prepare my submissions?

You may find the following suggestions helpful for preparing supplemental information: Explain your views as clearly as possible; describe any assumptions that you used; provide any technical information or data you used that support your views; provide specific examples to illustrate your concerns; offer alternatives; and make sure to submit your data by the deadline specified. Please provide any published studies or raw data supporting your position. Confidential Business Information (CBI) should not be submitted through *www.regulations.gov.* Please work with the person listed in the **FOR FURTHER INFORMATION CONTACT** section if submitting any information containing CBI.

### II. Background

Subsection (i) of the American Innovation and Manufacturing Act of 2020 (AIM Act or Act),[1] entitled ''Technology Transitions,'' provides that a person may petition the Administrator to promulgate a rule for the restriction on use of a regulated substance [2] in a sector or subsector. Once EPA receives a petition under this subsection, the AIM Act directs the Agency to make petitions publicly available within 30 days of receipt, and to grant or deny the petition within 180 days of receipt.

On April 13, 2021, the Agency received five petitions under subsection (i) of the AIM Act. We have established the docket to this notice to make these petitions publicly available, and to post letters of support and other submitted material for public accessibility. Table 1 below lists the petitions received by EPA on April 13, 2021, and each petition's docket document ID number. Going forward, EPA intends to also use this docket to post petitions and other relevant information submitted under subsection (i) of the AIM Act.

TABLE 1—LIST OF PETITIONERS AND PETITION DOCKET ID NUMBER

| Petitioner | Docket ID Number |
|---|---|
| Association of Home Appliance Manufacturers (AHAM) | EPA–HQ–OAR–2021–0289–0005. |
| Environmental Investigation Agency (EIA) | EPA–HQ–OAR–2021–0289–0006. |
| Natural Resources Defense Council (NRDC), Colorado Department of Public Health & Environment (CDPHE), and Institute for Governance & Sustainable Development (IGSD). | EPA–HQ–OAR–2021–0289–0007. |
| Air Conditioning, Heating, and Refrigeration Institute (AHRI) | EPA–HQ–OAR–2021–0289–0011. |
| Air Conditioning, Heating, and Refrigeration Institute (AHRI) | EPA–HQ–OAR–2021–0289–0012. |

Although not required under the statute, EPA welcomes additional data and relevant material to aid in its evaluation of petitions, based on the factors identified in the next section of this notice of data availability (NODA) and specified in subsection (i) of the AIM Act. Stakeholders should note that EPA is not soliciting information on any topic other than the posted petitions under subsection (i) through this notice. Public submissions that pertain to issues beyond the scope of this NODA will not be considered.

### III. What information does EPA consider when making a determination on a petition?

Subsection (i) of the AIM Act identifies certain factors for the Agency to consider when making a determination to grant or deny a petition. Specifically, subsection (i)(4) of the Act requires EPA to factor in, to the extent practicable:

(1) The best available data;

(2) the availability of substitutes for use of the regulated substance that is the subject of the petition, in a sector or subsector, taking into account technological achievability, commercial demands, affordability for residential and small business consumers, safety, consumer costs, building codes, appliance efficiency standards, contractor training costs, and other relevant factors, including the quantities of regulated substances available from reclaiming, prior production, or prior import;

(3) overall economic costs and environmental impacts, as compared to historical trends; and

(4) the remaining phase-down period for regulated substances under the final rule issued under subsection (e)(3) of the AIM Act, if applicable.

EPA invites relevant data related to the factors listed above for the petitions posted in the docket.[3] Any information submitted in response to this NODA should include the name of the petitioner(s) and the petition document ID number.

Subsequent petitions received by the Agency under subsection (i) will also be posted in this docket within 30 days of receipt, as well as on the Agency's website at *www.epa.gov/climate-hfcs-reduction/petitions-under-aim-act.* Interested entities may sign up to receive notification when new petitions are posted by following the instructions at this website. EPA invites relevant information regarding those petitions from the public to be submitted to the docket by the deadline provided on the website.

### IV. What happens after EPA makes a determination on a petition?

Where the Agency grants a petition submitted under subsection (i) of the AIM Act, the statute requires EPA to promulgate a final rule not later than two years from the date the Agency grants the petition. Per subsection (i)(1) of the AIM Act, EPA may issue rules that ''restrict, fully, partially, or on a graduated schedule,'' the use of a regulated substance in the sector or subsector in which the regulated substance is used. The Act establishes that no rule developed under subsection (i) may take effect earlier than one year after the rule promulgation date. In addition, prior to issuing a proposed rule under subsection (i), EPA must consider negotiating with stakeholders

[1] The AIM Act was enacted as section 103 in Division S, Innovation for the Environment, of the Consolidated Appropriations Act, 2021 (Pub. L. 116–260).

[2] The Act lists 18 saturated hydrofluorocarbons (HFCs), and by reference their isomers not so listed, that are covered by the statute's provisions, referred to as ''regulated substances'' under the Act. For the statutory list of regulated substances, refer to subsection (c)(1) of the AIM Act.

[3] Subsection (i)(5) of the AIM Act further states that, in carrying out subsection (i), the Agency shall ''evaluate substitutes for regulated substances in a sector or subsector, taking into account technological achievability, commercial demands, safety, overall economic costs and environmental impacts, and other relevant factors.''

in the sector or subsector in accordance with negotiated rulemaking procedures.[4] If the Agency decides not to undergo a negotiated rulemaking, the AIM Act requires the Agency to publish an explanation of its decision not to use that procedure.

For petitions which have been denied, the Agency will publish in the **Federal Register** an explanation of the denial.

**Cynthia A. Newberg,**

*Director, Stratospheric Protection Division.*

[FR Doc. 2021–11024 Filed 5–24–21; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OAR–2018–0209; FRL–10024–11–OAR]**

## Proposed Information Collection Request; Comment Request; Cross-State Air Pollution Rule and Texas $SO_2$ Trading Programs (Renewal)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), ''Cross-State Air Pollution Rule and Texas $SO_2$ Trading Programs (Renewal)'' (EPA ICR No. 2391.06, OMB Control No. 2060–0667) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through March 31, 2022. 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.

**DATES:** Comments must be submitted on or before July 26, 2021.

**ADDRESSES:** Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2018–0209, online using *www.regulations.gov* (our preferred method), by email to *a-and-r-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

**FOR FURTHER INFORMATION CONTACT:** Kevin Tran, Clean Air Markets Division, Office of Air and Radiation, (6204M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–343–9074; fax number: 202–343–2361; email address: *tran.kevin@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Supporting documents which explain in detail the information that EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) 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; (ii) 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; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) 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. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

*Abstract:* EPA is renewing an ICR for the Cross-State Air Pollution Rule (CSAPR) trading programs to allow for continued implementation of the programs. The information collection requirements under five CSAPR trading programs and the Texas $SO_2$ Trading Program are reflected in the existing ICR as most recently revised in 2018. In 2021, EPA promulgated an additional CSAPR $NO_X$ Ozone trading program which only includes sources previously subject to another CSAPR trading program reflected in the current ICR. This ICR renewal reflects all six CSAPR trading programs and the Texas $SO_2$ Trading Program. Most affected sources under the CSAPR and Texas trading programs are also subject to the Acid Rain Program (ARP). The information collection requirements under the CSAPR and Texas trading programs, which consist primarily of requirements to monitor and report emissions data in accordance with 40 CFR part 75, substantially overlap and are fully integrated with ARP information collection requirements. The burden and costs of overlapping requirements are accounted for in the ARP ICR (OMB Control Number 2060–0258). This ICR accounts for information collection burden and costs under the CSAPR and Texas trading programs that are incremental to the burden and costs already accounted for in the ARP ICR. All data received by EPA will be treated as public information.

*Form Numbers:* Agent Notice of Delegation #5900–172, Certificate of Representation #7610–1, General Account Form #7610–5, Allowance Transfer Form #7610–6, Retired Unit Exemption #7610–20, Allowance Deduction #7620–4.

*Respondents/affected entities:* Industry respondents are stationary, fossil fuel-fired boilers and combustion turbines serving electricity generators subject to the CSAPR and Texas trading programs, as well as non-source entities voluntarily participating in allowance trading activities. Potential state respondents are states that can elect to submit state-determined allowance allocations for sources located in their states.

*Respondents' obligation to respond:* Industry respondents: Voluntary and mandatory (Sections 110(a) and 301(a) of the Clean Air Act). State respondents: voluntary.

*Estimated number of respondents:* EPA estimates that there are 953 industry respondents, including 903 affected sources and 50 non-source entities participating in allowance trading activities, and 27 potential state respondents.

*Frequency of response:* On occasion, quarterly, and annually.

*Total estimated burden:* 113,512 hours (per year). Burden is defined at 5 CFR 1320.03(b).

[4] The negotiated rulemaking procedure is provided under subchapter III of chapter 5 of title 5, United States Code (commonly known as the ''Negotiated Rulemaking Act of 1990'').

*Total estimated cost:* $16,482,349 (per year); includes $7,095,827 annualized capital or operation & maintenance costs.

*Changes in estimates:* There is decrease of 21,111 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease is due almost entirely to adjustments in the estimated numbers of respondents and transactions.

**Reid P. Harvey,**

*Director, Clean Air Markets Division, Office of Atmospheric Programs, Office of Air and Radiation.*

[FR Doc. 2021–11023 Filed 5–24–21; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[OMB 3060–0600; FRS 28439]**

### Information Collection Requirement Being Submitted to the Office of Management and Budget for Emergency Review and Approval

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

**DATES:** Written PRA comments should be submitted on or before June 15, 2021.

**ADDRESSES:** Comments should be sent to *http://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the information collection to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918.

**SUPPLEMENTARY INFORMATION:** As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Commission invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

The Commission is requesting emergency OMB processing of the information collection requirement(s) contained in this notice and has requested OMB approval no later than 26 days after the collection is received at OMB. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of Commission ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the Commission's submission to OMB will be displayed.

*OMB Control Number:* 3060–0600.

*Title:* Application to Participate in an FCC Auction, FCC Form 175.

*Form Number:* FCC Form 175.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit entities, not-for-profit institutions, and state, local or Tribal governments.

*Estimated Number of Respondents and Responses:* 500 respondents and 500 responses.

*Estimated Time per Response:* 90 minutes.

*Frequency of Response:* On occasion reporting requirement.

*Obligation to Respond:* Required to obtain or retain benefits. Statutory authority for this information collection is contained in sections 154(i) and 309(j)(5) of the Communications Act, as amended, 47 U.S.C. 4(i), 309(j)(5), and in sections 1.2105, 1.2110, 1.2112 of the Commission's rules, 47 CFR 1.2105, 1.2110, 1.2112.

*Estimated Total Annual Burden:* 750 hours.

*Total Annual Costs:* None.

*Nature and Extent of Confidentiality:* Information collected on FCC Form 175 is made available for public inspection, and the Commission is not requesting that respondents submit confidential information on FCC Form 175. However, to the extent that a respondent seeks to have certain information collected on FCC Form 175 withheld from public inspection, the respondent may request confidential treatment of such information pursuant to section 0.459 of the Commission's rules, 47 CFR 0.459.

*Privacy Act Impact Assessment:* No impact(s).

*Needs and Uses:* FCC Form 175 is used by the public to apply to participate in auctions for Commission licenses and permits. The Beat CHINA for 5G Act of 2020, which was included in the Consolidated Appropriations Act, 2021, requires the Commission to begin an auction to grant new initial licenses for the use of a portion or all of the

3.45–3.55 GHz band no later than December 31, 2021. To begin the process of implementing this Congressional mandate, on March 17, 2021, the Commission adopted the *3.45 GHz Second Report and Order* (FCC 21–32), in which it established a new 3.45 GHz service and adopted rules to make licenses in the 3.45–3.55 GHz band available for flexible use wireless services throughout the contiguous United States. The Commission contemporaneously adopted the *Auction 110 Comment Public Notice* (FCC 21–33) in which it announced that an auction for licenses in the 3.45–3.55 GHz band will begin in early October 2021 and requested comment on proposed procedures for the auction. Among other things, the *Auction 110 Comment Public Notice* proposed that, in addition to making the certifications already required by the Commission's rules in its FCC Form 175 auction application, each Auction 110 applicant also certify that it has read the public notice adopting procedures for the auction and that it has familiarized itself both with the auction procedures and with the requirements for obtaining a license and operating facilities in the 3.45–3.55 GHz band. On May 19, 2021, the Commission's Office of Economics and Analytics and Wireless Telecommunications Bureau released a Public Notice (DA 21–567) adopting the proposed additional certification requirement for applicants seeking to participate in Auction 110. Accordingly, the Commission seeks OMB approval for a revision to its currently approved information collection to include this additional certification on FCC Form 175. The revised collection will enable the Commission to confirm that an auction applicant has read the public notice adopting procedures for the auction and has familiarized itself both with the auction procedures and with the requirements for obtaining a license and operating facilities in the 3.45–3.55 GHz band through the applicant's certification to that effect.

The Commission's auction rules and related requirements are designed to ensure that the competitive bidding process is limited to serious qualified applicants, deter possible abuse of the bidding and licensing processes, and enhance the use of competitive bidding to assign Commission licenses and permits in furtherance of the public interest. The information collected on FCC Form 175 is used by the Commission to determine if an applicant is legally, technically, and financially qualified to participate in an auction for Commission licenses or permits. Additionally, if an applicant applies for status as a particular type of auction participant pursuant to Commission rules, the Commission uses information collected on FCC Form 175 to determine whether the applicant is eligible for the status requested. Commission staff reviews the information collected on FCC Form 175 for a particular auction as part of the pre-auction process, prior to the auction being held. Staff determines whether each applicant satisfies the Commission's requirements to participate in the auction and, if an applicant claims status as a particular type of auction participant, whether that applicant is eligible for the status claimed. The Commission plans to continue to use the Form 175 for its upcoming auctions for Commission licenses and permits, including the forward auction component of any incentive auction, collecting only the information necessary for each particular auction.

Federal Communications Commission.

**Marlene Dortch,**

*Secretary, Office of the Secretary.*

[FR Doc. 2021–10982 Filed 5–24–21; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[OMB 3060–0999; FRS 27884]**

### Information Collection Being Reviewed by the Federal Communications Commission

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

**DATES:** Written comments should be submitted on or before July 26, 2021. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

**SUPPLEMENTARY INFORMATION:**

*OMB Control No.:* 3060–0999.

*Title:* Hearing Aid Compatibility Status Report and Section 20.19, Hearing Aid-Compatible Mobile Handsets (Hearing Aid Compatibility Act).

*Form Numbers:* FCC Form 655 and FCC Form 855.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit entities.

*Number of Respondents:* 934 respondents; 934 responses.

*Estimated Time per Response:* 13.9710921 hours per response (average).

*Frequency of Response:* On occasion and annual reporting requirements, recordkeeping requirements, and third-party disclosure requirements.

*Obligation to Respond:* Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151, 154(i), 157, 160, 201, 202, 214, 301, 303, 308, 309(j), 310 and 610 of the Communications Act of 1934, as amended.

*Total Annual Burden:* 13,049 hours.

*Total Annual Cost:* No cost.

*Privacy Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* Information requested in the reports and certifications may include confidential information. However, covered entities are allowed to request that such

materials submitted to the Commission be withheld from public inspection.

*Needs and Uses:* The Commission will submit the revised information collection to OMB to obtain a full three-year clearance. The changes being made to the information collect concern the Commission's wireless hearing aid compatibility rules as they relate to the obligations of wireless handset manufacturers and wireless service providers to: (1) Label and disclose certain information related to handset packaging; (2) post certain information on their publicly accessible websites; and (3) file annual status reports and certifications. No changes are being made to the information collection as related to standards development and the approved number of estimated respondents and responses.

The revisions to the information collection are necessitated by a Report and Order in WT Docket No. 20–3, FCC 21–28, adopted on February 16, 2021. In this Report and Order, the Commission adopted a new technical standard for determining hearing aid compatibility between hearing aids and wireless handsets and made other corresponding and implementation changes. In addition, the Commission revised the information that handset manufacturers and service providers must include on hearing aid-compatible wireless handset package labels and in the related package inserts or user manuals. The Commission revised the labeling rule in order to streamline the rule and remove outdated requirements. The new rule requires that the package label provide the volume control capabilities of a hearing aid-compatible handset that meets volume control requirements, and it maintains the requirement that a hearing aid-compatible handset's package label state that the handset is hearing aid-compatible. The new rule still requires hearing aid-compatible handsets to list the handset's hearing aid-compatible rating, but moves the location in which it is required to be listed from the package label to the package insert or user manual. The other requirements for package inserts and user manuals have not changed, but the requirements have been reorganized to make them easier to follow. The Commission's labeling revisions continue to allow consumers to access the information that they need to understand the hearing aid compatibility of handsets they are considering for purchase. At the same time, the labeling revisions give handset manufacturers and service providers flexibility in designing package labels and conveying supplemental information.

The Report and Order also revised website posting requirements for handset manufacturers and service providers. The revised rule requires handset manufacturers and service providers to post to their publicly accessible websites the technical standard used to determine hearing aid compatibility in addition to the information that handset manufacturers and service providers are presently required to post. Since handset manufacturers and service providers are already required to include the technical standard used to determine hearing aid compatibility in package inserts or user manuals for hearing aid-compatible handsets, this change will not substantially impact the existing paperwork burden estimates that OMB has already approved for this information collection. Further, the website posting requirement has been revised to eliminate the requirement that service providers post to their publicly accessible websites the different levels of functionality of the hearing aid-compatible handsets that they offer to the public. This change offsets any burden added by the requirement that service providers post the technical standard used to determine hearing aid compatibility.

Finally, the Report and Order addressed the status reporting and certification requirements for handset manufacturers and service providers. The Report and Order revised the dates that service providers must file their FCC Form 855 certifications and handset manufacturers must file their FCC Form 655 status reports. The forms were due January 15 and July 15 each year, respectfully, and now are due by January 31 and July 31. These changes were made to accommodate Federal holidays at the start of January and July and to make sure the forms contain information for the full preceding 12-month periods. The Commission uses these forms as the principal way to ensure compliance with its wireless hearing aid compatibility requirements. The Commission is also revising the forms to reflect the Commission's current hearing aid compatibility *de minimis* provisions and to reflect the Commission's new mailing address.

The changes the Commission is making will not affect the number of respondents or responses, burden hours, or costs presently approved by OMB for this information collection. The Commission requests that OMB approve the proposed revisions to the currently approved information collection in order to implement the changes the Commission adopted in the Report and Order. These changes benefit handset manufacturers and service providers by reducing regulatory burden while continuing to ensure that the Commission can fulfill its statutory obligation to monitor compliance with its hearing aid compatibility rules and make more complete and accessible information available to consumers. All other paperwork burden requirements previously approved by OMB for this information collection remain unchanged.

Federal Communications Commission.

**Marlene Dortch,**

*Secretary, Office of the Secretary.*

[FR Doc. 2021–10981 Filed 5–24–21; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[FR ID 28760]**

### Meeting of the Ending 9–1–1 Fee Diversion Now Strike Force; Correction

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice; correction.

**SUMMARY:** The Federal Communications Commission (Commission) published a document in the **Federal Register** of May 20, 2021. The document announced the first meeting of the ''Ending 9–1–1 Fee Diversion Now Strike Force'' (911 Strike Force) and provided a preliminary agenda for the meeting. This document corrects the document to explain that good cause exists for giving fewer than 15 calendar days' notice for that meeting.

**DATES:** May 25, 2021.

**ADDRESSES:** Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** John A. Evanoff, Designated Federal Officer, Federal Communications Commission, Public Safety and Homeland Security Bureau, (202) 418–0848; or Jill Coogan, Deputy Designated Federal Officer, Federal Communications Commission, Public Safety and Homeland Security Bureau, (202) 418–1499; or email: *911StrikeForce@fcc.gov.*

**SUPPLEMENTARY INFORMATION:**

*Correction*

In the **Federal Register** of May 20, 2021, in FR Doc. 2021–10597, on page 27432, in the third column, correct **SUPPLEMENTARY INFORMATION** by adding the following language to read:

*Good cause for late notice:* This Notice of public meeting is being published fewer than 15 days before the meeting date of June 3, 2021. This

Notice of public meeting, publishing on May 20, 2021, provides 14 days before the meeting date of June 3, 2021. There is good cause for this late notice. This notice was published late due to extenuating circumstances, including the ongoing COVID–19 pandemic, and the need for additional scheduling arrangements to ensure the ability of all 911 Strike Force members to participate in this initial meeting and to accommodate member and staff schedules. Thus, the FCC was unable to submit the meeting Notice to the OFR in time for the OFR to schedule publication to satisfy the 15-day advance notice requirement without causing significant disruption to 911 Strike Force members and FCC staff.

Federal Communications Commission.

**Lisa Fowlkes,**

*Chief, Public Safety and Homeland Security Bureau.*

[FR Doc. 2021–11145 Filed 5–21–21; 4:15 pm]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[GN Docket No. 17–208; FR ID 28556]**

### Meeting of the Federal Advisory Committee on Diversity and Digital Empowerment

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, this notice announces the June 24, 2021, meeting of the Federal Communications Commission's (Commission) Advisory Committee on Diversity and Digital Empowerment (ACDDE).

**DATES:** Thursday, June 24, 2021, from 10:00 a.m. to 4:00 p.m.

**ADDRESSES:** The ACDDE meeting will be available to the public for viewing via the internet at *http://www.fcc.gov/live.*

**FOR FURTHER INFORMATION CONTACT:** Jamila Bess Johnson, Designated Federal Officer (DFO) of the ACDDE, (202) 418–2608, *Jamila-Bess.Johnson@fcc.gov;* Julie Saulnier, Deputy DFO of the ACDDE, (202) 418–1598, *Julie.Saulnier@fcc.gov;* or Jamile Kadre, Deputy DFO of the ACDDE, (202) 418–2245, *Jamile.Kadre@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** The Committee's mission is to provide recommendations to the Commission on how to empower disadvantaged communities and accelerate the entry of small businesses, including those owned by women and minorities, into the media, digital news and information, and audio and video programming industries, including as owners, suppliers, and employees.

*Proposed Agenda:* The agenda for the final ACDDE meeting under its current charter will include a report from each of the ACDDE working groups. The *Access to Capital Working Group* will report on its ongoing examination of ways to improve access to capital to encourage management and ownership of broadcast properties by a diverse range of voices, including minorities and women. The *Digital Empowerment and Inclusion Working Group* will discuss its work assessing access, adoption, and use of broadband and new technologies by under-resourced communities. The *Diversity in the Tech Sector Working Group* will report on its progress in examining issues pertaining to hiring, promotion, and retention of women and minorities in tech industries. This agenda may be modified at the discretion of the ACDDE Chair and the DFO.

The ACDDE meeting is accessible to the public on the internet via live feed from the FCC's web page at *www.fcc.gov/live.* Members of the public may submit any questions during the meeting to *livequestions@fcc.gov.*

Members of the public may submit comments to the ACDDE using the FCC's Electronic Comment Filing System, ECFS, at *www.fcc.gov/ecfs.* Comments to the ACDDE should be filed in GN Docket No. 17–208.

Open captioning will be provided for this event. Other reasonable accommodations for persons with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). Such requests should include a detailed description of the accommodation needed. In addition, please include a way for the Commission to contact the requester if more information is needed to fulfill the request. Please allow at least five days' notice; last minute requests will be accepted but may not be possible to accommodate.

Federal Communications Commission.

**Thomas Horan,**

*Chief of Staff, Media Bureau.*

[FR Doc. 2021–11032 Filed 5–24–21; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

**[Docket No. AS21–05]**

### Appraisal Subcommittee; Notice of Meeting

**AGENCY:** Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

**ACTION:** Notice of meeting.

*Description:* In accordance with Section 1104(b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) will meet in open session for its regular meeting:

*Location:* Due to the COVID–19 Pandemic, the meeting will be open to the public via live webcast only. Visit the agency's homepage (*www.asc.gov*) and access the provided registration link in the What's New box. You MUST register in advance to attend this Meeting.

*Date:* June 2, 2021.

*Time:* 10:00 a.m. ET.

*Status:* Open.

**Action and Discussion Items**

Approval of Minutes

May 14, 2021 Special Meeting

Census/Survey Project

**How To Attend and Observe an ASC Meeting**

Due to the COVID–19 Pandemic, the meeting will be open to the public via live webcast only. Visit the agency's homepage (*www.asc.gov*) and access the provided registration link in the What's New box. The meeting space is intended to accommodate public attendees. However, if the space will not accommodate all requests, the ASC may refuse attendance on that reasonable basis. The use of any video or audio tape recording device, photographing device, or any other electronic or mechanical device designed for similar purposes is prohibited at ASC Meetings.

**James R. Park,**

*Executive Director.*

[FR Doc. 2021–10962 Filed 5–24–21; 8:45 am]

**BILLING CODE 6700–01–P**

## FEDERAL RESERVE SYSTEM

### Proposed Agency Information Collection Activities; Comment Request

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Notice, request for comment.

**SUMMARY:** The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, with revision, the Census of Finance Companies and Survey of Finance Companies (FR 3033p and FR 3033s; OMB No. 7100–0277).

**DATES:** Comments must be submitted on or before July 26, 2021.

**ADDRESSES:** You may submit comments, identified by FR 3033p or FR 3033s, by any of the following methods:

- *Agency Website: https://www.federalreserve.gov/.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include the OMB number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

**FOR FURTHER INFORMATION CONTACT:** Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

**SUPPLEMENTARY INFORMATION:** On June 15, 1984, OMB delegated to the Board authority under the PRA to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

A copy of the Paperwork Reduction Act (PRA) OMB submission, including the reporting form and instructions, supporting statement, and other documentation will be available at *https://www.reginfo.gov/public/do/PRAMain,* if approved. These documents will also be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above.

**Request for Comment on Information Collection Proposal**

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

**Proposal Under OMB Delegated Authority To Extend for Three Years, With Revision, the Following Information Collections**

*Report title:* Census of Finance Companies and Other Lenders.

*Agency form number:* FR 3033p.

*OMB control number:* 7100–0277.

*Frequency:* Quinquennially.

*Respondents:* Finance companies.

*Estimated number of respondents:* 12,800.

*Estimated average hours per response:* 0.33.

*Estimated annual burden hours:* 4,224.

*General description of report:* The FR 3033p is a census survey designed to identify the universe of finance companies eligible for potential inclusion in the FR 3033s and to enable the stratification of the sample for more statistically efficient estimation. The FR 3033p is currently composed of 7 questions to assess the company's asset size, level of loan and lease activity, company structure, and licensing authority.

*Report title:* Survey of Finance Companies.

*Agency form number:* FR 3033s.

*OMB control number:* 7100–0277.

*Frequency:* Quinquennially.

*Respondents:* Finance companies.

*Estimated number of respondents:* 900.

*Estimated average hours per response:* 1.

*Estimated annual burden hours:* 900.

*General description of report:* From the universe of finance companies identified by the Census of Finance Companies and Other Lenders (FR 3033p), a sample of finance companies will be invited to fill out FR 3033s. From these finance companies, the FR 3033s survey collects balance sheet data on major categories of consumer and business credit receivables and major liabilities. In addition, the survey may be used to gather information on topics that are pertinent to increasing the Federal Reserve's understanding of the finance companies.

*Proposed revisions:* Board staff proposes to revise the FR 3033s to improve clarity, simplify the form overall, and collect additional information on the COVID–19 impacts on lending activities. The Board is not proposing any revisions to the FR 3033p at this time. The FR 3033s revisions, which would be effective for the proposed September 2021 survey date, include:

*A. Removals*

- Removing the off-balance-sheet securitizations column on the balance sheet, which encompasses 20 items.
- Removing question 7.C (non-recourse debt associated with financing activities).
- Removing questions 12.A–12.D, as they were special topic questions added for the 2015 survey.

• Removing the question soliciting comments or explanations from the respondents.

*B. Revisions*

• Revising general survey instructions and item descriptions for clarity.

• Revising the benchmark date to June 30, 2021.

• Renumbering items 7.E–7.G to items 7.D–7.F.

• Revising question 7.D to ''Notes, Bonds, Debentures, and Other Debt'' and renumbering it to 7.C. This is to be consistent with the information collected on the FR 2248.

• Revising question 11.B to ''Total number of accounts for domestic business and real estate receivables.''

*C. Additions*

• Adding an item for ''Student Loans'' in section 3.B. as question 3.B.3 and renumbering ''Other Consumer Loans'' as question 3.B.4. This is to closer align the information collected on the FR 3033s with the FR 2248.

• Adding a Question 12 to collect detailed information on types of consumer credit that finance companies offer. This question is useful to assess the extent of offerings of consumer credit products by the finance company industry. This also makes it feasible to identify specialty finance companies and facilitate analysis of profitability at such companies.

• Adding a Question 13 with 3 sub-items to collect lending information related to the COVID–19 impacts. Given that the Survey of Finance Companies and Other Lenders falls during the time in which the United States economy has been impacted by the effects of the COVID–19 pandemic, it is useful to collect lending information related to this unforeseen event. The need for economic relief has been at the forefront of this pandemic. Many financial firms have already been approved to participate in the SBA's Paycheck Protection Program (PPP) to lend to small businesses in need and have been doing so. Additionally, some of these firms are actively advertising their lending relief options to the public. There may be value in assessing any COVID–19 relief lending by these firms.

*Legal authorization and confidentiality:* The FR 3033p and FR 3033s are authorized pursuant to sections 2A and 12A of the Federal Reserve Act (FRA). Section 2A of the FRA requires that the Board and the Federal Open Market Committee maintain long-run growth of the monetary and credit aggregates commensurate with the economy's long run potential to increase production, so as to promote effectively the goals of maximum employment, stable prices, and moderate long-term interest rates.[1] Under section 12A of the FRA, the Federal Open Market Committee is required to implement regulations relating to the open market operations conducted by Federal Reserve Banks with a view to accommodating commerce and business and with regard to their bearing upon the general credit situation of the country.[2] Information collected from the FR 3033p and FR 3033s is used to fulfill these obligations.

The FR 3033p and FR 3033s are voluntary. The information collected pursuant to the FR 3033p and FR 3033s is confidential pursuant to exemption 4 of the Freedom of Information Act,[3] which protects information that is both customarily and actually treated as private by the respondent.

Board of Governors of the Federal Reserve System, May 20, 2021.

**Michele Taylor Fennell,**

*Deputy Associate Secretary of the Board.*

[FR Doc. 2021–11060 Filed 5–24–21; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL RESERVE SYSTEM

### Proposed Agency Information Collection Activities; Comment Request

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Notice, request for comment.

**SUMMARY:** The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, with revision, the New Hire Information Collection (FR 27; OMB No. 7100–0375).

**DATES:** Comments must be submitted on or before July 26, 2021.

**ADDRESSES:** You may submit comments, identified by FR 27, by any of the following methods:

• *Agency Website: https://www.federalreserve.gov/.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*

• *Email: regs.comments@federalreserve.gov.* Include the OMB number in the subject line of the message.

• *Fax:* (202) 452–3819 or (202) 452–3102.

• *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

**FOR FURTHER INFORMATION CONTACT:** Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

**SUPPLEMENTARY INFORMATION:** On June 15, 1984, OMB delegated to the Board authority under the PRA to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

A copy of the Paperwork Reduction Act (PRA) OMB submission, including the reporting form and instructions, supporting statement, and other documentation will be available at *https://www.reginfo.gov/public/do/PRAMain,* if approved. These documents will also be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above.

[1] 12 U.S.C. 225a.

[2] 12 U.S.C. 263.

[3] 5 U.S.C. 552(b)(4).

**Request for Comment on Information Collection Proposal**

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

**Proposal Under OMB Delegated Authority To Extend for Three Years, With Revision, the Following Information Collection**

*Report title:* New Hire Information Collection.

*Agency form number:* FR 27.

*OMB control number:* 7100–0375.

*Frequency:* As needed.

*Respondents:* The FR 27 panel comprises individuals who are new hires to the Board, but have not yet become employees.

*Estimated number of respondents:* Regular hire: 312; intern hire: 122; federal transfer: 10.

*Estimated average hours per response:* Regular hire: 1; intern hire: 0.75; federal transfer: 1.08.

*Estimated annual burden hours:* Regular hire: 312; intern hire: 92; federal transfer: 11.

*General description of report:* This information collection provides for the electronic collection of certain personnel information from new hires using a secure web-based portal, the ''New Hire Portal,'' before the first day of employment of a new hire. As part of the onboarding process for new hires, a Human Resources professional at the Board identifies the necessary information that must be collected from the new hire, which is dependent upon whether the person will be starting as a full- or part-time employee, including a Governor or Board officer (Regular Hire) or starting as an intern (Intern Hire), or whether the Regular Employee is transferring from another federal agency (Federal Transfer). The new hire is then sent an email asking him or her to provide the information described below through the New Hire Portal prior to their official start date.

The New Hire Portal is broken out into different sections and each section corresponds to the hardcopy forms that new employees previously filled out and provide to the Board during or after the first day of new employee orientation (NEO). Thus, the information collection involves a new hire electronically providing this personnel information and filling out the applicable sections of the New Hire Portal before their first day of orientation. The sections of the portal that each new hire is asked to complete electronically depends upon the type of position that the new hire has been offered at the Board.

*Proposed revisions:* The Board proposes to remove the Direct Deposit section from the New Hire Portal and ask the respondent to provide that information after their NEO. After NEO, the respondent will be an employee of the Board, and the information requested will no longer be subject to the PRA.

*Legal authorization and confidentiality:* The New Hire Information Collection is authorized pursuant to sections 10(3), 10(4), 11(l), and 11(q) of the Federal Reserve Act, which provide the Board broad authority over employment of staff and security of its building.[1] In addition, Executive Order 9397 (Nov. 22, 1943) authorizes Federal agencies to use an individual's social security number to identify individuals in agency records.

Providing information collected as part of the New Hire Information Collection is voluntary. However, if certain information requested as part of the New Hire Information Collection is not provided by the new hire, the hiring process cannot be completed.[2]

Generally, information collected as part of the New Hire Information Collection may be kept confidential from the public under exemption 6 of the Freedom of Information Act (FOIA), which protects information that ''would constitute a clearly unwarranted invasion of personal privacy.'' [3] However, the release of information such as the educational history of the new hire or the start date of employment would not likely constitute a clearly unwarranted invasion of personal privacy and may be disclosed under the FOIA.

Determinations regarding disclosure to third parties of any confidential portions of the information collection that are considered exempt under the FOIA will be made in accordance with the Privacy Act.[4] Relevant Privacy Act statements are provided when a respondent logs in to the portal and before the respondent is asked to provide any information. The Board may make disclosures in accordance with the Privacy Act's routine use disclosure provision, which permits the disclosure of a record for a purpose which is compatible with the purpose for which the record was collected.[5]

Such routine uses are listed in specific systems of records notices, which apply to this information collection and which can be found in: (1) The System of Records Notice for BGFRS–1, FRB-Recruiting and Placement Records, located at: *https://www.federalreserve.gov/files/BGFRS-1-recruiting-and-placement-records.pdf;* (2) the System of Records Notice for BGFRS–4, FRB-General Personnel Records, located at: *https://www.federalreserve.gov/files/BGFRS-4-general-personnel-records.pdf;* (3) the System of Records Notice for BGFRS–7, FRB—Payroll and Leave Records, located at: *https://www.federalreserve.gov/files/BGFRS-7-payroll-and-leave-records.pdf;* (4) the System of Records Notice for BGFRS–24, FRB—EEO General Files, located at: *https://www.federalreserve.gov/files/BGFRS-24-eeo-general-files.pdf;* and/or (5) the System of Records Notice for BGFRS–34, FRB–ESS Staff Identification Card File, located at: *https://www.federalreserve.gov/files/*

[1] 12 U.S.C. 243, 244, 248(l), and 248(q).

[2] The voluntary provision of the following information is optional and is not required to complete the hiring process: education information (*e.g.,* name of educational institution, major, degree, year of graduation), race, ethnicity, and the identity of and relationship to any relatives who are also employed at the Board. Although a new hire is required to provide the name and contact information of one ''primary'' emergency contact, providing a ''second'' emergency contact is optional and is not required to complete the hiring process. A new hire can also voluntarily provide an alternative mailing address, if it is different from his or her current address. Lastly, although not required to complete the hiring process, information on dependents is required to obtain certain benefits (such as continuing health insurance benefits for the child or spouse of a new employee who is transferring from another federal agency).

[3] 5 U.S.C. 552(b)(6).

[4] 5 U.S.C. 552a(b).

[5] 5 U.S.C. 552a(a)(7) and (b)(3)).

*BGFRS-34-ess-staff-identification-card-file.pdf.*

Board of Governors of the Federal Reserve System, May 20, 2021.

**Michele Taylor Fennell,**

*Deputy Associate Secretary of the Board.*

[FR Doc. 2021–11059 Filed 5–24–21; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL TRADE COMMISSION

**[File No. 202 3111]**

## Kushly Industries LLC; Analysis of Proposed Consent Order To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement; request for comment.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis of Proposed Consent Order to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before June 24, 2021.

**ADDRESSES:** Interested parties may file comments online or on paper by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Please write ''Kushly Industries LLC; File No. 202 3111'' on your comment, and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** Reid Tepfer (214–979–9395) and Luis Gallegos (214–979–9383), Federal Trade Commission, Southwest Regional Office, 199 Bryan Street, Suite 2150, Dallas, TX 75201.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained at *https://www.ftc.gov/news-events/commission-actions.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before June 24, 2021. Write ''Kushly Industries LLC; File No. 202 3111'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the *https://www.regulations.gov* website.

Due to the COVID–19 pandemic and the agency's heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comments online through the *https://www.regulations.gov* website.

If you prefer to file your comment on paper, write ''Kushly Industries LLC; File No. 202 3111'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610, (Annex D), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610, (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible website at *https://www.regulations.gov,* you are solely responsible for making sure your comment does not include any sensitive or confidential information. In particular, your comment should not include sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the *https://www.regulations.gov* website—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from that website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website at *http://www.ftc.gov* to read this Notice and the news release describing the proposed settlement. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before June 24, 2021. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

### Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an agreement containing a consent order from Kushly Industries LLC and Cody Alt, individually and as an officer of Kushly Industries LLC (''Respondents''). The proposed consent order has been placed on the public record for 30 days for receipt of comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the agreement and the comments received, and will decide

whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

This matter involves the Respondents' advertising of products containing cannabidiol (''CBD Products''). The complaint alleges that Respondents violated Sections 5(a) and 12 of the FTC Act by disseminating false and unsubstantiated advertisements that claimed: (1) CBD Products effectively treat, mitigate, or cure diseases or health conditions including: Sleep disorders, including insomnia and narcolepsy; psychiatric disorders, including depression, bipolar disorder, post-traumatic stress disorder, psychosis, and anorexia nervosa; cancer; multiple sclerosis; Parkinson's disease; hypertension; Alzheimer's disease; acne, psoriasis, eczema; arthritis; muscle spasms; pain resulting from endometriosis; and dysmenorrhea; and (2) studies or scientific research prove CBD Products effectively treat, mitigate, or cure multiple sclerosis, generalized anxiety disorder, post-traumatic stress disorder, panic disorder, obsessive-compulsive disorder and social anxiety disorder, depression, cancer, sleep disorders, hypertension, Parkinson's disease, Alzheimer's disease, acne, psoriasis, and eczema, and improve sleep.

The order includes injunctive relief that prohibits these alleged violations and fences in similar and related conduct. The product coverage would apply to any dietary supplement, drug, or food Respondents sell or market, including CBD Products.

Part I prohibits Respondents from making any representation about the efficacy of any covered product, including that such product effectively treats, mitigates, or cures diseases or health conditions including: Sleep disorders, including insomnia and narcolepsy; headaches; psychiatric disorders, including depression, bipolar disorder, generalized anxiety disorder, panic disorder, obsessive-compulsive disorder and social anxiety disorder; post-traumatic stress disorder, psychosis, and anorexia nervosa; cancer; multiple sclerosis; chronic drowsiness; Parkinson's disease; hypertension; Alzheimer's disease; acne, psoriasis, eczema; arthritis; muscle spasms; pain resulting from endometriosis; and dysmenorrhea; unless the representation is non-misleading, including that, at the time such representation is made, they possess and rely upon competent and reliable scientific evidence that substantiates the representation is true.

For purposes of Part I, competent and reliable scientific evidence must consist of human clinical testing of the covered product, or of an essentially equivalent product, sufficient in quality and quantity based on standards generally accepted by experts in the relevant disease, condition, or function to which the representation relates, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate the representation is true. Such testing must be: (1) Randomized, double-blind, and placebo-controlled; and (2) conducted by researchers qualified by training and experience to conduct such testing.

Part II prohibits Respondents from making any representation, other than representations covered under Part I, about the health benefits, performance, efficacy, safety or side effects of any covered product, unless the representation is non-misleading, including that, at the time such representation is made, they possess and rely upon competent and reliable scientific evidence sufficient in quality and quantity based on standards generally accepted by experts in the relevant disease, condition, or function to which the representation relates, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate the representation is true.

For purposes of Part II, ''competent and reliable scientific evidence'' means tests, analyses, research, or studies that (1) have been conducted and evaluated in an objective manner by experts in the relevant disease, condition, or function to which the representation relates; (2) are generally accepted by such experts to yield accurate and reliable results; and (3) are randomized, double-blind, and placebo-controlled human clinical testing of the covered product, or of an essentially equivalent product, when such experts would generally require such human clinical testing to substantiate the representation is true.

Part III requires that, with regard to any human clinical test or study (''test'') upon which Respondents rely to substantiate any claim covered by the order, Respondents must secure and preserve all underlying or supporting data and documents generally accepted by experts in the field as relevant to an assessment of a test.

Part IV prohibits Respondents from misrepresenting: (1) That any covered product is clinically proven to treat, alleviate, or cure chronic pain, multiple sclerosis, anxiety, depression, cancer, sleep disorders, hypertension, Parkinson's disease, Alzheimer's disease, acne, psoriasis, and eczema; (2) that the performance or benefits of a covered product are scientifically or clinically proven or otherwise established; or (3) the existence, contents, validity, results, conclusions, or interpretations of any test, study, or other research.

Part V provides Respondents a safe harbor for making claims approved by the Food and Drug Administration. Parts VI and VII require Respondents to pay the Commission $30,583.14 and describe the procedures and legal rights related to that payment. Parts VIII, IX, and X require Respondents to provide customer information to the Commission and to provide notice of the order to customers, affiliates, and other resellers.

Part XI requires Respondents to submit an acknowledgement of receipt of the order, and for the individual Respondent to serve the order on certain individuals, including all officers or directors of any business the individual Respondent controls and employees having managerial responsibilities for conduct related to the subject matter of the order, and to obtain acknowledgements from each individual or entity to which a Respondent has delivered a copy of the order.

Part XII requires Respondents to file compliance reports with the Commission and to notify the Commission of bankruptcy filings or changes in corporate structure that might affect compliance obligations.

Part XIII contains recordkeeping requirements for accounting records, personnel records, consumer correspondence, advertising and marketing materials, and claim substantiation, as well as all records necessary to demonstrate compliance with the order.

Part XIV contains other requirements related to the Commission's monitoring of Respondents' order compliance.

Part XV provides the effective dates of the order, including that, with exceptions, the order will terminate in 20 years.

The purpose of this analysis is to facilitate public comment on the order, and it is not intended to constitute an official interpretation of the complaint or order, or to modify the order's terms in any way.

By direction of the Commission.

**April J. Tabor,**

*Secretary.*

[FR Doc. 2021–10976 Filed 5–24–21; 8:45 am]

**BILLING CODE 6750–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Agency for Healthcare Research and Quality, Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) reapprove the proposed information collection project ''*Ambulatory Surgery Center Survey on Patient Safety Culture Database.*''

**DATES:** Comments on this notice must be received by July 26, 2021.

**ADDRESSES:** Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by email at *doris.lefkowitz@AHRQ.hhs.gov*. Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

**FOR FURTHER INFORMATION CONTACT:** Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov*.

**SUPPLEMENTARY INFORMATION:** The Agency for Healthcare Research and Quality (AHRQ) requests that the Office of Management and Budget (OMB) reapprove, under the Paperwork Reduction Act of 1995, AHRQ's collection of information for the AHRQ Ambulatory Surgery Center (ASC) Survey on Patient Safety (SOPS) Database; OMB NO. 0935–0242; Approved September 10, 2018.

In 1999, the Institute of Medicine called for health care organizations to develop a ''culture of safety'' such that their workforce and processes focus on improving the reliability and safety of care for patients (IOM, 1999; To Err is Human: Building a Safer Health System). To respond to the need for tools to assess patient safety culture in health care, AHRQ developed and pilot tested the ASC Survey on Patient Safety Culture (OMB NO. 0935–0216; approved October 31, 2013).

The survey is designed to enable ASCs to assess provider and staff perspectives about patient safety issues, medical error, and error reporting. The survey includes 27 items that measure 8 composites of patient safety culture. In addition to the composite items, the survey includes one item measuring how often ASCs document near-misses; one item asking whether the respondent is in the room during surgeries, procedures, or treatments; and three items about communication before and after surgeries, procedures, or treatments. The survey also includes an overall rating item on patient safety, two items about respondent characteristics, and a section for open-ended comments. AHRQ made the survey publicly available along with a Survey User's Guide and other toolkit materials in May 2015 on the AHRQ website.

The AHRQ ASC SOPS Database consists of data from the AHRQ ASC Survey on Patient Safety Culture. Ambulatory surgery centers in the U.S. can voluntarily submit data from the survey to AHRQ, through its contractor, Westat. The ASC SOPS Database (OMB NO. 0935–0242; Approved September 10, 2018) was developed by AHRQ in response to requests from ASCs interested in tracking their own survey results. Organizations submitting data receive a feedback report, as well as a report of the aggregated, de-identified findings of the other ASCs submitting data. These reports are used to assist ASC staff in their efforts to improve patient safety culture in their organizations.

This database:

1. Presents results from ASCs that voluntarily submit their data;

2. Provides data to ASCs to facilitate internal assessment and learning in the patient safety improvement process; and

3. Provides supplemental information to help ASCs identify their strengths and areas with potential for improvement in patient safety culture.

This study is being conducted by AHRQ through its contractor, Westat, pursuant to AHRQ's statutory authority to conduct and support research on health care and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of healthcare services and with respect to health statistics, surveys, and database development. 42 U.S.C. 299a(a)(1) and (8).

**Method of Collection**

To achieve the goal of this project the following activities and data collections will be implemented:

1. Eligibility and Registration Form—The point-of-contact (POC), often the manager of the ASC, completes a number of data submission steps and forms, beginning with completion of an online Eligibility and Registration Form. The purpose of this form is to collect basic demographic information about the ASC and initiate the registration process.

2. Data Use Agreement—The purpose of the data use agreement, completed by the ASC manager, is to state how data submitted by ASCs will be used and provides privacy assurances.

3. ASC Site Information—The purpose of the site level specifications, completed by the ASC POC, is to collect background characteristics of the ASC. This information will be used to analyze data collected with the ASC SOPS survey.

4. Data Files Submission—POCs upload their data file(s), using ASC survey data file specifications, to ensure that users submit standardized and consistent data in the way variables are named, coded, and formatted. The number of submissions to the database is likely to vary each year because ASCs do not administer the survey and submit data every year. Data submission is typically handled by one POC who is either an ASC administrative manager or a survey vendor who contracts with an ASC to collect and submit its data.

**Estimated Annual Respondent Burden**

Exhibit 1 shows the estimated annualized burden hours for the respondents' time to participate in the database. An estimated 100 ASC managers (*i.e.,* POCs from ASCs) will complete the database submission steps and forms. Each POC will submit the following:

- Eligibility and registration form (completion is estimated to take about 5 minutes).
- Data use agreement (completion is estimated to take about 3 minutes).
- ASC Site Information Form (completion is estimated to take about 5 minutes).
- Survey data submission will take an average of one hour.

The total burden is estimated to be 121 hours.

Exhibit 2 shows the estimated annualized cost burden based on the respondents' time to submit their data. The cost burden is estimated to be $5,804.37

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

| Form name | Number of respondents/POCs | Number of responses per POC | Hours per response | Total burden hours |
|---|---|---|---|---|
| Eligibility and Registration Form | 100 | 1 | 5/60 | 8 |
| Data Use Agreement | 100 | 1 | 3/60 | 5 |
| ASC Site Information Form | 100 | 1 | 5/60 | 8 |
| Data Files Submission | 100 | 1 | 1 | 100 |
| Total | NA | NA | NA | 121 |

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

| Form name | Number of respondents/POCs | Total burden hours | Average hourly wage rate * | Total cost burden |
|---|---|---|---|---|
| Eligibility and Registration Form | 100 | 8 | $47.97 | $383.76 |
| Data Use Agreement | 100 | 5 | 47.97 | 239.85 |
| ASC Site Information | 100 | 8 | 47.97 | 383.76 |
| Data Files Submission | 100 | 100 | 47.97 | 4,797.00 |
| Total | NA | 121 | NA | 5,804.37 |

* Based on the mean hourly wage for 100 ASC Administrative Services Managers (11–3010; $47.97) obtained from the May 2019 National Industry-Specific Occupational Employment and Wage Estimates: NAICS 621400—Outpatient Care Centers (located at *https://www.bls.gov/oes/current/naics4_621400.htm#11-00000*).

**Request for Comments**

In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3520, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ's health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: May 19, 2021.

**Marquita Cullom,**

*Associate Director.*

[FR Doc. 2021–10938 Filed 5–24–21; 8:45 am]

**BILLING CODE 4160–90–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2020–P–2048]**

## Determination That MANGANESE SULFATE, Injectable, Equivalent 0.1 Milligram Manganese/Milliliter, Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) has determined that MANGANESE SULFATE, injectable, equivalent (Eq) 0.1 milligram (mg) manganese/milliliter (mL), was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for MANGANESE SULFATE, injectable, Eq 0.1 mg manganese/mL, if all other legal and regulatory requirements are met.

**FOR FURTHER INFORMATION CONTACT:** Sungjoon Chi, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6216, Silver Spring, MD 20993–0002, 240–402–9674, *Sungjoon.Chi@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the

listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

MANGANESE SULFATE, injectable, Eq 0.1 mg manganese/mL, is the subject of NDA 019228, held by Abraxis Pharmaceutical Products, and initially approved on May 5, 1987. MANGANESE SULFATE is indicated for use as a supplement to intravenous solutions given for total parenteral nutrition. Administration helps to maintain manganese serum levels and to prevent depletion of endogenous stores and subsequent deficiency symptoms.

MANGANESE SULFATE, injectable, Eq 0.1 mg manganese/mL, is currently listed in the ''Discontinued Drug Product List'' section of the Orange Book.

Fresenius Kabi USA, LLC, submitted a citizen petition dated October 4, 2020 (Docket No. FDA–2020–P–2048), under 21 CFR 10.30, requesting that the Agency determine whether MANGANESE SULFATE, injectable, Eq 0.1 mg manganese/mL, was withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that MANGANESE SULFATE, injectable, Eq 0.1 mg manganese/mL, was not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that MANGANESE SULFATE, injectable, Eq 0.1 mg manganese/mL, was withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of MANGANESE SULFATE, injectable, Eq 0.1 mg manganese/mL, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have found no information that would indicate that this drug product was withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list MANGANESE SULFATE, injectable, Eq 0.1 mg manganese/mL, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to MANGANESE SULFATE, injectable, Eq 0.1 mg manganese/mL, may be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: May 18, 2021.

**Lauren K. Roth,**

*Acting Principal Associate Commissioner for Policy.*

[FR Doc. 2021–11021 Filed 5–24–21; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2019–D–4751]**

## FDA Reauthorization Act Implementation Guidance for Pediatric Studies of Molecularly Targeted Oncology Drugs; Guidance for Industry; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled ''FDARA Implementation Guidance for Pediatric Studies of Molecularly Targeted Oncology Drugs.'' This guidance addresses early planning for pediatric evaluation of certain molecularly targeted oncology drugs, including biological products, for which original new drug applications (NDAs) and biologics license applications (BLAs) are expected to be submitted to FDA, in accordance with the provisions of the Federal Food, Drug, and Cosmetic Act (FD&C Act) as amended by the FDA Reauthorization Act of 2017 (FDARA). Early pediatric evaluation of certain molecularly targeted oncology drugs as required by the FD&C Act is expected to accelerate the creation of an informed pediatric development plan and ultimately the development of promising drugs for pediatric patients. This guidance finalizes the draft guidance entitled ''FDARA Implementation Guidance for Pediatric Studies of Molecularly Targeted Oncology Drugs'' issued on December 13, 2019, and finalizes certain material related to implementation of FDARA that was included in the draft guidance entitled ''Pediatric Study Plans for Oncology Drugs: Questions and Answers'' issued on January 16, 2020. Accordingly, FDA does not intend to finalize the draft guidance entitled ''Pediatric Study Plans for Oncology Drugs: Questions and Answers,'' which is now withdrawn.

**DATES:** The announcement of the guidance is published in the **Federal Register** on May 25, 2021.

**ADDRESSES:** You may submit either electronic or written comments on Agency guidances at any time as follows:

*Electronic Submissions*

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

*Written/Paper Submissions*

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

*Instructions:* All submissions received must include the Docket No. FDA–2019–D–4751 for ''FDARA Implementation Guidance for Pediatric Studies of Molecularly Targeted Oncology Drugs.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9

a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

**FOR FURTHER INFORMATION CONTACT:** Gregory Reaman, Oncology Center of Excellence, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 2202, Silver Spring, MD 20993–0002, 301–796–0785, *Gregory.Reaman@fda.hhs.gov;* or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911, *Stephen.Ripley@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

FDA is announcing the availability of a guidance for industry entitled ''FDARA Implementation Guidance for Pediatric Studies of Molecularly Targeted Oncology Drugs.'' This guidance addresses early planning for pediatric evaluation of certain molecularly targeted oncology drugs (including biological products) for which original NDAs and BLAs are expected to be submitted to FDA, in accordance with the provisions of section 505B of the FD&C Act (21 U.S.C. 355c). Section 505B of the FD&C Act (also referred to as the Pediatric Research Equity Act or PREA) was amended by FDARA.

The amendments to section 505B require pediatric evaluation of certain molecularly targeted oncology drugs, with the goal of helping address the needs of pediatric patients with cancer. FDARA amended section 505B of the FD&C Act to require—for original applications submitted on or after August 18, 2020—pediatric investigations of certain targeted cancer drugs with new active ingredients, based on molecular mechanism of action rather than clinical indication. Specifically, if an original NDA or BLA is submitted on or after August 18, 2020, for a new active ingredient, and the drug or biological product that is the subject of the application is intended for treatment of an adult cancer and directed at a molecular target FDA determines to be substantially relevant to the growth or progression of a pediatric cancer, reports on the molecularly targeted pediatric cancer investigation required under section 505B(a)(3) of the FD&C Act must be submitted with the marketing application, unless the requirement is waived or deferred (sections 505B(a)(1)(B) and (a)(3)(C) of the FD&C Act).

This guidance provides recommendations on regulatory considerations related to the amendments to section 505B of the FD&C Act, including information on molecular targets, factors FDA intends to consider in the determination of whether a molecular target is substantially relevant to the growth or progression of a pediatric cancer, information regarding the molecular target lists, recommendations on the content of the initial pediatric study plan and description of recommended study(ies), additional considerations for rare cancers, information pertaining to oncology drug combination regimens, and considerations regarding planned waivers and deferrals. In addition, the guidance includes information regarding global implications of, and the importance of international collaboration regarding, pediatric oncology studies.

This guidance finalizes the draft guidance entitled ''FDARA Implementation Guidance for Pediatric Studies of Molecularly Targeted Oncology Drugs,'' issued on December 13, 2019 (see 84 FR 68174). This guidance also finalizes certain recommendations related to implementation of FDARA section 504 that was included in the draft guidance entitled ''Pediatric Study Plans for Oncology Drugs: Transitional Information Until Full Implementation of FDARA Section 504 Questions and Answers,'' issued on January 16, 2020 (85 FR 2746). FDA considered comments received on both of these draft guidances as this guidance was finalized. Changes from the draft to the final guidance include the following: Describing additional safeguards for children in clinical investigations (see 21 CFR part 50, subpart D), providing information sources that have been used in the development of the molecular target lists, describing information that should be included in a request for a meeting regarding early advice on pediatric development for oncology projects subject to the amended provisions, and providing additional information and clarification regarding planned waivers and deferrals. Recommendations that were finalized in this guidance from the draft guidance entitled ''Pediatric Study Plans for Oncology Drugs: Transitional Information Until Full Implementation of FDARA Section 504 Questions and Answers'' include the following: Clarifying that a supplemental application does not trigger the requirement to submit reports on the molecularly targeted pediatric cancer

investigation and describing considerations for initial pediatric study plans for oncology drug combination regimens. In addition, editorial changes were made to improve clarity.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''FDARA Implementation Guidance for Pediatric Studies of Molecularly Targeted Oncology Drugs.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

## II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR parts 50 and 56 have been approved under OMB control number 0910–0130; the collections of information in 21 CFR part 314 have been approved under OMB control number 0910–0001; the collections of information in 21 CFR part 312 have been approved under OMB control number 0910–0014; the collections of information in 21 CFR part 601 have been approved under OMB control number 0910–0338; the collections of information in FDA's draft guidance for industry entitled ''Formal Meetings Between the FDA and Sponsors or Applicants of PDUFA Products'' have been approved under OMB control number 0910–0429; and the collections of information pertaining to submission of a biologics license application under section 351(k) of the Public Health Service Act and the draft guidance for industry entitled ''Formal Meetings Between the FDA and Sponsors or Applicants of BsUFA Products'' have been approved under OMB control number 0910–0719.

## III. Electronic Access

Persons with access to the internet may obtain the guidance at either *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances,* or *https://www.regulations.gov.*

Dated: May 18, 2021.

**Lauren K. Roth,**

*Acting Principal Associate Commissioner for Policy.*

[FR Doc. 2021–11022 Filed 5–24–21; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2019–D–0621]**

### Bispecific Antibody Development Programs; Guidance for Industry; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled ''Bispecific Antibody Development Programs.'' This guidance provides recommendations to assist industry and other parties involved in the development of bispecific antibodies. The guidance focuses on general regulatory and scientific considerations for bispecific antibodies, but not on development of a particular bispecific antibody. This guidance finalizes the draft guidance of the same title issued on April 19, 2019.

**DATES:** The announcement of the guidance is published in the **Federal Register** on May 25, 2021.

**ADDRESSES:** You may submit either electronic or written comments on Agency guidances at any time as follows:

*Electronic Submissions*

Submit electronic comments in the following way:

- *Federal eRulemaking Portal:https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

*Written/Paper Submissions*

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

*Instructions:* All submissions received must include the Docket No. FDA–2019–D–0621 for ''Bispecific Antibody Development Programs.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access

the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

**FOR FURTHER INFORMATION CONTACT:** Dat Doan, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 3334, Silver Spring, MD 20993, 240–402–8926; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

**SUPPLEMENTARY INFORMATION:**

## I. Background

FDA is announcing the availability of a guidance for industry entitled ''Bispecific Antibody Development Programs.'' The regulatory pathway for evaluation of monoclonal antibodies is well established, but additional guidance is warranted regarding antibody-based products that target more than one antigen. This guidance addresses challenges that may arise during development of bispecific antibodies and provides recommendations regarding the type of data necessary to support approval.

This guidance finalizes the draft guidance of the same title issued on April 19, 2019 (84 FR 16512). FDA considered comments received on the draft guidance as the guidance was finalized. In addition to minor editorial changes to improve clarity, changes from the draft to the final guidance include:

- Emphasis on discussing unique aspects of the quality, nonclinical, and clinical development programs for bispecific antibodies
- Clarification regarding potential immunogenicity associated with bispecific antibodies
- Clarification of clinical assessments comparing a bispecific antibody and an approved monospecific product(s)

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Bispecific Antibody Development Programs.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

## II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR part 312 have been approved under OMB control number 0910–0014.

## III. Electronic Access

Persons with access to the internet may obtain the guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances,* or *https://www.regulations.gov.*

Dated: May 18, 2021.

**Lauren K. Roth,**

*Acting Principal Associate Commissioner for Policy.*

[FR Doc. 2021–11026 Filed 5–24–21; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2012–N–0197]**

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Shortages Data Collections

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA, Agency, or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (PRA).

**DATES:** Submit written comments (including recommendations) on the collection of information by June 24, 2021.

**ADDRESSES:** To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The OMB control number for this information collection is 0910–0491. Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

### Shortages Data Collections

*OMB Control Number 0910–0491—Revision*

Under section 1003(d)(2) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 393(d)(2)), the Commissioner of Food and Drugs is authorized to implement general powers (including conducting research) to carry out effectively the mission of FDA.

After the events of September 11, 2001, and as part of broader

counterterrorism and emergency preparedness activities, FDA's Center for Devices and Radiological Health (CDRH) began developing operational plans and interventions that would enable CDRH to anticipate and respond to medical device shortages that might arise in the context of federally declared disasters/emergencies or regulatory actions. In particular, CDRH identified the need to acquire and maintain detailed data on domestic inventory, manufacturing capabilities, distribution plans, and raw material constraints for medical devices that would be in high demand and/or would be vulnerable to shortages in specific disaster/emergency situations or following specific regulatory actions. Such data could support prospective risk assessment, help inform risk mitigation strategies, support real-time decision making by the Department of Health and Human Services (HHS) during actual emergencies or emergency preparedness exercises, and mitigate or prevent harm to the public health.

This voluntary data collection process consists of outreach to firms that have been identified as producing or distributing medical devices that may be considered essential to the response effort. In this initial outreach, the intent and goals of the data collection effort will be described, and the specific data request made. Data are collected, using the least burdensome methods, in a structured manner to answer specific questions. After the initial outreach, we will request updates to the information periodically to keep the data current and accurate. Additional follow-up correspondence may occasionally be needed to verify/validate data, confirm receipt of follow-up correspondence(s), and/or request additional details to further inform FDA's public health response. These data, collected under section 1003(d)(2) of the FD&C Act, are currently approved under OMB control number 0910–0491. We have made minor changes to this ''Shortages data collection'' at this time (see first row of table 1 of this document) to reflect additional learnings from recent experience.

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was enacted on March 27, 2020. Section 3121 of the CARES Act amended the FD&C Act by adding section 506J to the FD&C Act (21 U.S.C. 356j). Section 506J provides FDA with new authorities intended to help prevent or mitigate medical device shortages by requiring medical device manufacturers to inform FDA about changes in device manufacturing that could potentially lead to a device shortage. Apprised with that information, section 506J authorizes FDA to take several actions that may help to mitigate or avoid supply disruptions.

Section 506J of the FD&C Act requires manufacturers of certain devices,[1] to notify FDA ''of a permanent discontinuance in the manufacture of the device'' or ''an interruption of the manufacture of the device that is likely to lead to a meaningful disruption in supply of that device in the United States'' during or in advance of a declared public health emergency, and the reason for such discontinuance or interruption.[2] Section 506J of the FD&C Act requires FDA to take action based on that information, including (1) publicly posting a list of devices it determines to be in shortage, (2) publicly posting the reasons for the shortage, and (3) issuing letters to manufacturers that fail to comply with the notification requirements of section 506J of the FD&C Act.

Section 3087 of the 21st Century Cures Act, signed into law in December 2016, added subsection (f) to section 319 of the Public Health Service Act (42 U.S.C. 247d). This new subsection gives the HHS Secretary (Secretary) the authority to waive PRA requirements with respect to voluntary collections of information during a public health emergency, as declared by the Secretary, or when a disease or disorder is significantly likely to become a public health emergency. In 2020, FDA published the guidance entitled ''Notifying CDRH of a Permanent Discontinuance or Interruption in Manufacturing of a Device Under Section 506J of the FD&C Act During the COVID–19 Public Health Emergency (Revised)'' (86 FR 106),[3] to implement section 506J of the FD&C Act, as it relates to device shortages and potential device shortages occurring during the COVID–19 pandemic, for the duration of the COVID–19 public health emergency. The guidance includes additional voluntary items that manufacturers could provide the Agency, including additional information about device manufacturing and supply, and updates to initial notifications. While PRA requirements for the voluntary information collections recommended in the guidance are waived[4] during the COVID–19 pandemic, public health emergency using this new authority, mandatory collections, such as those under section 506J of the FD&C Act, may not be part of the waiver. FDA requested emergency clearance under 44 U.S.C. 3507(j) and 5 CFR 1320.13 to immediately approve revision of OMB control number 0910–0491 to add the information collection required by section 506J of the FD&C Act, as amended. The emergency clearance approval expires on May 31, 2021; therefore, CDRH is requesting a revision of OMB control number 0910–0491 to add the information collection required by 506J of the FD&C Act.

In the **Federal Register** of February 23, 2021 (86 FR 10972), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

**I. Shortages Data Collection Currently Approved Under OMB Control Number 0910–0491**

FDA bases these estimates on past experiences with direct contact with the medical device manufacturers and distributors, and anticipated changes in the medical device manufacturing and distributions patterns for the specific devices that may be monitored. FDA estimates that there may be up to 500 manufacturers and distributors for which there may be targeted outreach because their devices may be essential to the response effort. This targeted outreach will be conducted periodically to either obtain primary data or to verify/validate updated data (although additional outreach may be undertaken as needed).

From the manufacturer and distributor's point of view, the data being requested represent common data elements that they monitor and track as part of routine business operations and, therefore, are readily available. It is anticipated that for most manufacturers and distributors, the estimated time to fulfill CDRH's data request will not exceed 30 minutes per request.

[1] Under section 506J of the FD&C Act, manufacturers of the following devices must notify FDA of an interruption or permanent discontinuance in manufacturing:

- Devices that are critical to public health during a public health emergency, including those that are life-supporting, life-sustaining, or intended for use in emergency medical care or during surgery; or
- Devices for which FDA determines information on potential meaningful supply disruptions is needed during a public health emergency.

*See* section 506J(a)(1), (2) of the FD&C Act.

[2] See section 506J(a) of the FD&C Act.

[3] See *https://www.fda.gov/media/137712/download.*

[4] See *https://aspe.hhs.gov/system/files/pdf/258866/FDA-PHE-PRA-Waiver-Notice_COVID-19_03.19.20.pdf.*

### II. Information Collection Under Section 506J of the FD&C Act and Related Voluntary Collections

Based on current registration and listing data (approved under OMB control number 0910–0625), we estimate the number of respondents that will submit a notification under section 506J of the FD&C Act to be approximately 20 percent of currently registered manufacturers. Data from our Registration and Listing system indicate that there are approximately 42,000 unique FDA Establishment Identification registered manufacturers. Therefore, we estimate 8,400 respondents per year. We believe that the burden, as well as the provision of required information under section 506J of the FD&C Act—as well as additional voluntary information related to the determination (including additional issues that may impact the availability of the device, such as information about critical suppliers, potential mitigations, production capacity and market share, and notification updates)—is minimal and such information is readily available to manufacturers of the applicable devices. Therefore, we estimate the burden of this information collection to be 15 minutes or less per determination and notification.

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

| Activity | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response | Total hours |
|---|---|---|---|---|---|
| Shortages data collection | 500 | 4 | 2,000 | 0.5 (30 minutes) | 1,000 |
| Information collection under section 506J of the FD&C Act | 8,400 | 1 | 8,400 | 0.25 (15 minutes) | 2,100 |
| Additional voluntary collections related to section 506J of the FD&C Act | 8,400 | 1 | 8,400 | 0.25 (15 minutes) | 2,100 |
| Total | | | 18,800 | | 5,200 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The information collection reflects a revision to add the information collection required by section 506J of the FD&C Act (as amended by section 3121 of the CARES Act) and additional voluntary collections related to section 506J of the FD&C Act to OMB control number 0910–0491.

Upon review of OMB control number 0910–0491, we note that there is a data-entry error in the RISC/ORIA Combined Information System (ROCIS) for a previous information collection approval on February 3, 2020. Currently, ROCIS lists the total burden hours for that approval as 390 hours; the correct total burden hour estimate is 520 hours. This error has carried through to the current total hour burden listed in ROCIS as 2,481 hours for the approval on November 24, 2020; the correct total burden hour estimate should be 2,611 hours. We will correct this error upon submission of this information collection request to OMB.

Additionally, we have updated the number of respondents in each information collection to reflect our current data and estimations.

These revisions and adjustments reflect an overall increase of 2,589 hours to the (corrected) estimated total burden.

Dated: May 19, 2021.

**Lauren K. Roth,**

*Acting Principal Associate Commissioner for Policy.*

[FR Doc. 2021–11028 Filed 5–24–21; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Aging; 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 on Aging Special Emphasis Panel; Infectious Etiology of AD.

*Date:* June 24–25, 2021.

*Time:* 12:00 p.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Video Meeting).

*Contact Person:* Joshua Jin-Hyouk Park, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, Gateway Building 2W200, 7201 Wisconsin Avenue, Bethesda, MD 20892, (301) 496–6208, *joshua.park4@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: May 20, 2021.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2021–11046 Filed 5–24–21; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Aging; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute on Aging Special Emphasis Panel, June 14, 2021, 11:30 a.m. to June 14, 2021, 03:30 p.m., National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD, 20892 which was published in the **Federal Register** on April 06, 2021, 86 FR 17847.

The meeting notice is amended to change the date of the meeting from June 14, 2021 to July 6, 2021. The meeting is closed to the public.

Dated: May 20, 2021.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2021–11030 Filed 5–24–21; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of General Medical Sciences; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of General Medical Sciences Special Emphasis Panel, June 22, 2021, 09:00 a.m. to June 23, 2021, 05:30 p.m., National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on April 16, 2021, 86 FR 20181.

The meeting notice is amended to change time of the meeting from 9:00 a.m.–5:30 p.m. to 9:30 a.m.–5:30 p.m. The meeting is closed to the public.

Dated: May 20, 2021.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2021–11044 Filed 5–24–21; 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:* Microbiology, Infectious Diseases and AIDS Initial Review Group; Microbiology and Infectious Diseases B Research Study Section Microbiology and Infectious Diseases B Subcommittee.

*Date:* June 15–17, 2021.

*Time:* 11:00 a.m. to 5:30 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 3F40, Rockville, MD 20892 (Virtual Meeting).

*Contact Person:* Ellen S. Buczko, 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 3F40, Rockville, MD 20892, 301–451–2676, *ebuczko1@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 19, 2021.

**Tyeshia M. Roberson,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2021–10964 Filed 5–24–21; 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:* Brain Disorders and Clinical Neuroscience Integrated Review Group; Clinical Neuroscience and Neurodegeneration Study Section.

*Date:* June 23–24, 2021.

*Time:* 8:30 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Alessandra C. Rovescalli, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Rm 5205, MSC7846, Bethesda, MD 20892, (301) 435–1021, *rovescaa@mail.nih.gov.*

*Name of Committee:* Cardiovascular and Respiratory Sciences Integrated Review Group; Respiratory Integrative Biology and Translational Research Study Section.

*Date:* June 24–25, 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 (Virtual Meeting).

*Contact Person:* Bradley Nuss, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC7814, Bethesda, MD 20892, 301–451–8754, *nussb@csr.nih.gov.*

*Name of Committee:* Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Skeletal Muscle and Exercise Physiology Study Section.

*Date:* June 24–25, 2021.

*Time:* 9:00 a.m. to 7:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Richard Ingraham, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7814, Bethesda, MD 20892, (301) 496–8551, *ingrahamrh@mail.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: The Cancer Biotherapeutics Development (CBD).

*Date:* June 24–25, 2021.

*Time:* 9:00 a.m. to 8:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Laura Asnaghi, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Room 6200, MSC 7804, Bethesda, MD 20892, (301) 443–1196, *laura.asnaghi@nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Organization and Delivery of Health Services.

*Date:* June 24, 2021.

*Time:* 9:00 a.m. to 8:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Jessica Bellinger, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, Bethesda, MD 20892, *bellingerjd@csr.nih.gov.*

*Name of Committee:* Biology of Development and Aging Integrated Review Group; Drug Discovery and Molecular Pharmacology Study Section.

*Date:* June 28–29, 2021.

*Time:* 9:00 a.m. to 8:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Jeffrey Smiley, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892, 301–594–7945, *smileyja@csr.nih.gov.*

*Name of Committee:* Oncology 2—Translational Clinical Integrated Review Group; Clinical Oncology Study Section.

*Date:* June 28–29, 2021.
*Time:* 9:00 a.m. to 7:00 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
*Contact Person:* Malaya Chatterjee, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6192, MSC 7804, Bethesda, MD 20892, 301–806–2515, *chatterm@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Digestive and Nutrient Physiology and Diseases.
*Date:* June 28–29, 2021.
*Time:* 9:30 a.m. to 6:00 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
*Contact Person:* Aster Juan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817, 301–435–5000, *juana2@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: May 20, 2021.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2021–11045 Filed 5–24–21; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Request for Information on Drinking Water Contaminants of Emerging Concern for the National Emerging Contaminant Research Initiative

**AGENCY:** National Institutes of Health, HHS.

**ACTION:** Request for information.

**SUMMARY:** The National Institutes of Health (NIH), National Institute of Environmental Health Sciences (NIEHS), on behalf of the Office of Science and Technology Policy (OSTP), requests input from all interested parties on research needed to identify, analyze, monitor, and mitigate drinking water contaminants of emerging concern (DW CECs). Comments provided through this Request for Information (RFI) will inform the development of a National Emerging Contaminant Research Initiative (NECRI). The NECRI will be the precursor to Federal coordination of DW CEC research; and agencies will publish external grant solicitations that align with the goals of the NECRI.

**DATES:** This Request for Information is open for public comment for 30 days. Responses must be received by June 24, 2021 to ensure consideration.

**ADDRESSES:** Responses to this RFI may be submitted online to *NIEHSCEC@nih.gov.* Email submissions should be machine-readable [PDF, Word] and should not be copy-protected. Submissions should include ''RFI Response: Drinking Water Contaminants of Emerging Concern'' in the subject line of the email.

Response to this RFI is voluntary. Each individual or organization is requested to submit only one response. Please feel free to respond to one or as many statements as you choose. Responses must not exceed 10 pages in 12 point or larger font (exclusive of attachments), with a page number provided on each page. Responses should include the name of the person(s) or organization(s) filing the response.

Responses containing references, studies, research, and other empirical data that are not widely published should include copies of or electronic links to the referenced materials. Responses containing profanity, vulgarity, threats, or other inappropriate language or content will not be considered.

Comments submitted in response to this RFI are subject to the Freedom of Information Act (FOIA). Responses to this RFI may also be posted, without change, on a Federal website. Therefore, we request that any proprietary information, copyrighted information, or personally identifiable information be omitted from your response to this RFI.

This RFI is for planning purposes only and should not be construed as a solicitation for applications or proposals, or as an obligation in any way on the part of the United States Federal government. The Federal government will not pay for the preparation of any information submitted or for the government's use. Additionally, the government cannot guarantee the confidentiality of the information provided.

**FOR FURTHER INFORMATION CONTACT:** Questions about this request for information should be directed to Christopher P. Weis, Ph.D., DABT, National Institute of Environmental Health Sciences (NIEHS), Telephone: 301–496–3512, Email: *Christopher.Weis@nih.gov;* or David M. Balshaw, National Institute of Environmental Health Sciences (NIEHS), Telephone: 984–287–3234, Email: *balshaw@niehs.nih.gov.*

**SUPPLEMENTARY INFORMATION:** Drinking water contaminants of emerging concern (DW CECs) are newly identified or re-emerging manufactured or naturally occurring physical, chemical, biological, radiological, or nuclear materials that may cause adverse effects to human health or the environment and do not currently have a national primary drinking water regulation. Through this RFI, NIH/NIEHS seeks input from non-governmental entities (*e.g.,* industry, academia, civil society), State and local governments, and other institutions with scientific and material interest in DW CEC research. Comments provided in response to this RFI will inform the development of a National Emerging Contaminant Research Initiative (NECRI) for protection of U.S. drinking water quality. Responses may also be used to address requests from the 2021 National Defense Authorization Act to identify research questions and priorities in the area of sustainable chemistry. The initiative will build on the National Science and Technology Council's (NSTC) cross-agency Plan for Addressing Critical Research Gaps Related to Emerging Contaminants in Drinking Water published in 2018. The NECRI will be the precursor to Federal coordination of DW CEC research; and, in compliance with the NDAA for Fiscal Year 2020, Title LXXIII, Subtitle D, Sections 7341 and 7342, agencies will ''issue a solicitation for research proposals consistent with the Federal research strategy and that agency's mission.''

Contaminants of emerging concern may be present in drinking water and in some cases have been shown to cause adverse effects on human health. The 2020 NDAA instructed Office of Science and Technology Policy (OSTP) to establish the NECRI to improve the ''identification, analysis, monitoring, and treatment methods of contaminants of emerging concern'' and subsequently develop ''any necessary program, policy, or budget'' to further DW CEC research. The 2020 NDAA also directs the Administrator of the U.S. Environmental Protection Agency (EPA) and the Secretary of Health and Human Services (HHS) to establish an Interagency Working Group on Contaminants of Emerging Concern (CEC IWG) to facilitate coordination of Federal research on CEC. OSTP collaborated with the CEC IWG to identify approaches, tools, and methods to accelerate DW CEC research, and metrics and indicators to assess progress in reaching the goals of the NECRI.

**Information Requested**

This RFI requests feedback on two sections: The need for coordination of efforts and the scientific focus of a DW CEC effort. Respondents are free to address one or both of the sections listed below and respond to as many items in each section as they choose, while remaining within the 10-page limit, exclusive of attachments.

*Section 1—Feedback on Improving and Coordinating DW CEC Efforts:* This RFI requests feedback on methods to focus and coordinate DW CEC research efforts. Please consider how U.S. Government and external stakeholder action could contribute to DW CEC research, take advantage of emerging science and technology opportunities, measure outcomes, and develop a DW CEC research initiative with the goal to provide safe drinking water for the American people. Please comment on:

1. Barriers that prevent or limit you or your organization's DW CEC research capabilities and success.

2. Potential opportunities to improve coordination and partnership among public and private entities participating in DW CEC research and prevent unnecessarily duplicative efforts.

3. The types of outreach efforts most useful to communicate DW CEC research results for impacted Federal, State, local, and Tribal communities. Please provide examples where possible.

4. Metrics or indicators that you or your organization adopted to measure the success of your DW CEC research or other related research efforts.

5. Metrics or indicators that would be valuable in measuring the success of a National DW CEC research initiative.

6. As an affected community member, the most significant concerns and recommendations for DW CECs.

*Section 2—Feedback on DW CEC Research Areas:* This RFI requests feedback on needs for broad areas of DW CEC research (detailed below) and research needed for shaping the NECRI.

**DW CEC Research Areas**

Below are descriptions of four areas of DW CEC research identified by the CEC IWG. When submitting your feedback, please indicate which DW CEC research area(s) you are responding to.

**Research Area 1: Exposure**

Exposure to DW CECs can occur through ingestion, inhalation, or dermal routes. Exposure-related research includes contaminant identification and monitoring from source-to-tap and informs downstream efforts to understand the biological effects of CEC exposures, characterize their risk, and develop mitigation tools. Monitoring can be performed routinely to assess water composition, during acute exposure events, or to estimate the effect of CEC mitigation efforts. Exposure science includes efforts to estimate the type and concentration of contaminants through a range of activities from targeted analysis of specific CEC, non-targeted analysis for the discovery of unknown CEC, and modeling activities. Please include thoughts on identification and measurement tools, such as sensors, to conduct analyses.

**Research Area 2: Human Health and Environmental Effects**

Emerging contaminants may cause adverse effects on human health and the environment. Biological effects research encompasses the identification and characterization of these adverse effects, including factors that influence susceptibility to disease or disfunction. Research tools may include *in-silico* and receptor-based approaches, predictive modeling, new toxicological assessments, and data analytics strategies. In the context of this research initiative, environmental effects research considers indicators of adverse human health effects.

**Research Area 3: Risk Characterization To Inform Risk Mitigation**

Risk characterization synthesizes available information and communicates uncertainty about exposure, biological effects, and other relevant considerations to inform risk mitigation actions. Risk mitigation actions include research into preventative approaches such as source reduction. Sustainable chemistry efforts may also fall into risk mitigation actions. In addition, treatments, technological development and application, and other interventions may also be considered to reduce or otherwise mitigate risk for individual, mixtures, or classes of CEC.

**Research Area 4: Risk Communication**

Risk communication relays information to relevant groups about risks to human health and actions that could address those risks. The scope of relevant groups includes those affected by exposures, the general public, decision makers, scientists, industry, and other technical experts. Risk communication research includes techniques and media formats used to inform stakeholder groups and studies on the psychosocial aspects of risks, such as general perceptions of risk, the adoption of risk reduction behaviors, and perceptions framed by scientific controversy or misinformation.

The following statements are provided to obtain feedback to fill existing gaps in DW CEC knowledge and practice in these research areas. Please comment on:

1. The critical, impactful research questions and topics that should be addressed in order to better protect American public health in regard to DW CEC.

2. Research priorities within each of the four areas described below.

3. New or innovative tools, technologies, software, modeling, methods, data/information sharing, etc. that should be developed or employed to address these research areas.

This RFI is for planning purposes only and should not be construed as a solicitation for applications or proposals, or as an obligation in any way on the part of the United States Federal government. The Federal government will not pay for the preparation of any information submitted or for the government's use. Additionally, the government cannot guarantee the confidentiality of the information provided.

Dated: May 19, 2021.

**Christopher P. Weis,**

*Toxicology Liaison, National Institute of Environmental Health Sciences, National Institutes of Health.*

[FR Doc. 2021–11051 Filed 5–24–21; 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 Limited Competition:

Facility and Building System Upgrades Support for the Regional Biocontainment Laboratories (G20—Clinical Trial Not Allowed).

*Date:* June 30, 2021.

*Time:* 10:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G42A, Rockville, MD 20892 (Virtual Meeting).

*Contact Person:* Lynn Rust, 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 3G42A, Rockville, MD 20852, (240) 669–5069, *lrust@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 19, 2021.

**Tyeshia M. Roberson,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2021–10965 Filed 5–24–21; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of General Medical Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of General Medical Sciences Special Emphasis Panel; Review of Centers of Biomedical Research Excellence (COBRE) Phase 1 Applications.

*Date:* July 13–14, 2021.

*Time:* 10:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Video Meeting).

*Contact Person:* Nina Sidorova, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institutes of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18, Bethesda, MD 20814, 301–402–2783, *sidorova@mail.nih.gov*.

*Name of Committee:* National Institute of General Medical Sciences Special Emphasis Panel; Review of NIGMS Pathway to Independence Award K99/R00 Applications.

*Date:* July 15, 2021.

*Time:* 10:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Video Meeting).

*Contact Person:* Rebecca H. Johnson, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18C, 45 Center Drive, Bethesda, MD 20892, 301–594–2771, *johnsonrh@nigms.nih.gov*.

*Name of Committee:* National Institute of General Medical Sciences Special Emphasis Panel; Review of NIGMS Support of Competitive Research (SCORE) Award Applications.

*Date:* July 19, 2021.

*Time:* 10:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Video Meeting).

*Contact Person:* Saraswathy Seetharam, Ph.D., Scientific Review Officer, Office Scientific Review, National Institute of General Medical Sciences, National Institutes Health, 45 Center Drive, Room 3AN12C, Bethesda, MD 20892, 301–594–2763, *seetharams@nigms.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: May 20, 2021.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2021–11039 Filed 5–24–21; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID: FEMA–2021–0016; OMB No. 1660–0086]**

### Agency Information Collection Activities: Proposed Collection; Comment Request; National Flood Insurance Program—Mortgage Portfolio Protection Program (MPPP); Ask the Advocate Web Form

**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 revision of a previously approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning an amendment to a currently-approved collection of information related to the National Flood Insurance Program (NFIP), Mortgage Portfolio Protection Program (MPPP), which is an option that companies participating in the NFIP can use to bring their mortgage loan portfolios into compliance with the flood insurance purchase requirements. This notice seeks comments concerning the collection of information related to the Office of the Flood Insurance Advocate (OFIA).

**DATES:** Comments must be submitted on or before July 26, 2021.

**ADDRESSES:** To avoid duplicate submissions to the docket, please submit comments at *www.regulations.gov* under Docket ID FEMA–2021–0016. 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 *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:** For information related to the NFIP Mortgage Portfolio Protection Program

(MPPP), contact Kelly Bronowicz, Industry Management Branch Chief, FIMA, FEMA, 202–557–9488, *Kelly.Bronowicz@fema.dhs.gov.*

For information related to the Ask the Advocate web form, contact Joe Cecil, Advocate Representative Team Lead, Office of the Flood Insurance Advocate, FIMA, FEMA, 202–701–3465, *Joseph.Cecil@fema.dhs.gov.*

Requests for additional information or copies of the information collection should be made to the Forms & Information Collections Manager, Information Management Division, 500 C Street SW, Washington, DC 20472, email address *FEMA-Information-Collections-Management@fema.dhs.gov.*

**SUPPLEMENTARY INFORMATION:** Pertaining to the MPPP, federal lenders and Federally-regulated or sponsored lending institutions may not make, increase, extend, or renew any loan secured by improved real property located in a special flood hazard area (SFHA) unless the building and any personal property securing the loan is covered by flood insurance for the life of the loan. See Flood Disaster Protection Act of 1973 (FDPA) § 102 (Pub. L. 93–234; 42 U.S.C. 4012a). The FEMA Administrator carries out the NFIP to enable interested persons to purchase insurance against loss resulting from physical damage to or loss of real or personal property arising from flood in the United States. See National Flood Insurance Act of 1968 (NFIA) (Pub. L. 90–448, title XIII; 42 U.S.C. 4001 *et seq.*).

In general, individual mortgagees subject to the requirements of the FDPA obtain and maintain flood insurance for their individual properties. When individual mortgagees do not obtain required flood insurance, the NFIP's MPPP allows covered lenders to ensure compliance with the requirements of FDPA by making available special coverage for the lender's entire mortgage portfolio. See 44 CFR 62.23(l). To sell MPPP policies, private insurance companies participating in the NFIP's Write Your Own (WYO) Program must apply for and annually renew their election to voluntarily participate in the MPPP.

This information collection expires on December 31, 2021. FEMA is requesting a revision of this currently approved collection. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

Pertaining to the Ask the Advocate Web Form, Section 24 of the Homeowner Flood Insurance Affordability Act of 2014 (42 U.S.C. 4033), Public Law 113–89, 128 Stat. 1030, requires FEMA to designate a Flood Insurance Advocate that would advocate for the fair treatment of NFIP policyholders and property owners by: (1) Providing education and guidance on all aspects of the NFIP, (2) identifying trends affecting the public, and (3) making recommendations for NFIP program improvements to FEMA leadership. Pursuant to this authority, FEMA established OFIA on December 22, 2014.

Members of the public regularly contact OFIA seeking assistance on the NFIP. OFIA seeks to facilitate the timely and effective management of these inquiries by creating a web form on OFIA's web page at *https://www.fema.gov/flood-insurance/advocate.* The web form will allow users to provide information that includes all the data necessary for OFIA to perform its Congressionally mandated duties and responsibilities.

Consumers who submit an inquiry to OFIA will be required to fill-out ten (10) informational fields on the Ask the Advocate web form. These fields include: (1) First name, (2) Last name, (3) Email address, (4) Confirm email address, (5) How did you hear of Advocate's office (pull-down list), (6) Contact role (list field), (7) State (pull-down list), (8) ZIP code, (9) Subject (of inquiry) and (10) Questions/Comment (regarding inquiry). An eleventh (11th) field is a security CAPTCHA field intended to distinguish human from machine input as a way of thwarting spam and automated extraction of data from websites.

When a consumer submits this information, the data will be collected and stored on OFIA's Department of Homeland Security/FEMA-approved Customer Relationship Management cloud-based environment hosted by Salesforce.

Once OFIA receives this information, the inquiry will be assigned a system-generated ''Case number'', and then the case is then assigned to an OFIA Advocate Representative (FEMA employee). Using the data collected from the Ask the Advocate web form, the Advocate Representative will research the customer's inquiry and offer education and guidance to help the customer navigate the NFIP process.

**Collection of Information**

*Title:* National Flood Insurance Program—Mortgage Portfolio Protection Program (MPPP).

*Type of Information Collection:* Revision of a currently approved information collection.

*OMB Number:* 1660–0086.

*FEMA Forms:* Ask the Advocate Web Form (form number pending OMB approval).

*Abstract:* Regarding the MPPP, FEMA needs the information to ensure that private insurance companies that join the NFIP's WYO Program meet all state and Federal requirements for insurance companies. Requirements include a good business record and satisfactory rating in their field. There is no other way to obtain this information because it is specific to each company that applies to join the NFIP.

Regarding the Ask the Advocate Web Form, the Homeowner Flood Insurance Affordability Act of 2014 requires FEMA to designate a Flood Insurance Advocate that would advocate for the fair treatment of NFIP policyholders and property owners. Pursuant to this authority, FEMA established OFIA on December 22, 2014.

Members of the public regularly contact OFIA seeking assistance on the NFIP. OFIA seeks to facilitate the timely and effective management of these inquiries through a web form on OFIA's web page. The web form will allow users to provide information that includes all the data necessary for OFIA to fulfill its duties and responsibilities.

*Affected Public:* Individuals, households, businesses, or other for-profit.

*Estimated Number of Respondents:* 1,041.

*Estimated Number of Responses:* 1,041.

*Estimated Total Annual Burden Hours:* 227.

*Estimated Total Annual Respondent Cost:* $11,856.

*Estimated Respondents' Operation and Maintenance Costs:* $0.00.

*Estimated Respondents' Capital and Start-Up Costs:* $0.00.

*Estimated Total Annual Cost to the Federal Government:* $71,930.

**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. 2021–11058 Filed 5–52–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4511–DR; Docket ID FEMA–2021–0001]**

### Commonwealth of the Northern Mariana Islands; Amendment No. 6 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the Commonwealth of the Northern Mariana Islands (FEMA–4511–DR), dated April 1, 2020, and related determinations.

**DATES:** This change occurred on April 26, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Robert J. Fenton, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Tammy L. Littrell as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–11003 Filed 5–24–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4495–DR; Docket ID FEMA–2021–0001]**

### Guam; Amendment No. 6 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for territory of Guam (FEMA–4495–DR), dated March 27, 2020, and related determinations.

**DATES:** This change occurred on April 26, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Robert J. Fenton, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Tammy L. Littrell as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–11001 Filed 5–24–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4582–DR; Docket ID FEMA–2021–0001]**

### Navajo Nation; Amendment No. 3 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the Navajo Nation (FEMA–4582–DR), dated February 2, 2021, and related determinations.

**DATES:** This change occurred on April 26, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Robert J. Fenton, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Tammy L. Littrell as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–11007 Filed 5–24–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4595–DR; Docket ID FEMA–2021–0001]**

### Kentucky; Amendment No. 2 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the Commonwealth of Kentucky (FEMA–4595–DR), dated April 23, 2021, and related determinations.

**DATES:** This amendment was issued May 14, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the Commonwealth of Kentucky is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 23, 2021.

Greenup County for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–11011 Filed 5–24–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4595–DR; Docket ID FEMA–2021–0001]**

### Kentucky; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the Commonwealth of Kentucky (FEMA–4595–DR), dated April 23, 2021, and related determinations.

**DATES:** This amendment was issued May 5, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the Commonwealth of Kentucky is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 23, 2021.

Bell, Calloway, Clark, Edmonson, Graves, Harlan, Leslie, Letcher, Menifee, Owsley, Perry, Pulaski, Union, and Whitley Counties for Public Assistance.

Clay and Estill Counties for Public Assistance (already designated for Individual Assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–11010 Filed 5–24–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4523–DR; Docket ID FEMA–2021–0001]**

### Nevada; Amendment No. 5 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Nevada (FEMA–4523–DR), dated April 4, 2020, and related determinations.

**DATES:** This change occurred on April 26, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Robert J. Fenton, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Tammy L. Littrell as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–11004 Filed 5–24–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4587–DR; Docket ID FEMA–2021–0001]**

### Oklahoma; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Oklahoma (FEMA–4587–DR), dated February 24, 2021, and related determinations.

**DATES:** This amendment was issued May 11, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Oklahoma is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of February 24, 2021.

Muskogee County for Individual Assistance (already designated for emergency protective measures (Category B), including direct federal assistance under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–11008 Filed 5–24–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4482–DR; Docket ID FEMA–2021–0001]**

### California; Amendment No. 4 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for State of California (FEMA–4482–DR), dated March 22, 2020, and related determinations.

**DATES:** This change occurred on April 26, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Robert J. Fenton, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Tammy L. Littrell as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–11000 Filed 5–24–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4537–DR; Docket ID FEMA–2021–0001]**

### American Samoa; Amendment No. 4 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the territory of American Samoa (FEMA–4537–DR), dated April 17, 2020, and related determinations.

**DATES:** This change occurred on April 26, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Robert J. Fenton, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Tammy L. Littrell as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–11006 Filed 5–24–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4593–DR; Docket ID FEMA–2021–0001]**

### Washington; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Washington (FEMA–4593–DR), dated April 8, 2021, and related determinations.

**DATES:** This amendment was issued May 14, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Washington is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 8, 2021.

Cowlitz County and the Puyallup Tribe of Indians for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–11009 Filed 5–24–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4524–DR; Docket ID FEMA–2021–0001]**

### Arizona; Amendment No. 5 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Arizona (FEMA–4524–DR), dated April 4, 2020, and related determinations.

**DATES:** This change occurred on April 26, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Robert J. Fenton, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Tammy L. Littrell as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–11005 Filed 5–24–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4510–DR; Docket ID FEMA–2021–0001]**

### Hawaii; Amendment No. 5 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for State of Hawaii (FEMA–4510–DR), dated April 1, 2020, and related determinations.

**DATES:** This change occurred on April 26, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Robert J. Fenton, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Tammy L. Littrell as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–11002 Filed 5–24–21; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

**[Docket No. ICEB–2021–0004]**

**RIN 1653–ZA18**

## Employment Authorization for Burmese F–1 Nonimmigrant Students Experiencing Severe Economic Hardship as a Direct Result of the Current Crisis in Burma (Myanmar)

**AGENCY:** U.S. Immigration and Customs Enforcement (ICE); Department of Homeland Security (DHS).

**SUMMARY:** This notice announces that the Secretary of Homeland Security (Secretary) has suspended certain regulatory requirements for F–1 nonimmigrant students whose country of citizenship is Burma (regardless of country of birth) and who are experiencing severe economic hardship as a direct result of the current crisis in Burma. The Secretary is taking action to provide relief to Burmese citizens who are lawful F–1 nonimmigrant students so the students may request employment authorization, work an increased number of hours while school is in session, and reduce their course load while continuing to maintain F–1 nonimmigrant student status. DHS will deem an F–1 nonimmigrant student who receives employment authorization by means of this notice to be engaged in a ''full course of study'' for the duration of the employment authorization, if the nonimmigrant student satisfies the minimum course load requirement described in this notice.

**DATES:** This F–1 Notice is effective May 25, 2021 and will remain in effect until November 25, 2022.

**FOR FURTHER INFORMATION CONTACT:** Sharon Snyder, Unit Chief, Policy and Response Unit, Student and Exchange Visitor Program; U.S. Immigration and Customs Enforcement, 500 12th Street SW, Stop 5600, Washington, DC 20536–5600; email: *sevp@ice.dhs.gov,* telephone: (703) 603–3400. This is not a toll-free number. Program information is available at *http://www.ice.gov/sevis/*.

**SUPPLEMENTARY INFORMATION:**

### What action is DHS taking under this notice?

The Secretary is exercising the authority under 8 CFR 214.2(f)(9) to temporarily suspend the applicability of certain requirements governing on-campus and off-campus employment for F–1 nonimmigrant students whose country of citizenship is Burma (regardless of country of birth), who are present in the United States in lawful F–1 nonimmigrant student status as of May 25, 2021, and who are experiencing severe economic hardship as a direct result of the current crisis in Burma. Effective with this publication, suspension of the employment limitations is available through November 25, 2022, for those who are in lawful F–1 nonimmigrant status as of May 25, 2021. DHS will deem an F–1 nonimmigrant student granted employment authorization by means of this notice to be engaged in a ''full course of study,'' for the duration of the employment authorization, if the student satisfies the minimum course load set forth in this notice.[1] *See* 8 CFR 214.2(f)(6)(i)(F).

### Who is covered by this notice?

This notice applies exclusively to F–1 nonimmigrant students who meet all of the following conditions:

(1) Are citizens of Burma, regardless of country of birth;

(2) Were lawfully present in the United States in F–1 nonimmigrant status on May 25, 2021, under section 101(a)(15)(F)(i) of the Immigration and Nationality Act (INA), 8 U.S.C. 1101(a)(15)(F)(i);

(3) Are enrolled in an academic institution that is Student and Exchange Visitor Program (SEVP)-certified for enrollment of F–1 nonimmigrant students;

(4) Are currently maintaining F–1 nonimmigrant status; and

(5) Are experiencing severe economic hardship as a direct result of the current crisis in Burma.

This notice applies to F–1 nonimmigrant students engaged in private school (kindergarten through grade 12), public school (grades 9–12), and undergraduate and graduate education. An F–1 nonimmigrant student covered by this notice who transfers to another SEVP-certified academic institution remains eligible for the relief provided by means of this notice.

### Why is DHS taking this action?

As a result of the current crisis in Burma, the Secretary designated Burma for Temporary Protected Status (TPS) for 18 months, effective May 25, 2021 through November 25, 2022, based on extraordinary and temporary conditions in Burma caused by a February 2021 military coup, which has led to continuing violence, arbitrary detentions, use of lethal violence against peaceful protesters, and the worsening of humanitarian conditions. DHS now is taking action to provide relief to eligible Burmese F–1 nonimmigrant students who are experiencing severe economic hardship as a direct result of the current crisis in Burma. These nonimmigrant students may request employment authorization, work an increased number of hours while school is in session, and reduce their course load while continuing to maintain F–1 nonimmigrant student status.

DHS has reviewed conditions in Burma and determined that making employment authorization available for eligible nonimmigrant students is warranted due to conditions in Burma. On February 1, 2021, the Burmese military perpetrated a coup, deposing the democratically elected government. The military is responding to the Burmese people's peaceful rejection of the coup with brutal repression and violence, resulting in large-scale human rights abuses, including arbitrary detentions and deadly force against unarmed individuals. The coup has triggered a humanitarian crisis, including the disruption of communications and limited access to medical care. The impacts include, among other things, the closure of banks and interruptions of payments and cash withdrawal systems, as well as a reported increase in prices of basic commodities, including food, construction materials and fuel in some areas. Among those in need of humanitarian assistance are over 330,000 people in Burma who remain internally displaced.[2]

[1] Because the suspension of requirements applies throughout an academic term during which the suspension is in effect, DHS considers an F–1 nonimmigrant student who engages in a reduced course load or employment (or both) after this notice is issued to be engaging in a ''full course of study,'' *see* 8 CFR 214.2(f)(6), and eligible for employment authorization, through the end of any academic term for which such student is matriculated as of November 25, 2022, provided they satisfy the minimum course load requirement in this notice. DHS also considers students who engage in online coursework pursuant to ICE coronavirus disease 2019 (COVID–19) guidance for nonimmigrant students to be in compliance with regulations while such guidance remains in effect. See ICE Guidance and Frequently Asked Questions on COVID–19, *available at https://www.ice.gov/coronavirus* [last visited Mar. 2021].

[2] United Nations Office for the Coordination of Humanitarian Affairs (UN OCHA) (February 2021) *Myanmar: Humanitarian Update No. 4, available at*

As of March 11, 2021, approximately 1,634 Burmese F–1 nonimmigrant students were physically present in the United States and enrolled in SEVP-certified academic institutions. Given the extent of the current crisis in Burma, affected nonimmigrant students whose primary means of financial support comes from Burma may need to be exempt from the normal student employment requirements to continue studying in the United States. The current crisis has created financial barriers for nonimmigrant students which could interfere with their ability to financially support themselves and to return to Burma for the foreseeable future. Without employment authorization, these students may lack the means to meet basic living expenses.

**What is the minimum course load requirement set forth in this notice?**

Undergraduate F–1 nonimmigrant students who receive on-campus or off-campus employment authorization under this notice must remain registered for a minimum of six semester or quarter hours of instruction per academic term.[3] A graduate-level F–1 nonimmigrant student who receives on-campus or off-campus employment authorization under this notice must remain registered for a minimum of three semester or quarter hours of instruction per academic term. *See* 8 CFR 214.2(f)(5)(v).

In addition, an F–1 nonimmigrant student (either undergraduate or graduate) granted on-campus or off-campus employment authorization under this notice may count up to the equivalent of one class or three credits per session, term, semester, trimester, or quarter of online or distance education toward satisfying this minimum course load requirement, unless the course of study is in a language study program.[4] *See* 8 CFR 214.2(f)(6)(i)(G). An F–1 nonimmigrant student attending an approved private school (kindergarten through grade 12) or public school (grades 9–12) must maintain ''class attendance for no less than the minimum number of hours a week prescribed by the school for normal progress toward graduation,'' as required under 8 CFR 214.2(f)(6)(i)(E).

**May an eligible F–1 nonimmigrant student who already has on-campus or off-campus employment authorization benefit from the suspension of regulatory requirements under this notice?**

Yes. A Burmese F–1 nonimmigrant student who already has on-campus or off-campus employment authorization and is otherwise eligible may benefit under this notice, which suspends regulatory requirements relating to the minimum course load requirement under 8 CFR 214.2(f)(6)(i)(A) and (B) and the employment eligibility requirements under 8 CFR 214.2(f)(9) as specified in this notice. Such an eligible F–1 nonimmigrant student may benefit without having to apply for a new Form I–766, Employment Authorization Document (EAD). To benefit from this notice, F–1 nonimmigrant students must request that their designated school official (DSO) enter the following statement in the remarks field of that student's Student and Exchange Visitor Information System (SEVIS) record so the students' Form I–20, Certificate of Eligibility for Nonimmigrant (F–1) Student Status reflects:

Approved for more than 20 hours per week of [DSO must insert ''on-campus'' or ''off-campus,'' depending upon the type of employment authorization the student already has] employment authorization and reduced course load under the Special Student Relief authorization from [DSO must insert the beginning date of the notice or the beginning date of the student's employment, whichever date is later] until [DSO must insert either the student's program end date, the current EAD expiration date (if the student is currently authorized for off-campus employment), or the end date of this notice, whichever comes first].

**Must the F–1 nonimmigrant student apply for reinstatement after expiration of this special employment authorization if the student reduces the ''full course of study''?**

No. DHS will deem an F–1 nonimmigrant student who receives and comports with the employment authorization permitted under this notice to be engaged in a ''full course of study'' for the duration of the employment authorization, provided that a qualifying undergraduate level F–1 nonimmigrant student remains registered for a minimum of six semester or quarter hours of instruction per academic term and a qualifying graduate level F–1 nonimmigrant student remains registered for a minimum of three semester or quarter hours of instruction per academic term.[5] *See* 8 CFR 214.2(f)(5)(v) and (f)(6)(i)(F). DHS will not require such students to apply for reinstatement under 8 CFR 214.2(f)(16) if otherwise maintaining F–1 nonimmigrant student status.

**Will an F–2 dependent (spouse or minor child) of an F–1 nonimmigrant student covered by this notice be eligible to apply for employment authorization?**

No. An F–2 spouse or minor child of an F–1 nonimmigrant student is not authorized to work in the United States and, therefore, may not accept employment under the F–2 nonimmigrant status. *See* 8 CFR 214.2(f)(15)(i).

**Will the suspension of the applicability of the standard student employment requirements apply to an individual who receives an initial F–1 visa and makes an initial entry in the United States after publication of this notice in the Federal Register?**

No. The suspension of the applicability of the standard regulatory requirements only applies to those F–1 nonimmigrant students who meet the following conditions:

(1) Are citizens of Burma, regardless of country of birth;

(2) Were lawfully present in the United States in F–1 nonimmigrant status on May 25, 2021, under section 101(a)(15)(F)(i) of the INA, 8 U.S.C. 1101(a)(15)(F)(i);

(3) Are enrolled in an academic institution that is SEVP-certified for enrollment for F–1 nonimmigrant students;

(4) Are currently maintaining F–1 nonimmigrant status; and

(5) Are experiencing severe economic hardship as a direct result of the current crisis in Burma.

An F–1 nonimmigrant student who does not meet all of these requirements is ineligible for the suspension of the applicability of the standard regulatory requirements under this notice (even if experiencing severe economic hardship as a direct result of the current crisis in Burma).

*https://reliefweb.int/sites/reliefweb.int/files/resources/OCHA%20Myanmar%20-%20Humanitarian%20Update%20-%20No.%204.pdf* [last accessed Mar. 2021].

[3] Undergraduate F–1 students enrolled in a term of different duration must register for at least one half of the credit hours normally required under a ''full course of study.'' *See* 8 CFR 214.2(f)(6)(i)(B).

[4] DHS considers students who engage in online coursework pursuant to ICE coronavirus disease 2019 (COVID–19) guidance for nonimmigrant students to be in compliance with regulations while such guidance remains in effect. See ICE Guidance and Frequently Asked Questions on COVID–19, *https://www.ice.gov/coronavirus* [last visited Mar.2021].

[5] Undergraduate F–1 nonimmigrant students enrolled in a term of different duration must register for at least one half of the credit hours normally required under a ''full course of study.'' *See* 8 CFR 214.2(f)(6)(i)(B).

**Does this notice apply to a continuing F–1 nonimmigrant student who departs the United States after publication of this notice in the Federal Register and who needs to obtain a new F–1 visa before returning to the United States to continue an educational program?**

Yes. This notice applies to such a nonimmigrant student, but only if the DSO has properly notated the SEVIS record, which will then appear on the student's Form I–20. The normal rules for visa issuance remain applicable to a nonimmigrant who needs to apply for a new F–1 visa to continue an educational program in the United States.

**Does this notice apply to elementary school, middle school, and high school students in F–1 status?**

Yes. However, this notice does not by itself reduce the required course load for private school (kindergarten through grade 12) or public school (grades 9–12) F–1 nonimmigrant students. Such Burmese students must maintain the minimum number of hours of class attendance per week prescribed by the academic institution for normal progress toward graduation. *See* 8 CFR 214.2(f)(6)(i)(E). The suspension of certain regulatory requirements related to employment through this notice is applicable to all eligible F–1 nonimmigrant students regardless of educational level. Eligible F–1 nonimmigrant students covered by this notice who are enrolled in an elementary school, middle school, or high school do benefit from the suspension of the requirement in 8 CFR 214.2(f)(9)(i) that limits on-campus employment to 20 hours per week while school is in session. Nothing in this notice affects the applicability of federal and state labor laws limiting the employment of minors.

**On-Campus Employment Authorization**

*Will an F–1 nonimmigrant student who receives on-campus employment authorization under this notice be authorized to work more than 20 hours per week while school is in session?*

Yes. For an F–1 nonimmigrant student covered by this notice, the Secretary is suspending the applicability of the requirement in 8 CFR 214.2(f)(9)(i) that limits an F–1 nonimmigrant student's on-campus employment to 20 hours per week while school is in session. An eligible nonimmigrant student has authorization to work more than 20 hours per week while school is in session, if the DSO has entered the following statement in the remarks field of the SEVIS student record, which will appear on the student's Form I–20:

> Approved for more than 20 hours per week of on-campus employment and reduced course load, under the Special Student Relief authorization from [DSO must insert the beginning date of the notice or the beginning date of the student's employment, whichever date is later] until [DSO must insert the student's program end date or the end date of this notice, whichever date comes first].

To obtain on-campus employment authorization, the F–1 nonimmigrant student must demonstrate to their DSO that the employment is necessary to avoid severe economic hardship directly resulting from the current crisis in Burma. A nonimmigrant student authorized by their DSO to engage in on-campus employment by means of this notice does not need to file with the U.S. Citizenship and Immigration Services (USCIS). The standard rules that permit full-time employment on-campus when school is not in session or during school vacations apply. *See* 8 CFR 214.2(f)(9)(i).

*Will an F–1 nonimmigrant student who receives on-campus employment authorization under this notice have authorization to reduce the normal course load and still maintain the student's F–1 nonimmigrant student status?*

Yes. DHS will deem an F–1 nonimmigrant student who receives on-campus employment authorization under this notice to be engaged in a ''full course of study'' [6] for the purpose of maintaining F–1 nonimmigrant student status for the duration of the on-campus employment, if the student satisfies the minimum course load requirement described in this notice. *See* 8 CFR 214.2(f)(6)(i)(F). However, the authorization to reduce the normal course load is solely for DHS purposes of determining valid F–1 nonimmigrant student status. Nothing in this notice mandates that school officials allow an F–1 nonimmigrant student to take a reduced course load if the reduction would not meet the school's minimum course load requirement for continued enrollment.[7]

**Off-Campus Employment Authorization**

*What regulatory requirements does this notice temporarily suspend relating to off-campus employment?*

For an F–1 nonimmigrant student covered by this notice, as provided under 8 CFR 214.2(f)(9)(ii)(A), the Secretary is suspending the following regulatory requirements relating to off-campus employment:

(a) The requirement that a student must have been in F–1 nonimmigrant student status for one full academic year to be eligible for off-campus employment;

(b) The requirement that an F–1 nonimmigrant student must demonstrate that acceptance of employment will not interfere with the student's carrying a full course of study;

(c) The requirement that limits an F–1 nonimmigrant student's employment authorization to no more than 20 hours per week of off-campus employment while school is in session; and

(d) The requirement that the student demonstrate that the employment under 8 CFR 214.2(f)(9)(i) is unavailable or otherwise insufficient to meet the needs that have arisen as a result of the unforeseen circumstances.

*Will an F–1 nonimmigrant student who receives off-campus employment authorization under this notice have authorization to reduce the normal course load and still maintain F–1 nonimmigrant status?*

Yes. DHS will deem an F–1 nonimmigrant student who receives off-campus employment authorization by means of this notice to be engaged in a ''full course of study'' for the purpose of maintaining F–1 nonimmigrant student status for the duration of employment authorization if the student satisfies the minimum course load requirement described in this notice. *See* 8 CFR 214.2(f)(6)(i)(F). However, the authorization to reduce the normal course load is solely for DHS purposes of determining valid F–1 nonimmigrant student status. Nothing in this notice mandates that school officials allow an F–1 nonimmigrant student to take a reduced course load if such a reduced course load would not meet the school's minimum course load requirement.[8]

[6] *See* 8 CFR 214.2(f)(6).

[7] Minimum course load requirement for enrollment in a school must be established in a publicly available document (*e.g.,* catalog, website, or operating procedure), and it must be a standard applicable to all students (U.S. citizens and foreign students) enrolled at the school.

[8] Minimum course load requirement for enrollment in a school must be established in a publicly available document (*e.g.,* catalog, website, or operating procedure), and it must be a standard applicable to all students (U.S. citizens and foreign students) enrolled at the school.

*How may an eligible F–1 nonimmigrant student obtain employment authorization for off-campus employment with a reduced course load under this notice?*

An F–1 nonimmigrant student must file a Form I–765, Application for Employment Authorization, with USCIS to apply for off-campus employment authorization based on the severe economic hardship directly resulting from the current crisis in Burma. Filing instructions are located at *http://www.uscis.gov/i-765.*

*Fee considerations.* Submission of a Form I–765 currently requires payment of a $410 fee. An applicant who is unable to pay the fee may submit a completed Form I–912, Request for Fee Waiver, along with the Form I–765. *See www.uscis.gov/feewaiver.* The submission must include an explanation of why USCIS should grant the fee waiver and the reason(s) for the inability to pay, and any evidence to support the reason(s). *See* 8 CFR 103.7(c).

*Supporting documentation.* An F–1 nonimmigrant student seeking off-campus employment authorization due to severe economic hardship must demonstrate the following to the DSO:

(1) This employment is necessary to avoid severe economic hardship; and

(2) The hardship is a direct result of the current crisis in Burma.

If the DSO agrees that the F–1 nonimmigrant student should receive such employment authorization, the DSO must recommend application approval to USCIS by entering the following statement in the remarks field of the student's SEVIS record, which will then appear on that student's Form I–20:

> Recommended for off-campus employment authorization in excess of 20 hours per week and reduced course load under the Special Student Relief authorization from the date of the USCIS authorization noted on Form I–766 until [DSO must insert the students' program end date or the end date of this notice, whichever date comes first].

The F–1 nonimmigrant student must then file the properly endorsed Form I–20 and Form I–765 according to the instructions for the Form I–765. The F–1 nonimmigrant student may begin working off campus only upon receipt of the EAD from USCIS.

*DSO recommendation.* In making a recommendation that an F–1 nonimmigrant student be approved for Special Student Relief, the DSO certifies the following:

(a) The F–1 nonimmigrant student is in good academic standing and carrying a ''full course of study'' [9] at the time of the request for employment authorization;

(b) The F–1 nonimmigrant student is a citizen of Burma (regardless of country of birth) and is experiencing severe economic hardship as a direct result of the current crisis in Burma, as documented on the Form I–20;

(c) The F–1 nonimmigrant student has confirmed that the student will comply with the reduced course load requirements of 8 CFR 214.2(f)(5)(v) and register for the duration of the authorized employment for a minimum of six semester or quarter hours of instruction per academic term if at the undergraduate level or for a minimum of three semester or quarter hours of instruction per academic term if at the graduate level; and

(d) The off-campus employment is necessary to alleviate severe economic hardship to the individual as a direct result of the current crisis in Burma.

*Processing.* To facilitate prompt adjudication of the student's application for off-campus employment authorization under 8 CFR 214.2(f)(9)(ii)(C), the F–1 nonimmigrant student should do both of the following:

(a) Ensure that the application package includes all of the following documents:

(1) A completed Form I–765;

(2) The required fee or properly documented fee waiver request as defined in 8 CFR 103.7(c); and

(3) A signed and dated copy of the student's Form I–20 with the appropriate DSO recommendation, as previously described in this notice; and

(b) Send the application in an envelope clearly marked on the front of the envelope, bottom right-hand side, with the phrase ''SPECIAL STUDENT RELIEF.'' Failure to include this notation may result in significant processing delays.

If USCIS approves the student's Form I–765, a USCIS official will send the student an EAD as evidence of the students' employment authorization. The EAD will contain an expiration date that does not exceed the end of the granted temporary relief.

**Temporary Protected Status Considerations**

*Can an F–1 nonimmigrant student apply for TPS and for benefits under this notice at the same time?*

Yes. An F–1 nonimmigrant student who has not yet applied for TPS or other relief that reduce the student's course load per term and permits an increase number of work hours per week, such as Special Student Relief,[10] under this notice has two options.

Under the first option, the nonimmigrant student may file the TPS application according to the instructions in the **Federal Register** notice designating Burma for TPS. All TPS applicants must file a Form I–821, Application for Temporary Protected Status (or submit a Request for a Fee Waiver (Form I–912)). Although not required to do so, if an F–1 nonimmigrant student wants to obtain a new EAD based on their TPS application that is valid through November 25, 2022, and to be eligible for EAD extensions that may be available to EADs with an A–12 or C–19 category code, they must file Form I–765 and pay the Form I–765 fee (or submit a Request for a Fee Waiver (Form I–912)). After receiving the TPS-related EAD, an F–1 nonimmigrant student may request that the student's DSO make the required entry in SEVIS, issue an updated Form I–20, as described in this notice, and notate that the nonimmigrant student has been authorized to carry a reduced course load and is working pursuant to a TPS-related EAD. So long as the nonimmigrant student maintains the minimum course load described in this notice, does not otherwise violate the student's nonimmigrant status, including as provided under 8 CFR 214.1(g), and maintains the student's TPS, then the student maintains F–1 nonimmigrant status and TPS concurrently.

Under the second option, the nonimmigrant student may apply for an EAD under Special Student Relief by filing the Form I–765 with the location specified in the filing instructions. At the same time, the F–1 nonimmigrant student may file a separate TPS application but must submit the TPS application according to the instructions provided in the **Federal Register** Notice designating Burma for TPS. Because the F–1 nonimmigrant student already has applied for employment authorization under Special Student Relief, they are not required to submit the Form I–765 as part of the TPS application. However, some nonimmigrant students may wish to obtain a TPS EAD in light of certain extensions that may be available to EADs with an A–12 or C–19 category code. The nonimmigrant student should check the appropriate box when filling out Form I–821 to indicate whether an EAD is being requested. Again, the

[9] *See* 8 CFR 214.2(f)(6).

[10] *See* DHS Study in the States, Special Student Relief, available at *https://studyinthestates.dhs.gov/students/special-student-relief* [last visited Mar. 2021].

nonimmigrant will be able to maintain compliance requirements for F–1 nonimmigrant student status and TPS.

*When a student applies simultaneously for TPS status and benefits under this notice, what is the minimum course load requirement while an application for employment authorization is pending?*

The F–1 nonimmigrant student must maintain normal course load requirements for a ''full course of study'' [11] unless or until the nonimmigrant student receives employment authorization under this notice. TPS-related employment authorization, by itself, does not authorize a nonimmigrant student to drop below twelve credit hours, or otherwise applicable minimum requirements (*e.g.,* clock hours for language students). Once approved for Special Student Relief employment authorization, the F–1 nonimmigrant student may drop below twelve credit hours, or otherwise applicable minimum requirements (with a minimum of six semester or quarter credit hours of instruction per academic term if at the undergraduate level, or a minimum of three semester or quarter credit hours of instruction per academic term if at the graduate level). *See* 8 CFR 214.2(f)(5)(v), 214.2(f)(6), 214.2(f)(9)(i) and (ii).

*How does a student who has received a TPS-related employment authorization document then apply for authorization to take a reduced course load under this notice?*

There is no further application process if a student has been approved for a TPS-related EAD. The F–1 nonimmigrant student must demonstrate and provide documentation to the DSO of the direct economic hardship resulting from the current crisis in Burma. The DSO will then verify and update the student's record in SEVIS to enable the F–1 nonimmigrant student with TPS to reduce the course load without any further action or application. No other EAD needs to be issued for the F–1 nonimmigrant student to have employment authorization.

*Can a noncitizen who has been granted TPS apply for reinstatement of F–1 nonimmigrant student status after the noncitizen's F–1 nonimmigrant student status has lapsed?*

Yes. Current regulations permit certain students who fall out of F–1 nonimmigrant student status to apply for reinstatement. *See* 8 CFR 214.2(f)(16). This provision might apply to students who worked on a TPS-related EAD or dropped their course load before publication of this notice, and therefore fell out of student status. These students must satisfy the criteria set forth in the student status reinstatement regulations.

**How long will this notice remain in effect?**

This notice grants temporary relief until November 25, 2022, to eligible F–1 nonimmigrant students. DHS will continue to monitor the situation in Burma. Should the special provisions authorized by this notice need modification or extension, DHS will announce such changes in the **Federal Register**.

**Paperwork Reduction Act (PRA)**

An F–1 nonimmigrant student seeking off-campus employment authorization due to severe economic hardship must demonstrate to the DSO that this employment is necessary to avoid severe economic hardship. A DSO who agrees that a nonimmigrant student should receive such employment authorization must recommend an application approval to USCIS by entering information in the remarks field of the student's SEVIS record. The authority to collect this information is in the SEVIS collection of information currently approved by the Office of Management and Budget (OMB) under OMB Control Number 1653–0038.

This notice also allows an eligible F–1 nonimmigrant student to request employment authorization, work an increased number of hours while the academic institution is in session, and reduce their course load while continuing to maintain F–1 nonimmigrant student status.

To apply for employment authorization, certain F–1 nonimmigrant students must complete and submit a currently approved Form I–765 according to the instructions on the form. OMB has previously approved the collection of information contained on the current Form I–765, consistent with the PRA (OMB Control No. 1615–0040). Although there will be a slight increase in the number of Form I–765 filings because of this notice, the number of filings currently contained in the OMB annual inventory for Form I–765 is sufficient to cover the additional filings. Accordingly, there is no further action required under the PRA.

**Alejandro N. Mayorkas,**

*Secretary, U.S. Department of Homeland Security.*

[FR Doc. 2021–10997 Filed 5–24–21; 8:45 am]

**BILLING CODE 9111–28–P**

[11] *See* 8 CFR 214.2(f)(6).

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

**[CIS No. 2686–21; DHS Docket No. USCIS–2021–0005]**

**RIN 1615–ZB88**

## Designation of Burma (Myanmar) for Temporary Protected Status

**AGENCY:** U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security (DHS).

**ACTION:** Notice of Temporary Protected Status (TPS) designation.

**SUMMARY:** Through this Notice, DHS announces that the Secretary of Homeland Security is designating Burma for TPS for 18 months, effective May 25, 2021, through November 25, 2022. Under the Immigration and Nationality Act (INA), the Secretary is authorized to designate a foreign state (or any part thereof) for TPS upon finding that extraordinary and temporary conditions in the foreign state prevent its nationals from returning safely, unless permitting the foreign state's nationals to remain temporarily in the United States is contrary to the national interest of the United States. Regardless of an individual's country of birth, this designation allows eligible Burmese nationals (and individuals having no nationality who last habitually resided in Burma) who have continuously resided in the United States since March 11, 2021, and have been continuously physically present in the United States since May 25, 2021 to apply for TPS. This Notice also describes the other eligibility criteria applicants must meet. Individuals who believe they may qualify for TPS under this designation may apply within the 180-day registration period that begins on May 25, 2021, and ends on November 22, 2021. They may also apply for TPS-related Employment Authorization Documents (EADs) and for travel authorization.

**DATES:** The designation of Burma for TPS is effective on May 25, 2021 and

will remain in effect for 18 months, through November 25, 2022.

The 180-day registration period for eligible individuals to submit TPS applications begins May 25, 2021, and will remain in effect through November 22, 2021.

**FOR FURTHER INFORMATION CONTACT:**

- You may contact Maureen Dunn, Chief, Humanitarian Affairs Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, by mail at 5900 Capital Gateway Drive, Camp Springs, MD 20746, or by phone at 800–375–5283.
- For further information on TPS, including guidance on the registration process and additional information on eligibility, please visit the USCIS TPS web page at *uscis.gov/tps.* You can find specific information about Burma's TPS designation by selecting ''Burma'' from the menu on the left side of the TPS web page.
- If you have additional questions about TPS, please visit *uscis.gov/tools.* Our online virtual assistant, Emma, can answer many of your questions and point you to additional information on our website. If you are unable to find your answers there, you may also call our USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).
- Applicants seeking information about the status of their individual cases may check Case Status Online, available on the USCIS website at *uscis.gov,* or visit the USCIS Contact Center at *uscis.gov/contactcenter.*
- Further information will also be available at local USCIS offices upon publication of this Notice.

**SUPPLEMENTARY INFORMATION:**

**Table of Abbreviations**

BIA—Board of Immigration Appeals
CFR—Code of Federal Regulations
DHS—U.S. Department of Homeland Security
DOS—U.S. Department of State
EAD—Employment Authorization Document
FNC—Final Nonconfirmation
Form I–765—Application for Employment Authorization
Form I–797—Notice of Action (Approval Notice)
Form I–821—Application for Temporary Protected Status
Form I–9—Employment Eligibility Verification
Form I–912—Request for Fee Waiver
Form I–94—Arrival/Departure Record
FR—Federal Register
Government—U.S. Government
IER—U.S. Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section
IJ—Immigration Judge
INA—Immigration and Nationality Act
SAVE—USCIS Systematic Alien Verification for Entitlements Program
Secretary—Secretary of Homeland Security
TNC—Tentative Nonconfirmation
TPS—Temporary Protected Status
TTY—Text Telephone
USCIS—U.S. Citizenship and Immigration Services
U.S.C.—United States Code

**Purpose of This Action (TPS)**

Through this Notice, DHS sets forth procedures necessary for eligible nationals of Burma (or individuals having no nationality who last habitually resided in Burma) to submit an initial registration application under the designation of Burma for TPS and apply for an EAD. Under the designation, individuals must submit an initial Application for Temporary Protected Status (Form I–821) and they may also submit an Application for Employment Authorization (Form I–765) during the 180-day initial registration period that runs from May 25, 2021 through November 22, 2021. In addition to demonstrating continuous residence in the United States since March 11, 2021, and meeting other eligibility criteria, initial applicants for TPS under this designation must demonstrate that they have been continuously physically present in the United States since May 25, 2021, the effective date of this designation of Burma, in order for USCIS to grant them TPS. USCIS estimates that approximately 1,600 individuals are eligible to apply for TPS under the designation of Burma.

**What is Temporary Protected Status (TPS)?**

- TPS is a temporary immigration status granted to eligible nationals of a foreign state designated for TPS under the INA, or to eligible individuals without nationality who last habitually resided in the designated foreign state.
- During the TPS designation period, TPS beneficiaries are eligible to remain in the United States, may not be removed, and are authorized to obtain EADs so long as they continue to meet the requirements of TPS.
- TPS beneficiaries may also apply for and be granted travel authorization as a matter of discretion. Upon return from such authorized travel, TPS beneficiaries retain the same immigration status they had before the travel.
- The granting of TPS does not result in or lead to lawful permanent resident status.
- To qualify for TPS, beneficiaries must meet the eligibility standards at INA section 244(c)(1)–(2), 8 U.S.C. 1254a(c)(1)–(2).
- When the Secretary terminates a foreign state's TPS designation, beneficiaries return to one of the following:
  - The same immigration status or category that they maintained before TPS, if any (unless that status or category has since expired or been terminated); or
  - Any other lawfully obtained immigration status or category they received while registered for TPS, as long as it is still valid beyond the date TPS terminates.

**Why was Burma designated for TPS?**

*Overview*

On February 1, 2021, the Burmese military perpetrated a coup, deposing the democratically elected government and declaring a temporary one-year state of emergency, after which it has said it will hold elections. The military is responding with increasing oppression and violence to demonstrations and protests, resulting in large-scale human rights abuses, including arbitrary detentions and deadly force against unarmed individuals. The coup has triggered a humanitarian crisis, including the disruption of communications and limited access to medical care. The Burmese military has a clear and well-documented history of committing atrocities against the people of Burma, and again, the military is committing brutal violence against the Burmese people, including young children.

*Political Crisis*

On February 1, 2021, the Burmese military seized power in a coup against the democratically elected government led by President Win Myint and State Counsellor Aung San Suu Kyi, who were taken into custody along with other leaders of their party, the National League for Democracy (NLD).[1] Immediately after the coup, there were disruptions of internet and cellular service, state television went off air, security checkpoints were set up in major cities, and banks suspended services. The military has imposed a curfew across the country, from 8 p.m. until 6 a.m.[2] and restricted internet and telecommunication services across the country. The military regime has also blocked social media sites such as Facebook and Twitter, detained journalists for doing their work, and is drafting a cybersecurity law that will

[1] ''Myanmar military seizes power, detains elected leader Aung San Suu Kyi,'' Reuters, Feb. 1, 2021.

[2] ''Myanmar's military stages coup d'etat: Live news,'' Al-Jazeera, Feb. 1, 2021.

further restrict online freedom of expression.[3] These disruptions, limitations, and detentions prevent persons in Burma from obtaining timely safety information.

Public protests have taken place in various parts of the country, including some that occur on a nightly basis and some with thousands of participants, in spite of the government's continued blocking of social media websites.[4] Since February 5, a grassroots peaceful Civil Disobedience Movement (CDM), spearheaded by political leaders, civil society activists, youth, government bureaucrats, and health officials, has spread in cities across the country.[5] The protest sizes ebb and flow, reaching numbers of more than 1 million people on February 22. Airport, bank, and health care workers have gone on strike.[6]

To curb protests, on February 8, the military declared a curfew in 36 townships and major cities, dramatically expanding the ability of security forces to arbitrarily arrest and detain individuals, search homes, and use force against people congregating peacefully in groups of five or more.[7] In addition, the military has released more than 20,000 convicted prisoners in what some civil society contacts report is an apparent attempt to intimidate peaceful protestors and create disorder and fear, thus enabling further military crackdowns.[8]

Criminal charges against State Counsellor Aung San Suu Kyi followed two days after the coup. Those charges, purported to relate to violations of import law, were ''widely seen as a pretext to keep her detained'' [9] and to disqualify and/or prevent her for keeping office as an elected official. She was accused of new criminal charges on April 12.[10]

On March 3, the United Nations Special Envoy for Burma, Christine Schraner Burgener, warned that the situation in Burma challenges ''the stability of the region'' and could lead to a ''real war'' and stressed that ''every tool available was now needed to end the situation'' and that ''the unity of the international community was essential.'' [11]

*Human Rights Abuses*

Violence Committed by Police and Military Forces

Since the coup, police and military forces steadily escalated their use of force, resulting in the injuring and killing of multiple individuals. There are multiple credible accounts of heavily armed police and military deploying to areas where demonstrations were taking place, firing into crowds, and killing and injuring demonstrators. [12] Police and military personnel have conducted nighttime raids, resulting in arrests and killings of individuals who tried to stop individuals from entering their communities. [13] On March 30, Secretary of State Antony Blinken called the military's actions in Burma ''reprehensible'' and described ''increasingly disturbing and even horrifying violence''.[14] On April 21, Secretary Blinken stated that the military regime ''has intensified its violent crackdown, killing more than 650 people, including many children, and detaining more than 3,200 others since February 1.'' [15]

Security forces killed over 100 people on March 27 alone as the military celebrated its annual Armed Forces Day, the single bloodiest day since the coup.[16] On April 9, the junta's armed forces killed some 82 people in the city of Bago in a violent suppression of protests.[17] The military has also killed at least 43 children since February 1, according to rights organization Save the Children.[18]

Arbitrary Arrest and Detention

The U.N. Human Rights Office advised that, since the beginning of the coup, the police and security forces have targeted an ''ever-increasing number of opposition voices and demonstrators by arresting political officials, activists, civil society members, journalists and medical professionals.'' [19]

Danger to Vulnerable Groups

Human Rights Watch has expressed concern that military control of the government will further endanger human rights for Rohingya Muslims, who have been denied citizenship and suffered oppression for decades, and that ''serious threats lay ahead for activists, journalists, ethnic minorities and others who have long been targets of the military's oppressive campaigns.'' [20]

The regime has also stepped up the violence in ethnic minority regions. In late March, the military escalated its offensive in Karen State, launching aerial attacks that have driven more than 200,000 residents from their homes to seek shelter in the border regions.[21]

[3] ''Myanmar coup: Teachers join growing protests against military'', BBC News, Feb. 5. 2021; Myanmar: ''A coup is worse than covid. I've lived through three'', The Economist, Feb. 5. 2021; Report of the Special Rapporteur on the situation of human rights in Myanmar, Thomas H. Andrews, U.N. Human Rights Council, Mar. 4, 2021.

[4] ''Myanmar coup: Teachers join growing protests against military'', BBC News, Feb. 5. 2021; Myanmar: ''A coup is worse than covid. I've lived through three'', The Economist, Feb. 5. 2021.

[5] ''Myanmar's Military Arrests Doctors for Joining and Supporting Civil Disobedience Movement'', The Irrawaddy, Feb. 12, 2021; Report of the Special Rapporteur on the situation of human rights in Myanmar, Thomas H. Andrews, U.N. Human Rights Council, Mar. 4, 2021.

[6] ''Myanmar grinds to a halt as hundreds of thousands strike against military coup'', Washington Post, Feb. 22, 2021; Report of the Special Rapporteur on the situation of human rights in Myanmar, Thomas H. Andrews, U.N. Human Rights Council, Mar. 4, 2021, Feb. 22, 2021; Report of the Special Rapporteur on the situation of human rights in Myanmar, Thomas H. Andrews, U.N. Human Rights Council, Mar. 4, 2021.

[7] ''Myanmar's military stages coup d'etat: Live news'', Al-Jazeera, Feb. 1, 2021; Report of the Special Rapporteur on the situation of human rights in Myanmar, Thomas H. Andrews, U.N. Human Rights Council, Mar. 4, 2021.

[8] ''Report of the Special Rapporteur on the situation of human rights in Myanmar'', Thomas H. Andrews, U.N. Human Rights Council, Mar. 4, 2021.

[9] ''Myanmar's Coup, Explained,'' New York Times, Feb. 5, 2020.

[10] ''Myanmar's Junta Levies New Charge Against Aung San Suu Kyi,'' Voice of America News, April 12, 2021.

[11] ''Stability of the region' hangs on Myanmar, declares UN Special Envoy,'' UN News, *https://news.un.org/en/story/2021/03/1086332,* UN News, March 3, 2021.

[12] See, *e.g.,* ''Mass protests and funeral follow deadly shootings in Myanmar,'' NBC News/Associated Press, Feb. 21, 2021; Report of the Special Rapporteur on the situation of human rights in Myanmar, Thomas H. Andrews, U.N. Human Rights Council, Mar. 4, 2021.

[13] See, *e.g.,* ''Myanmar security forces open fire on protesters, killing at least 18, according to U.N.,'' Washington Post, Feb. 28, 2021; Myanmar residents on night patrol as coup tensions deepen, Agence-France Press, Feb. 15, 2021.

[14] ''U.S.' Blinken calls for global companies to reconsider financial support to Myanmar's military,'' Reuters, March 30, 2021.

[15] ''Press Statement of Antony J. Blinken, Secretary of State, on Imposing Sanctions on Two Burmese State-Owned Enterprises'' (April 21, 2021).

[16] ''Army Fires at funeral as Myanmar mourns day of 'mass murder,' '' Aljazeera, March 28, 2021, *available at https://www.aljazeera.com/news/2021/3/28/12-defence-chiefs-condemn-myanmar-army-after-day-of-mass-murder.*

[17] ''Witnesses to Bago killings describe relentless military onslaught against Myanmar civilian population,'' CNN, April 16, 2021, *available at https://www.cnn.com/2021/04/16/asia/bago-mass-killing-myanmar-civilians-intl-hnk/index.html.*

[18] ''Myanmar coup: More than 40 children killed by military, rights group says,'' BBC News, April 1, 2021, *available at https://www.bbc.com/news/world-asia-56600292.*

[19] ''UN Human Rights Office urges military to halt violence against peaceful protestors across Myanmar,'' *https://bangkok.ohchr.org/6109-2/,* February 28, 2021.

[20] ''Serious Threats' Ahead: Human Rights Experts Voice Concern for Rohingya Muslims in Myanmar Following Military Coup,'' Frontline, *https://www.pbs.org/wgbh/frontline/article/human-rights-experts-concern-rohingya-muslims-myanmar-january-31-military-coup/,* February 2, 2021.

[21] ''Myanmar military's offensive against Karen people,'' Vatican News, *https://*

The military has also intensified fighting in Kachin State, after the Kachin Independence Organization (KIO) opposition to the coup and the killing of protestors.[22]

*Humanitarian Crisis*

The Burmese military's history of committing atrocities to maintain and expand its control in the country have raised concerns about the possibility of escalating violence, new displacement, and ongoing and increased obstacles to the provision of humanitarian assistance. In response to past movements against military rule, in 1988 and 2007, the military committed massacres against individuals.[23] Burma's coup on February 1, 2021, has triggered a humanitarian crisis, including the disruption of communications and limited access to medical care. The impacts include, among other things, the closure of banks and interruptions of payments and cash withdrawal systems, as well as a reported increase in prices of basic commodities, including food, construction materials and fuel in some areas.[24] The U.N. Office for the Coordination of Humanitarian Affairs (OCHA) reports the situation has impacted the ability of partners to respond to the needs of vulnerable communities and displaced persons in violence-affected areas. OCHA indicated that about 945,000 people were targeted for such assistance in 2021.[25] Among those in need of humanitarian assistance are over 330,000 people who remain internally displaced (IDPs) within Burma.[26] This includes 126,000 IDPs in camps since the 2012 violence in Rakhine State and, in northern Shan State, around 2,300 people newly displaced in Kyaukme, Namtu and Hsipaw townships in February due to armed clashes between the MAF and ethnic armed organizations or between armed organizations.[27] OCHA reports concerns for its own staff safety and security as well.[28]

**What authority does the Secretary have to designate Burma for TPS?**

Section 244(b)(1) of the INA, 8 U.S.C. 1254a(b)(1), authorizes the Secretary,[29] after consultation with appropriate agencies of the U.S. Government, to designate a foreign state (or part thereof) for TPS if the Secretary determines that certain country conditions exist. The decision to designate any foreign state (or part thereof) is a discretionary decision, and there is no judicial review of any determination with respect to the designation, or termination of or extension of a designation. *See* INA section 244(b)(5)(A); 8 U.S.C. 1254a(b)(5)(A). It is then in the Secretary's discretion to grant TPS to eligible nationals of that foreign state (or individuals having no nationality who last habitually resided in the designated foreign state). See INA section 244(a)(1)(A), 8 U.S.C. 1254a(a)(1)(A).

At least 60 days before the expiration of a foreign state's TPS designation or extension, the Secretary, after consultation with appropriate Government agencies, must review the conditions in the foreign state designated for TPS to determine whether the conditions for the TPS designation continue to be met. See INA section 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A). If the Secretary does not determine that the foreign state no longer meets the conditions for TPS designation, the designation will be extended for an additional period of 6 months or, in the Secretary's discretion, 12 or 18 months. See INA section 244(b)(3)(A), (C), 8 U.S.C. 1254a(b)(3)(A), (C). If the Secretary determines that the foreign state no longer meets the conditions for TPS designation, the Secretary must terminate the designation. See INA section 244(b)(3)(B), 8 U.S.C. 1254a(b)(3)(B).

**Notice of the Designation of Burma for TPS**

By the authority vested in me as Secretary under INA section 244, 8 U.S.C. 1254a, I have determined, after consultation with the appropriate U.S. Government agencies, the statutory conditions supporting Burma's designation for TPS on the basis of extraordinary and temporary conditions are met. See INA section 244(b)(1)(C), 8 U.S.C. 1254a(b)(1)(C). I estimate approximately 1,600 individuals are eligible to apply for TPS under the designation of Burma. On the basis of this determination, I am designating Burma for TPS for 18 months, from May 25, 2021 through November 25, 2022. See INA section 244(b)(1)(C) and (b)(2); 8 U.S.C. 1254a(b)(1)(C), and (b)(2).

**Alejandro N. Mayorkas,**

*Secretary, U.S. Department of Homeland Security.*

**Eligibility and Employment Authorization for TPS**

*Required Application Forms and Application Fees To Register for TPS*

To register for TPS based on the designation of Burma, you must submit an Application for Temporary Protected Status (Form I–821) and pay the filing fee (or submit a Request for a Fee Waiver (Form I–912)). You may be required to pay the biometric services fee. Please see additional information under the ''Biometric Services Fee'' section of this Notice.

Although not required to do so, if you want to obtain an EAD valid through November 25, 2022, you must file an Application for Employment Authorization (Form I–765) and pay the Form I–765 fee (or submit a Request for a Fee Waiver (Form I–912)). If you do not want to request an EAD now, you may also file Form I–765 at a later date and pay the fee (or request a fee waiver), provided that you still have TPS or a pending TPS application.

For more information on the application forms and fees for TPS, please visit the USCIS TPS web page at *uscis.gov/tps.* Fees for the Form I–821, the Form I–765, and biometric services are also described in 8 CFR 103.7(b)(1)(i).

*Biometric Services Fee*

Biometrics (such as fingerprints) are required for all applicants 14 years of age and older. Those applicants must submit a biometric services fee. As previously stated, if you are unable to pay the biometric services fee, you may complete a Request for Fee Waiver (Form I–912). For more information on the application forms and fees for TPS, please visit the USCIS TPS web page at *uscis.gov/tps.* If necessary, you may be required to visit an Application Support Center to have your biometrics captured. For additional information on the USCIS biometric screening process, please see the USCIS Customer Profile

*www.vaticannews.va/en/world/news/2021-04/myanmar-military-strikes-karen-people-displaced.html.*

[22] ''Myanmar Military Suffers Heavy Casualties in Attacks by Ethnic Armed Groups in Kachin State, The Irrawaddy, *https://www.irrawaddy.com/news/burma/myanmar-military-suffers-heavy-casualties-attacks-ethnic-armed-group-kachin-state.html.*

[23] ''The shooting starts,'' The Economist, Mar. 6, 2021.

[24] ''Myanmar Humanitarian Update No. 4,'' *https://reliefweb.int/report/myanmar/myanmar-humanitarian-update-no-4-25-february-2021,* Feb. 25, 2021.

[25] ''Relief programmes hit by ongoing crisis in Myanmar, UN humanitarian office says,'' U.N. News, Feb. 26, 2021.

[26] ''Myanmar: Humanitarian Update No. 4, U.N. Office for the Coordination of Humanitarian Affairs,'' Feb. 25, 2021.

[27] ''Myanmar Humanitarian Update No. 4,'' *https://reliefweb.int/report/myanmar/myanmar-humanitarian-update-no-4-25-february-2021,* Feb. 25, 2021.

[28] ''Myanmar Humanitarian Update No. 4,'' *https://reliefweb.int/report/myanmar/myanmar-humanitarian-update-no-4-25-february-2021,* Feb. 25, 2021.

[29] INA § 244(b)(1) prescribes this power to the Attorney General. Congress transferred this authority from the Attorney General to the Secretary of Homeland Security *See* Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135.

Management Service Privacy Impact Assessment, available at *dhs.gov/privacy.*

*Refiling a TPS Registration Application After Receiving a Denial of a Fee Waiver Request*

You should file as soon as possible within the 180-day registration period so USCIS can process your application and issue any EAD promptly, if you requested one. Properly filing early will also allow you time to refile your application before the deadline, should USCIS deny your fee waiver request. If, however, you receive a denial of your fee waiver request and are unable to refile by the registration deadline, you may still refile your Form I–821 with the biometric services fee. However, you are urged to refile within 45 days of the date on any USCIS fee waiver denial notice. See INA section 244(c)(1)(A)(iv); 8 U.S.C. 1254a(c)(1)(A)(iv); 8 CFR 244.6(a). Following denial of your fee waiver request, you may also refile your Form I–765, with fee, either with your Form I–821 or at a later time, if you choose.

*Note:* Although an initial applicant for TPS must pay the Form I–821 filing fee and those applicants age 14 or older must also pay the biometric services fee, unless granted a fee waiver, you may decide to wait to request an EAD. Therefore, you do not have to file the Form I–765 or pay the associated Form I–765 fee (or request a fee waiver) at the time of registration, and could wait to seek an EAD until after USCIS has approved your TPS registration application. If you choose to do this, to register for TPS you would only need to file the Form I–821 with the $50 filing fee and with the biometric services fee, if applicable (or request a fee waiver).

*Mailing Information*

Mail your application for TPS to the proper address in Table 1.

Table 1—Mailing Addresses

Mail your completed Application for Temporary Protected Status (Form I–821) and Application for Employment Authorization (Form I–765) and supporting documentation to the proper address in Table 1.

TABLE 1—MAILING ADDRESSES

| If . . . | Mail to . . . |
|---|---|
| You are applying through the U.S. Postal Service. | U.S. Citizenship and Immigration Services, Attn: TPS Burma, P.O. Box 6943, Chicago, IL 60680–6943. |
| You are using FedEx, UPS, or DHL ..... | U.S. Citizenship and Immigration Services, Attn: TPS Burma (Box 6943), 131 S Dearborn St. 3rd Floor, Chicago, IL 60603–5517. |

While Burma is designated for TPS, if you are granted TPS by an immigration judge (IJ) or the Board of Immigration Appeals (BIA) and you wish to request an EAD or are registering for the first time following a grant of TPS by an IJ or the BIA, please mail your application to the appropriate mailing address in Table 1. When registering and requesting an EAD based on an IJ/BIA grant of TPS, please include a copy of the IJ or BIA order granting you TPS with your application. This will help USCIS to verify your grant of TPS and process your application.

*Supporting Documents*

The filing instructions on Form I–821 list all the documents needed to establish eligibility for TPS. You may also find information on the acceptable documentation and other requirements for applying or registering for TPS on the USCIS website at *uscis.gov/tps* under ''Burma.''

**General Employment-Related Information for TPS Applicants and Their Employers**

*How can I obtain information on the status of my TPS and EAD request?*

To get case status information about your TPS application, as well as the status of your TPS-based EAD request, you can check Case Status *Online at uscis.gov,* or visit the USCIS Contact Center at *uscis.gov/contactcenter.* If your Form I–821 or Form I–765 has been pending for more than 90 days, and you still need assistance, you may ask a question about your case online at *egov.uscis.gov/e-request/Intro.do* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

*When hired, what documentation may I show to my employer as evidence of identity and employment authorization when completing Form I–9?*

You can find the Lists of Acceptable Documents on the third page of Form I–9, Employment Eligibility Verification, as well as the Acceptable Documents web page at *uscis.gov/i-9-central/acceptable-documents.* Employers must complete Form I–9 to verify the identity and employment authorization of all new employees. Within three days of hire, employees must present acceptable documents to their employers as evidence of identity and employment authorization to satisfy Form I–9 requirements.

You may present any document from List A (which provides evidence of both identity and employment authorization) or one document from List B (which provides evidence of your identity) together with one document from List C (which provides evidence of employment authorization), or you may present an acceptable receipt as described in the Form I–9 Instructions. Employers may not reject a document based on a future expiration date. You can find additional information about Form I–9 on the I–9 Central web page at *uscis.gov/I–9Central.* An EAD is an acceptable document under List A.

*If I have an EAD based on another immigration status, can I obtain a new TPS-based EAD?*

Yes, if you are eligible for TPS, you can obtain a new EAD, regardless of whether you already have an EAD or work authorization based on another immigration status. If you want to obtain a TPS-based EAD valid through November 25, 2022, then you must file Form I–765, Application for Employment Authorization, and pay the associated fee (unless USCIS grants your fee waiver request).

*Can my employer require that I provide any other documentation, such as evidence of my status or proof of my Burmese citizenship, for Form I–9 completion?*

No. When completing Form I–9, employers must accept any documentation you choose to present from the Form I–9 Lists of Acceptable Documents that reasonably appears to be genuine and that relates to you, or an acceptable List A, List B, or List C receipt. Employers need not reverify List B identity documents. Employers may not request proof of Burmese citizenship when completing Form I–9 for new hires or reverifying the employment authorization of current employees. Refer to the ''Note to

Employees'' section of this **Federal Register** notice for important information about your rights if your employer rejects lawful documentation, requires additional documentation, or otherwise discriminates against you based on your citizenship or immigration status, or your national origin.

*Note to All Employers*

Employers are reminded that the laws requiring proper employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This **Federal Register** notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those rules setting forth reverification requirements. For general questions about the employment eligibility verification process, employers may call USCIS at 888–464–4218 (TTY 877–875–6028) or email USCIS at *I-9Central@uscis.dhs.gov.* USCIS accepts calls and emails in English and many other languages. For questions about avoiding discrimination during the employment eligibility verification process (Form I–9 and E-Verify), employers may call the U.S. Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section (IER) Employer Hotline at 800–255–8155 (TTY 800–237–2515). IER offers language interpretation in numerous languages. Employers may also email IER at *IER@usdoj.gov.*

*Note to Employees*

For general questions about the employment eligibility verification process, employees may call USCIS at 888–897–7781 (TTY 877–875–6028) or email USCIS at *I-9Central@uscis.dhs.gov.* USCIS accepts calls in English, Spanish and many other languages. Employees or job applicants may also call the IER Worker Hotline at 800–255–7688 (TTY 800–237–2515) for information regarding employment discrimination based upon citizenship, immigration status, or national origin, including discrimination related to Form I–9 and E-Verify. The IER Worker Hotline provides language interpretation in numerous languages.

To comply with the law, employers must accept any document or combination of documents from the Lists of Acceptable Documents if the documentation reasonably appears to be genuine and to relate to the employee, or an acceptable List A, List B, or List C receipt under DHS regulations, and as described in the Form I–9 Instructions. Employers may not require extra or additional documentation beyond what is required for Form I–9 completion. Further, employers participating in E-Verify who receive an E-Verify case result of ''Tentative Nonconfirmation'' (TNC) must promptly inform employees of the TNC and give such employees an opportunity to contest the TNC. A TNC case result means that the information entered into E-Verify from Form I–9 differs from records available to DHS.

Employers may not terminate, suspend, delay training, withhold or lower pay, or take any adverse action against an employee because of the TNC while the case is still pending with E-Verify. A Final Nonconfirmation (FNC) case result is received when E-Verify cannot confirm an employee's employment eligibility. An employer may terminate employment based on a case result of FNC. Work-authorized employees who receive an FNC may call USCIS for assistance at 888–897–7781 (TTY 877–875–6028). For more information about E-Verify-related discrimination or to report an employer for discrimination in the E-Verify process based on citizenship, immigration status, or national origin, contact IER's Worker Hotline at 800–255–7688 (TTY 800–237–2515). Additional information about proper nondiscriminatory Form I–9 and E-Verify procedures is available on the IER website at *justice.gov/ier* and the USCIS and E-Verify websites at *uscis.gov/i-9-central* and *e-verify.gov.*

*Note Regarding Federal, State, and Local Government Agencies (Such as Departments of Motor Vehicles)*

For Federal purposes, individuals approved for TPS may show their Form I–797, Notice of Action, indicating approval of their Form I–821 application, or their A12 or C19 EAD to prove that they have TPS. However, while Federal Government agencies must follow the guidelines laid out by the Federal Government, state and local government agencies establish their own rules and guidelines when granting certain benefits. Each state may have different laws, requirements, and determinations about what documents they require you to provide to prove eligibility for certain benefits. Whether you are applying for a Federal, state, or local government benefit, you may need to provide the government agency with documents that show you are covered under TPS and/or show you are authorized to work based on TPS. Examples of such documents are:

- Your new EAD with a category code of A12 or C19; or
- A copy of your Form I–94, Arrival/Departure Record or Form I–797, the notice of approval, for your Form I–821, if you received one from USCIS.

Check with the government agency regarding which document(s) the agency will accept.

Some benefit-granting agencies use the SAVE program to confirm the current immigration status of applicants for public benefits. SAVE can verify when an individual has TPS based on the documents above. In most cases, SAVE provides an automated electronic response to benefit-granting agencies within seconds, but occasionally verification can be delayed. You can check the status of your SAVE verification by using CaseCheck at *uscis.gov/save/save-casecheck,* then by clicking the ''Check Your Case'' button. CaseCheck is a free service that lets you follow the progress of your SAVE verification using your date of birth and SAVE verification case number or an immigration identifier number that you provided to the benefit-granting agency. If an agency has denied your application based solely or in part on a SAVE response, the agency must offer you the opportunity to appeal the decision in accordance with the agency's procedures. If the agency has received and acted on or will act on a SAVE verification and you do not believe the response is correct, find detailed information on how to make corrections or update your immigration record, make an appointment, or submit a written request for information about correcting records on the SAVE website at *www.uscis.gov/save.*

[FR Doc. 2021–11075 Filed 5–24–21; 8:45 am]

**BILLING CODE 9111–97–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–6270–N–01]**

## Notice of a Federal Advisory Committee Meeting Manufactured Housing Consensus Committee

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (HUD).

**ACTION:** Notice of Federal Advisory Committee meetings: Manufactured Housing Consensus Committee (MHCC, Committee).

**SUMMARY:** This notice sets forth the schedule and proposed agenda for a meeting of the Manufactured Housing Consensus Committee, to be held via teleconference and webinar. The meeting is open to the public. The agenda for the meeting provides an

opportunity for citizens to comment on the business before the MHCC.

**DATES:** The MHCC Meeting will be held on June 10, 2021, 10:00 a.m. to 5:00 p.m. Eastern Standard Time (EST).

The teleconference number is: 301–715–8592 or 646–558–8656 and the Meeting ID is: 941 9545 5054. To access the webinar, use the following link: *https://zoom.us/j/94195455054.*

**FOR FURTHER INFORMATION CONTACT:** Teresa B. Payne, Administrator, Office of Manufactured Housing Programs, Department of Housing and Urban Development, 451 7th Street SW, Room 9166, Washington, DC 20410, telephone 202–402–2698 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

**SUPPLEMENTARY INFORMATION:** Notice of this meeting is provided in accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 10(a)(2) through implementing regulations at 41 CFR 102–3.150. The MHCC was established by the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5403(a)(3), as amended by the Manufactured Housing Improvement Act of 2000, (Pub. L. 106–569, Sec. 601, *et seq.*). According to 42 U.S.C. 5403, as amended, the purposes of the MHCC are to:

- Provide periodic recommendations to the Secretary to adopt, revise, and interpret the Federal manufactured housing construction and safety standards in accordance with this subsection;
- Provide periodic recommendations to the Secretary to adopt, revise, and interpret the procedural and enforcement regulations, including regulations specifying the permissible scope and conduct of monitoring in accordance with subsection (b); and
- Be organized and carry out its business in a manner that guarantees a fair opportunity for the expression and consideration of various positions and for public participation.

The MHCC is deemed an advisory committee not composed of Federal employees.

*Public Comment:* Citizens wishing to make comments on the business of the MHCC must register in advance by contacting the Administering Organization (AO), Home Innovation Research Labs; Attention: Kevin Kauffman, 400 Prince Georges Blvd., Upper Marlboro, MD 20774, or email to *mhcc@homeinnovation.com,* or call 888–602–4663. With advance registration, members of the public will have an opportunity to provide written comments relative to agenda topics for the Committee's consideration. All written comments must be provided to *mhcc@homeinnovation.com.* Written comments must be provided no later than June 3, 2020. Please note, written comments submitted will not be read during the meeting but will be provided to the MHCC members prior to the meeting. The MHCC will also provide an opportunity for oral public comments on specific matters before the MHCC at each meeting. The total amount of time for oral comments will be 30 minutes, in two 15-minute periods, with each commenter limited to two minutes, if necessary, to ensure pertinent Committee business is completed and all public comments can be expressed. The Committee will not respond to individual written or oral statements; however, it will take all public comments into account in its deliberations. The MHCC strives to accommodate citizen comments to the extent possible within the time constraints of the meeting agenda.

**Tentative Agenda for MHCC Teleconference**

*Thursday, June 10, 2021—10 a.m. to 5 p.m. ET*

I. Call to Order—MHCC Chair & Designated Federal Officer (DFO)
Roll Call—AO
II. Opening Remarks—MHCC Chair & DFO
Introductions:
i. MHCC Members
ii. HUD Staff
iii. Guests
Administration Announcements—DFO & AO
III. Approval of draft minutes from January 7, 2021 MHCC special meeting on the Advance Notice of Public Rulemaking on Minimum Payments to the States.
IV. Public Comment Period—15 minutes
V. Report from the Technical System Subcommittee to the MHCC and Review of Current Log & Action Items
[Log 211, Log 212, Log 216, Log 219, Log 222, Log 223]
VI. Report from the Regulatory Enforcement Subcommittee to the MHCC and Review of Current Log & Action Items
[Log 195, Log 209, Log 214, Log 218, DRC 4]
VII. Lunch from 12:30 p.m. to 1:30 p.m.
VIII. Report from the Structure & Design Subcommittee to the MHCC and Review of Current Log & Action Items
[Log 207, Log 208, Log 210, Log 213, Log 215, Log 217, Log 220, Log 221, Log 224]
IX. Presentation by Department of Energy regarding Manufactured Housing Energy Conservation Standards
X. Public Comment Period—15 minutes
XI. Wrap Up—DFO & AO
XII. Adjourn

**Janet Golrick,**

*Acting, Chief of Staff for the Office of Housing—Federal Housing Administration.*

[FR Doc. 2021–10953 Filed 5–24–21; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R2–ES–2021–N157; FXES11130200000–212–FF02ENEH00]**

### Endangered and Threatened Wildlife and Plants; Recovery Permit Applications

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of permit applications; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications for a permit to conduct activities intended to recover and enhance endangered species survival. With some exceptions, the Endangered Species Act of 1973, as amended (ESA), prohibits certain activities that may impact endangered species unless a Federal permit allows such activity. The ESA also requires that we invite public comment before issuing these permits.

**DATES:** To ensure consideration, please submit your written comments by June 24, 2021.

**ADDRESSES:**

*Document availability:* Request documents by phone or email: Beth Forbus, 505–248–6681, *beth_forbus@fws.gov.*

*Comment submission:* Submit comments by email to *fw2_te_permits@fws.gov.* Please specify the permit you are interested in by number (*e.g.,* Application No. CS1234567).

**FOR FURTHER INFORMATION CONTACT:** Beth Forbus, Supervisor, Classification and Restoration Division, 505–248–6681. Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

**SUPPLEMENTARY INFORMATION:**

## Background

With some exceptions, the Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*) prohibits activities that constitute take of listed species unless a Federal permit is issued that allows such activity. The ESA's definition of ''take'' includes hunting, shooting, harming, wounding, or killing but also such activities as pursuing, harassing, trapping, capturing, or collecting.

The ESA and our implementing regulations in the Code of Federal Regulations (CFR) at title 50, part 17, provide for issuing such permits and require that we invite public comment before issuing permits for activities involving endangered species.

A recovery permit we issue under the ESA, section 10(a)(1)(A), authorizes the permittee to conduct activities with endangered or threatened species for scientific purposes that promote recovery or enhance the species' propagation or survival. These activities often include such prohibited actions as capture and collection. Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

## Permit Applications Available for Review and Comment

Documents and other information submitted with these applications are available for review by any party who submits a request as specified in **ADDRESSES**. Releasing documents is subject to Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552) requirements.

Proposed activities in the following permit requests are for the recovery and enhancement of propagation or survival of the species in the wild. We invite local, State, Tribal, and Federal agencies and the public to submit written data, views, or arguments with respect to these applications. The comments and recommendations that will be most useful and likely to influence agency decisions are those supported by quantitative information or studies. Please refer to the application number when submitting comments.

| Application No. | Applicant | Species | Location | Activity | Type of take | Permit action |
|---|---|---|---|---|---|---|
| ESPER0007876 ... | Cherokee Nation; Tahlequah, Oklahoma. | American burying beetle (*Nicrophorus americanus*). | Oklahoma ..... | Presence/absence surveys. | Harm, harass ..... | Renew. |
| ESPER0009587 ... | Rieck, Jean Marie; Flagstaff, Arizona. | Southwestern willow flycatcher (*Empidonax traillii extimus*). | Arizona, Colorado, New Mexico, Utah. | Presence/absence surveys. | Harm, harass ..... | Renew. |
| ESPER0009589 ... | Paramextrix; Albuquerque, New Mexico. | Loach minnow (*Tiaroga cobitis*), northern aplomado falcon (*Falco femoralis septentrionalis*), piping plover (*Charadrius melodus*), southwestern willow flycatcher (*Empidonax traillii extimus*), spikedace (*Meda fulgida*), Holy Ghost ipomopsis (*Ipomopsis sanctispiritus*), Knowlton's cactus (*Pediocactus knowltonii),* Mancos milk-vetch (*Astragalus humillimus*), Sacramento prickly poppy (*Argemone pleiacantha* ssp. *pinnatisecta*), Sneed pincushion cactus (*Coryphantha sneedii* var. *sneedii*), Todsen's pennyroyal (*Hedeoma todsenii*). | New Mexico ..... | Presence/absence surveys. | Harm, harass ..... | Renew. |
| ESPER0009588 ... | Bureau of Land Management; Tucson, Arizona. | Huachuca water-umbel (*Lilaeopsis schaffneriana* var. *recurva*). | Arizona ..... | Presence/absence surveys, monitoring. | Collect ..... | Amend. |
| ES839848 ..... | U.S. Forest Service, Carson National Forest; Taos, New Mexico. | Southwestern willow flycatcher (*Empidonax traillii extimus*). | New Mexico ..... | Presence/absence surveys. | Harm, harass ..... | Renew. |
| ESPER0009405 ... | Bureau of Land Management; Las Cruces, New Mexico. | Southwestern willow flycatcher (*Empidonax traillii extimus*), northern aplomado falcon (*Falco femoralis septentrionalis*), Mexican long-nosed bat (*Leptonycteris nivalis*), spikedace (*Meda fulgida*), loach minnow (*Tiaroga cobitis*). | New Mexico ..... | Presence/absence surveys. | Harm, harass ..... | Renew. |
| ESPER0007004 ... | Bureau of Land Management; Safford, Arizona. | Southwestern willow flycatcher (*Empidonax traillii extimus*), spikedace (*Meda fulgida*), loach minnow (*Tiaroga cobitis*), desert pupfish (*Cyprinodon macularius*), Gila chub (*Gila intermedia*), Gila topminnow (*Poeciliopsis occidentalis*), Little Peebles Navajo cactus (*Pediocactus peeblesianus* var. *peeblesianus*). | Arizona ..... | Presence/absence surveys. | Harm, harass ..... | Renew. |
| ESPER0005103 ... | Proppe, Darren; Dripping Springs, Texas. | Houston toad (*Bufo houstonensis*) ..... | Texas ..... | Presence/absence | Harm, harass ..... | New. |
| ESPER0005104 ... | Schofield, Landon; Kingsville, Texas. | Ocelot (*Leopardus pardalis*) ..... | Texas ..... | Presence/absence, trapping, live capture, blood collection. | Harm, harass ..... | New. |

| Application No. | Applicant | Species | Location | Activity | Type of take | Permit action |
|---|---|---|---|---|---|---|
| ESPER0004032 ... | Horizon Environmental Services, Inc.; Austin, Texas. | Golden-cheeked warbler (*Dendroica crysoparia*), Houston toad (*Bufo houstonensis*), *Rhadine exilis* (ground beetle, no common name), *Rhadine infernalis* (ground beetle, no common name), Helotes mold beetle (*Batrisodes venyivi*), Cokendolpher Cave harvestman (*Texella cokendolpheri*), Robber Baron Cave meshweaver (*Cicurina baronia*), Madla Cave meshweaver (*Cicurina madla*), Braken Bat Cave meshweaver (*Cicurina venii*), Government Canyon Bat Cave meshweaver (*Cicurina vespera*), Government Canyon Bat Cave spider (*Tayshaneta* (= *Neoleptoneta*) *microps*), Tooth Cave spider (*Tayshaneta* (=*Neoleptoneta myopica*)), Tooth Cave pseudoscorpion (*Tartarocreagris texana*), Bee Creek Cave harvestman (*Texella reddelli*), Kretschmarr Cave mold beetle (*Texamaurops reddelli*), Tooth Cave ground beetle (*Rhadine persephone*), Bone Cave harvestman (*Texella reyesi*), Coffin Cave mold beetle (*Batrisodes texanus*). | Texas ..... | Presence/absence, collection. | Harm, harass ..... | Renew. |
| ESPER0009384 ... | SWCA; Albuquerque, NM. | Southwestern willow flycatcher (*Empidonax traillii extimus*), Rio Grande silvery minnow (*Hybognathus amarus*), razorback sucker (*Xyrauchen texanus*), Colorado pikeminnow, (*Ptychocheilus lucius*), spikedace (*Meda fulgida*), loach minnow (*Tiaroga cobitis*). | Arizona, Colorado, New Mexico, Nevada, Utah. | Presence/absence surveys, nest monitoring. | Harm, harass ..... | Renew. |

## Authority

We provide this notice under section 10 of the ESA (16 U.S.C. 1531 *et seq.*).

**Amy L. Lueders,**

*Regional Director, Southwest Region, U.S. Fish and Wildlife Service.*

[FR Doc. 2021–11014 Filed 5–24–21; 8:45 am]

**BILLING CODE 4333–15–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–HQ–FAC–2020–N153; FF09F42300 FVWF97920900000 XXX]**

### Sport Fishing and Boating Partnership Council; Call for Nominations

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Call for nominations.

**SUMMARY:** The Secretary of the Interior (Secretary) seeks nominations for individuals to be considered for membership on the Sport Fishing and Boating Partnership Council (Council).

**DATES:** Email submissions must be received by June 24, 2021 and U.S. mail submissions must be postmarked by June 24, 2021.

**ADDRESSES:** Please address your nomination letters to David Hoskins, Assistant Director, Fish and Aquatic Conservation, U.S. Fish and Wildlife Service. Submit your nomination letters via email or U.S. mail to David Miko, Designated Federal Officer, Sport Fishing and Boating Partnership Council, U.S. Fish and Wildlife Service; 5275 Leesburg Pike, Mailstop 3C016A–FAC, Falls Church, VA 22041–3803; *david_miko@fws.gov.*

**FOR FURTHER INFORMATION CONTACT:** David Miko, via email at *david_miko@fws.gov,* or by telephone at 703–216–5401. Hearing or speech impaired individuals may call the Federal Relay Service at 800–877–8339 for TTY assistance.

**SUPPLEMENTARY INFORMATION:** The Secretary seeks nominations for individuals to be considered for membership on the Council. The Council advises the Secretary, through the Director, U.S. Fish and Wildlife Service, on aquatic conservation endeavors that benefit recreational fishery resources and recreational boating and that encourage partnerships among industry, the public, and government. The Council conducts its operations in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App.). The Council functions solely as an advisory body. Six members' terms expired on April 1, 2021.

## Council Duties

The Council's duties and responsibilities, where applicable, are as follows:

a. Providing advice that will assist the Secretary in carrying out the authorities of the Fish and Wildlife Act of 1956.

b. Fulfilling responsibilities established by Executive Order 12962:

(1) Monitoring specific Federal activities affecting aquatic systems and the recreational fisheries they support.

(2) Reviewing and evaluating the relation of Federal policies and activities to the status and conditions of recreational fishery resources.

c. Recommending policies or programs to increase public awareness of and support for the Sport Fish Restoration and Boating Trust Fund.

d. Recommending policies or programs that foster conservation and ethics in recreational fishing and boating.

e. Recommending policies or programs to stimulate angler and boater participation in the conservation and restoration of aquatic resources through outreach and education.

f. Advising how the Secretary can foster communication and coordination

among government, industry, anglers, boaters, and the public.

g. Providing recommendations for implementation of Secretary's Order 3347—Conservation Stewardship and Outdoor Recreation, and Secretary's Order 3356—Hunting, Fishing, Recreational Shooting, and Wildlife Conservation Opportunities and Coordination with States, Tribes, and Territories.

h. Providing recommendations for implementation of regulatory reform initiatives and policies specified in section 2 of Executive Order 13777—Reducing Regulation and Controlling Regulatory Costs; Executive Order 12866—Regulatory Planning and Review, as amended; and section 6 of Executive Order 13563—Improving Regulation and Regulatory Review.

**Council Makeup**

The Director of the U.S. Fish and Wildlife Service, and the President of the Association of Fish and Wildlife Agencies are ex officio members. The Council may consist of no more than 18 members and up to 16 alternates appointed by the Secretary for a term not to exceed 3 years. Appointees will be selected from among, but not limited to, the following national interest groups:

a. State fish and wildlife resource management agencies (two members—one a Director of a coastal State, and one a Director of an inland State);

b. Saltwater and freshwater recreational fishing organizations;

c. Recreational boating organizations;

d. Recreational fishing and boating industries;

e. Recreational fishery resources conservation organizations;

f. Tribal resource management organizations;

g. Aquatic resource outreach and education organizations; and

h. The tourism industry.

**Nomination Method and Eligibility**

Members will be senior-level representatives of recreational fishing, boating, and aquatic resource conservation organizations, and must have the ability to represent their designated constituencies. Nominations should include a resume that provides contact information and a description of the nominee's qualifications that would enable the Department of the Interior to make an informed decision regarding the candidate's suitability to serve on the Council. Any nominee may also submit the name and resume of a person on their organization's staff whom they would like to be considered as their alternate.

*Public Disclosure:* Before including your address, phone number, email address, or other personal identifying information in your nomination, you should be aware that your entire nomination—including your personal identifying information—may be made publicly available at any time. While you can ask us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Authority:** 5 U.S.C. Appendix 2.

**David Hoskins,**

*Assistant Director, Fish and Aquatic Conservation, U.S. Fish and Wildlife Service.*

[FR Doc. 2021–11015 Filed 5–24–21; 8:45 am]

**BILLING CODE 4333–15–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLWY921000 L14400000.ET0000, 21X; WYW–149140]**

### Notice of Application for Withdrawal Extension and Opportunity for Public Meeting for the Tie Hack Campground; Wyoming

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The United States Department of Agriculture, United States Forest Service (USFS), has filed an application with the Bureau of Land Management (BLM) requesting the Secretary of the Interior extend Public Land Order (PLO) No. 7513 for an additional 20-year term. PLO No. 7513 withdrew 20.90 acres of National Forest System lands from location and entry under the United States mining laws, but not from the general land laws or the mineral leasing laws, to protect the Tie Hack Campground and capital investments in Johnson County, Wyoming. This notice advises the public of an opportunity to comment on this application for a withdrawal extension and to request a public meeting.

**DATES:** Comments and requests for a public meeting regarding the withdrawal application must be received on or before August 23, 2021.

**ADDRESSES:** Comments and meeting requests should be sent to the BLM Wyoming State Director, 5353 Yellowstone Road, Cheyenne, Wyoming 82009.

**FOR FURTHER INFORMATION CONTACT:** Keesha Clay, Realty Specialist, at 307–775–6189. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact either of the above individuals during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individuals. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The withdrawal established by PLO No. 7513 (67 FR 8036) will expire February 20, 2022. The USFS has filed an application to extend PLO No. 7513 for an additional 20-year term.

The purpose of the withdrawal extension is to continue the withdrawal to protect the Tie Hack Campground and capital investments in the area.

The use of a right-of-way, interagency, or cooperative agreement would not constrain nondiscretionary uses.

There are no suitable alternative sites available; there are no other Federal lands in the area containing these recreational values.

There is no water rights requirement for the purpose of this withdrawal extension.

Comments, including name and street address of respondents, will be available for public review at the BLM Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming, during regular business hours, 8:00 a.m. to 4:30 p.m., Monday through Friday, except holidays.

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 personally identifying information—may be made publicly available at any time. While you may ask the BLM in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with this withdrawal extension. All interested persons who desire a public meeting for the purpose of being heard on the withdrawal extension must submit a written request to the State Director, BLM Wyoming State Office at the address in the **ADDRESSES** section, within 90 days from the date of publication of this Notice. If the authorized officer determines that a public meeting will be held, a notice of the date, time, and place will be published in the **Federal Register** and local newspapers and will post on the BLM website at: *www.blm.gov* at least 30 days before the scheduled date of the meeting.

**Authority:** 43 CFR 2310.4.

**Kimber Liebhauser,**

*Acting State Director, Wyoming.*

[FR Doc. 2021–10927 Filed 5–24–21; 8:45 am]

**BILLING CODE 4310–22–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLHQ310000.L13100000.PP0000; OMB Control No. 1004–0211]**

### Agency Information Collection Activities; Production Subject to Royalties, and Resource Conservation

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) proposes to renew an information collection.

**DATES:** Interested persons are invited to submit comments on or before July 26, 2021.

**ADDRESSES:** Send your written comments on this information collection request (ICR) by mail to Darrin King, Information Collection Clearance Officer, U.S. Department of the Interior, Bureau of Land Management, Attention PRA Office, 440 W 200 S #500, Salt Lake City, UT 84101; or by email to *BLM_HQ_PRA_Comments@blm.gov*. Please reference Office of Management and Budget (OMB) Control Number 1004–0211 in the subject line of your comments. Please note that due to COVID–19, the electronic submission of comments is recommended.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact Jennifer Spencer by email at *j35spenc@blm.gov,* or by telephone at 307–775–6261. Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

**SUPPLEMENTARY INFORMATION:** In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. The BLM may not conduct or sponsor, and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

*Abstract:* The BLM's royalty-free standards contained in 43 CFR parts 3160 and 3170 apply to Federal and Indian (except Osage Tribe) oil and gas leases. The information collection requirements contained in standards are designed to address circumstances under which oil or gas produced from onshore wells may be used royalty-free in operations. This request is for OMB to renew this OMB Control Number for an additional three years.

*Title of Collection:* Production Subject to Royalties, and Resource Conservation (43 CFR parts 3160 and 3170).

*OMB Control Number:* 1004–0211.

*Form Numbers:* 3160–005.

*Type of Review:* Extension of a currently approved collection.

*Respondents/Affected Public:* Holders of Federal and Indian (except Osage Tribe) oil and gas leases.

*Total Estimated Number of Annual Respondents:* 50.

*Total Estimated Number of Annual Responses:* 50.

*Estimated Completion Time per Response:* Varies from 8 hours, depending on activity.

*Total Estimated Number of Annual Burden Hours:* 400.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*Frequency of Collection:* On occasion.

*Total Estimated Annual Nonhour Burden Cost:* None.

An agency may not conduct or sponsor and, notwithstanding any other provision of law, 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.*).

**Darrin A. King,**

*Information Collection Clearance Officer.*

[FR Doc. 2021–10990 Filed 5–24–21; 8:45 am]

**BILLING CODE 4310–84–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NRNHL–DTS#–31992; PPWOCRADI0, PCU00RP14.R50000]**

### National Register of Historic Places; Notification of Pending Nominations and Related Actions

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The National Park Service is soliciting electronic comments on the significance of properties nominated before May 15, 2021, for listing or related actions in the National Register of Historic Places.

**DATES:** Comments should be submitted electronically by June 9, 2021.

**ADDRESSES:** Comments are encouraged to be submitted electronically to *National_Register_Submissions@nps.gov* with the subject line ''Public Comment on <property or proposed district name, (County) State>.'' If you have no access to email you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

**SUPPLEMENTARY INFORMATION:** The properties listed in this notice are being

considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before May 15, 2021. Pursuant to Section 60.13 of 36 CFR part 60, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

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.

Nominations submitted by State or Tribal Historic Preservation Officers:

**ALABAMA**

**Hale County**

Magnolia Hall, 805 Otts St., Greensboro, SG100006665

**GEORGIA**

**De Kalb County**

East Atlanta Historic District, Roughly bounded by I20, Moreland Ave., Edgemore Dr., Elmhurst Cir., Wainwright Dr., and Fayetteville Rd., Atlanta, SG100006668

**Habersham County**

Clarkesville Downtown Square Historic District (Clarkesville MRA), Along Washington St. (US 441/23), roughly bounded by Jefferson, Morgan, Madison, Water, Monroe, and Grant Sts., Clarkesville, MP100006669

**Upson County**

McDaniel, John and Effie, House, 317 West Main St., Thomaston, SG100006662

**KANSAS**

**Chase County**

Cottonwood Falls Grade School (Public Schools of Kansas MPS), 401 Maple St., Cottonwood Falls, MP100006682

**Douglas County**

Kansas Homestead of Thomas McQuill(i)an (Agriculture-Related Resources of Kansas MPS), 1320 North 150 Rd., Baldwin City vicinity, MP100006683

**KENTUCKY**

**Jefferson County**

Conrad, Theophilus T., House-Rose Anna Hughes Presbyterian Widows Home, 1402 St. James Ct., Louisville, SG100006661

**MAINE**

**Kennebec County**

Brunswick Square, Bounded by School St., Brunswick, Dresden, and Lincoln Aves., Gardiner, SG100006675

**Somerset County**

Young Surgical Building-Central Maine Sanatorium, 50 Mountain Ave., Fairfield, SG100006674

**MINNESOTA**

**Rice County**

Northfield Commercial Historic District (Boundary Decrease), Roughly bounded by South Water, Division, Washington, East. 3rd, West 3rd, East 4th, and West 6th Sts., Dahomey Ave./TH 3, Northfield, BC100006666

**NEW JERSEY**

**Essex County**

Everett Court Apartments, The, 76–80 Court St., Newark, SG100006672

**NEW YORK**

**Erie County**

John Kam Company Malt House & Kiln House, 356 Hertel Ave., Buffalo, SG100006684

**OREGON**

**Union County**

Oregon Trail: La Grande to Hilgard Segment, (The Oregon Trail, Oregon, 1840 to 1880 MPS), Hilgard Quadrangle, T3S R37E Secs. 10, 11, 12; T3S R38E Sec. 7 (South of I84 between La Grande and Hilgard), La Grande, MP100006679

Additional documentation has been received for the following resources:

**ALABAMA**

**Dallas County**

Water Avenue Historic District (Additional Documentation), Water Ave., bounded by Lauderdale St., MLK Blvd., Beech Creek., Alabama R, Selma, AD05000650

**ARKANSAS**

**Pulaski County**

Central High School Neighborhood Historic District (Additional Documentation), Roughly bounded by MLK Dr., Thayer Ave., West 12th St., and Roosevelt Rd., Little Rock, AD96000892

**KENTUCKY**

**Jefferson County**

Highlands Historic District (Additional Documentation), Roughly bounded by Barrett Ave., Eastern Pkwy., Fernwood, Bardstown, Woodbourne, Ellerbee, and Sherwood Aves., Louisville, AD83002680

**MICHIGAN**

**St. Joseph County**

White Pigeon Prairie Land Office (Additional Documentation), 113 West. Chicago Rd., White Pigeon, AD88003234

**MINNESOTA**

**Rice County**

Northfield Commercial Historic District (Additional Documentation), Roughly bounded by South Water, Division, Washington, East 3rd, West 3rd, East 4th, and West 6th Sts., Dahomey Ave./TH 3, Northfield, AD79003125

Nominations submitted by Federal Preservation Officers:

The State Historic Preservation Officer reviewed the following nominations and responded to the Federal Preservation Officer within 45 days of receipt of the nominations and supports listing the properties in the National Register of Historic Places.

**IDAHO**

**Custer County**

Yankee Fork Gold Dredge, 300 Yankee Fork Rd. (Forest Service Rd. 013), Stanley vicinity, SG100006663

**WYOMING**

**Sweetwater County**

Lucerne Valley Archaeological District, Address Restricted, Washam vicinity, SG100006664

**Authority:** Section 60.13 of 36 CFR part 60.

Dated: May 18, 2021.

**Sherry A. Frear,**

*Chief, National Register of Historic Places/National Historic Landmarks Program.*

[FR Doc. 2021–10978 Filed 5–24–21; 8:45 am]

**BILLING CODE 4312–52–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–1195]**

## Certain Electronic Candle Products and Components Thereof Commission Determination To Review in Part an Initial Determination Finding a Violation of Section 337; Schedule for Filing Written Submissions on the Issues Under Review and on Remedy, the Public Interest, and Bonding

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission (''Commission'') has determined to review in part an initial determination (''ID'') (Order No. 41) of the presiding administrative law judge (''ALJ''). The Commission requests briefing from the parties on certain issues under review, as indicated in this notice. The Commission also requests briefing from the parties, interested government agencies, and other interested persons on the issues of remedy, the public interest, and bonding.

**FOR FURTHER INFORMATION CONTACT:** Robert Needham, Esq., Office of the General Counsel, U.S. International

Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–5468. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on April 6, 2020, based on a complaint filed by L&L Candle Company LLC of Brea, California and Sotera Tschetter, Inc. of St. Paul, Minnesota (together, ''Complainants''). 85 FR 19158–59. The complaint alleged violations of section 337 in the importation into the United States, the sale for importation, and the sale after importation within the United States after importation of certain electronic candle products and components thereof by reason of infringement of one or more of claims 1–6, 10, 12–15, 17–19, and 28 of U.S. Patent No. 8,550,660; claims 1–15 of the U.S. Patent No. 9,366,402; claims 1–4, 6–12, 14–18, 20–25, 27, and 28 of the U.S. Patent No. 9,512,971; claims 1–7, 10–14, 17, 18, 22, 24, 25, 27, and 29 of U.S. Patent No. 9,523,471; and claims 1–5, 7, 8, 10–12, 15, 17, 21 and 22 of U.S. Patent No. 10,533,718. *Id.* The notice of investigation named as respondents The Gerson Company of Olathe, Kansas; Gerson International (H.K.) Ltd. of Hong Kong; Sterno Home Inc. of Coquitlam, Canada; Ningbo Huamao International Trading Co., Ltd. of Ningbo City, China; Ningbo Yinzhou Langsheng Artware Co., Ltd of Ningbo City, China; Lifetime Brands, Inc. of Garden City, New York; Scott Brothers Entertainment, Inc. of Las Vegas, Nevada; Nantong Ya Tai Candle Arts & Crafts Co., Ltd. of San Gabriel, California; NapaStyle, Inc. of Napa, California; Veraflame International, Inc. of Vancouver, Canada (''Veraflame''); MerchSource, LLC of Irvine, California; Ningbo Mascube Import Export Company of Ningbo City, China (''Ningbo Mascube''); Decorware International Inc. dba Decorware Inc. of Rancho Cucamonga, California; Shenzhen Goldenwell Smart Technology Co., Ltd. of Shenzhen City, China; Shenzhen Ksperway Technology Co., Ltd. of Shenzhen City, China; Ningbo Shanhuang Electric Appliance Co. of Ningbo City, China (''Ningbo Shanhuang''); Yiwu Shengda Art Co., Ltd. of Yiwu City, China (''Yiwu Shengda''); Shenzhen Tongfang Optoelectronic Technology Co., Ltd. of Shenzhen City, China; TFL Candles of Shenzhen City, China; Guangdong Tongfang Lighting Co., Ltd. of Hong Kong; Tongfang Optoelectronic Company of Hong Kong; and Virtual Candles Limited of Kent, United Kingdom (''Virtual Candles''). *Id.* at 19159. The Office of Unfair Import Investigations (''OUII'') is a party to the investigation. *Id.*

The Commission terminated five respondents from the investigation based on consent orders. See Order No. 7 (May 4, 2020), *unreviewed by* Notice (Jun. 3, 2020) (terminating the investigation with respect to Shenzhen Tongfang Optoelectronic Technology Co., Ltd.; TFL Candles; Guandong Tongfang Lighting Co., Ltd.; and Tongfang Optoelectronic Company); Order No. 37 (Dec. 17, 2020), *unreviewed by* Notice (Jan. 5, 2021) (terminating the investigation with respect to Nantong Ya Tai Candle Arts & Crafts Co., Ltd. based on a consent order and a settlement agreement). The Commission also terminated eight respondents from the investigation based on settlement. Order No. 12 (Jun. 15, 2020), *unreviewed by* Notice (Jun. 20, 2020) (terminating The Gerson Company and Gerson International (H.K.) Ltd. based on settlement); Order No. 15 (Jul. 15, 2020), *unreviewed by* Notice (Aug. 5, 2020) (terminating Merchsource, LLC based on settlement); Order No. 29 (Oct. 19, 2020), *unreviewed by* Notice (Nov. 2, 2020) (terminating Decorware International Inc. based on settlement); Order No. 38 (Dec. 18, 2020), *unreviewed by* Notice (Jan. 5, 2021) (Sterno Home Inc., Ningbo Huamao International Trading Co., Ltd., and Ningbo Yinzhou Langsheng Artware Co., Ltd. based on settlement); Order No. 39 (Dec. 18, 2020), *unreviewed by* Notice (Jan. 5, 2021) (terminating Lifetime Brands, Inc. based on settlement). The Commission further terminated three respondents from the investigation based on Complainants' partial withdrawal of the complaint due to the failure to serve those entities with the complaint and notice of investigation. Order No. 35 (Nov. 13, 2020), *unreviewed by* Notice (Nov. 30, 2020) (terminating NapaStyle, Inc., Shenzhen Goldenwell Smart Technology Co., Ltd., and Shenzhen Ksperway Technology Co., Ltd. based on a partial withdrawal of the complaint). Finally, the Commission terminated Scott Brothers Entertainment Inc. from the investigation based on a summary determination that Complainants failed to establish the importation requirement with respect to that respondent. Order No. 17 (Jul. 28, 2020), *unreviewed by* Notice (Aug. 28, 2020).

With respect to the five remaining respondents, the Commission found Veraflame, Ningbo Mascube, Virtual Candles, Yiwu Shengda, and Ningbo Shanhuang (together, ''the Defaulting Respondents'') in default for failing to respond to the complaint and notice of investigation and for failing to show cause why they had not done so, or for failing to participate in discovery. Order No. 14 (Jul. 8, 2020), *unreviewed by* Notice (Aug. 3, 2020) (finding Veraflame, Mascube, and Virtual Candles in default); Order No. 33 (Nov. 12, 2020), *unreviewed by* Notice (Nov. 30, 2020) (finding Yiwu Shengda and Ningbo Shanhuang in default).

On November 13, 2020, Complainants moved for a summary determination of violation and for a recommendation for the issuance of a GEO. On December 4, 2020, OUII filed a response that questioned whether Complainants had satisfied the economic prong of the domestic industry requirement, but otherwise supported a finding of violation and the issuance of a GEO. On December 9, 2020, Complainants filed a reply in support of their motion.

On April 2, 2021, the ALJ issued the subject ID and granted Complainants' motion for a summary determination of violation by each of the five Defaulting Respondents. Order No. 41 (Apr. 2, 2021). No party petitioned for review of the subject ID.

The Commission has determined to review the subject ID in part. Specifically, the Commission has determined to review the ID's finding that Complainants satisfied the economic prong of the domestic industry requirement. The Commission has not determined to review any other findings in the ID.

In connection with its review, the Commission is interested in briefing on the following issues:

1. Attached to Complainants' motion for summary determination, Complainants submitted the declaration of Dr. Seth Kaplan. That declaration repeatedly refers to exhibits ''attached hereto,'' but the declaration contains no attachments. Do the documents referred to in Dr. Kaplan's declaration appear elsewhere in the record? If so, please identify the location. If not, please address the admissibility of Dr. Kaplan's declaration and whether the Commission should entertain *a motion under Rule 210.15 (19 CFR 210.15) by Complainants, accompanied by the*

*exhibits, to* reopen the record to admit the exhibits into the administrative record.

2. Please discuss Complainants' domestic industry investments under Section 337(a)(3)(A), (B), or (C) that are related to products that practice each patent and explain whether such investments are significant or substantial under each subsection in light of Commission and Federal Circuit precedents. Please include in your response, a contextual discussion of the relevant marketplace, for example, without being exhaustive, a discussion of Complainants' foreign investments relative to its domestic industry expenditures in these statutory categories, a discussion of the value added to the product from Complainant's activities in the United States, and/or a discussion of the domestic industry investments in the statutory categories relative to Complainants' total domestic operations. *See, e.g., Certain Carburetors & Prods. Containing Such Carburetors,* Inv. No. 337–TA–1123, Comm'n Op., 2019 WL 5622443, *12 (Oct. 28, 2019); *Certain Solid State Storage Drives, Stacked Electronics Components, and Products Containing the Same,* Inv. No. 337–TA–1097, Commission Op. at 29–30 (June 29, 2018).

3. Please address whether the domestic industry investments constitute investments in the ''exploitation'' of the asserted patents under Section 337(a)(3)(C). *See Certain Integrated Circuit Chips and Products Containing the Same,* Inv. No. 337–TA–859, Comm'n Op., 2014 WL 12796437 (Aug. 22, 2014).

4. Please explain whether Complainants' asserted domestic industry differs from that of a mere importer, including by discussing: (A) How the Commission and the Federal Circuit have considered such investments in prior investigations, and (B) how the facts of this investigation should be assessed in light of applicable precedent. Also address the extent to which the activities relied upon to show satisfaction of the economic prong need to take place in the United States either as a legal or a practical matter, such that those activities would not distinguish a domestic industry from a mere importer.

The parties are invited to brief only the discrete issues described above, with reference to the applicable law and evidentiary record. The parties are not to brief other issues on review, which are adequately presented in the parties' existing filings.

In connection with the final disposition of this investigation, the statute authorizes issuance of (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in the respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843, Comm'n Op. at 7–10 (December 1994).

The statute requires the Commission to consider the effects of that remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order and/or a cease and desist order would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no action on the Commission's determination. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

*Written Submissions:* The Commission requests that the parties to the investigation file written submissions on the issues identified in this notice. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such initial submissions should include views on the recommended determination by the ALJ on remedy and bonding.

In their initial submissions, Complainants and OUII are also requested to identify the remedy sought and to submit proposed remedial orders for the Commission's consideration. Complainants are also requested to state the HTSUS subheadings under which the accused products are imported and to supply the identification information for all known importers of the products at issue in this investigation. The initial written submissions and proposed remedial orders must be filed no later than close of business on June 1, 2021. Reply submissions must be filed no later than the close of business on June 8, 2021. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (March 19, 2020). Submissions should refer to the investigation number (Inv. No. 337–TA–1195) in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf* ). Persons with questions regarding filing should contact the Secretary, (202) 205–2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5

U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

The Commission vote for this determination took place on May 19, 2021.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: May 19, 2021.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2021–10944 Filed 5–24–21; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 701–TA–658–659 and 731–TA–1538–1542 (Final)]**

## Aluminum Foil From Armenia, Brazil, Oman, Russia, and Turkey Scheduling of the Final Phase of Countervailing and Antidumping Duty Investigations

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice of the scheduling of the final phase of antidumping and countervailing duty investigation Nos. 701–TA–658–659 and 731–TA–1538–1542 (Final) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of aluminum foil from Armenia, Brazil, Oman, Russia, and Turkey, provided for in subheadings 7607.11.30, 7607.11.60, 7607.11.90, and 7607.19.60 of the Harmonized Tariff Schedule of the United States, preliminarily determined by the Department of Commerce (''Commerce'') to be sold at less-than-fair-value and imports of aluminum foil preliminarily determined to be subsidized by the governments of Oman and Turkey.

**DATES:** May 4, 2021.

**FOR FURTHER INFORMATION CONTACT:** Celia Feldpausch (202) 205–2387, Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:**

*Scope.*—For purposes of these investigations, Commerce has defined the subject merchandise as ''aluminum foil having a thickness of 0.2 mm or less, in reels exceeding 25 pounds, regardless of width. Aluminum foil subject to these investigations are made from an aluminum alloy that contains more than 92 percent aluminum. Aluminum foil may be made to ASTM specification ASTM B479, but can also be made to other specifications. Regardless of specification, however, all aluminum foil meeting the scope description is included in the scope, including aluminum foil to which lubricant has been applied to one or both sides of the foil.'' [1]

*Background.*—The final phase of these investigations is being scheduled pursuant to sections 705(b) and 731(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 1673d(b)), as a result of affirmative preliminary determinations by Commerce that certain benefits which constitute subsidies within the meaning of § 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters of aluminum foil in Oman and Turkey, and that such products from Armenia, Brazil, Oman, Russia, and Turkey are being sold in the United States at less than fair value within the meaning of § 733 of the Act (19 U.S.C. 1673b). The investigations were requested in petitions filed on September 29, 2020, by the Aluminum Association Trade Enforcement Working Group, Arlington, Virginia and its individual members—Gränges Americas Inc., Franklin, Tennessee; JW Aluminum Company, Daniel Island, South Carolina; and Novelis Corporation, Atlanta, Georgia.

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

*Participation in the investigations and public service list.*—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.*—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Staff report.*—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on August 27, 2021, and a public version will be issued

[1] For a full description of the scope of these investigations, including product exclusions, see Appendix I of *Certain Aluminum Foil from the Republic of Armenia: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures,* 86 FR 23672, May 4, 2021.

thereafter, pursuant to § 207.22 of the Commission's rules.

*Hearing.*—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on Tuesday, September 14, 2021. Information about the place and form of the hearing, including about how to participate in and/or view the hearing, will be posted on the Commission's website at *https://www.usitc.gov/calendarpad/calendar.html.* Interested parties should check the Commission's website periodically for updates. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before Tuesday, September 7, 2021. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on Thursday, September 9, 2021. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

*Written submissions.*—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.23 of the Commission's rules; the deadline for filing is September 3, 2021. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.25 of the Commission's rules. The deadline for filing posthearing briefs is September 21, 2021. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before September 21, 2021. On October 12, 2021, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before October 14, 2021, but such final comments must not contain new factual information and must otherwise comply with § 207.30 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

Additional written submissions to the Commission, including requests pursuant to § 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

By order of the Commission.

Issued: May 19, 2021.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2021–10971 Filed 5–24–21; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### Bureau of Alcohol, Tobacco, Firearms and Explosives

**[OMB Number 1140–NEW]**

### Agency Information Collection Activities; Proposed eCollection of eComments Requested; New Information Collection; Authorization for Release of Information—ATF Form 8620.56

**AGENCY:** Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

**ACTION:** 60-Day notice.

**SUMMARY:** The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection (IC) is also being published to obtain comments from the public and affected agencies.

**DATES:** Comments are encouraged and will be accepted for 60 days until July 26, 2021.

**FOR FURTHER INFORMATION CONTACT:** If you have additional comments, regarding the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact: Lakisha Gregory, Chief, Personnel Security Division either by mail at 99 New York Ave. NE, Washington, DC 20226, by email at *Lakisha.Gregory@atf.gov,* or by telephone at 202–648–9260.

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

#### Overview of This Information Collection

1. *Type of Information Collection* (check justification or form 83): New collection.

2. *The Title of the Form/Collection:* Authorization for Release of Information.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

*Form number (if applicable):* ATF Form 8620.56.

*Component:* Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

*Primary:* Individuals or households.

*Other (if applicable):* None.

*Abstract:* The Authorization for Release of Information—ATF Form 8620.56 will be used to determine if a candidate complies with personnel security requirements and is suitable for Federal or contractor employment at the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF).

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 2,000 respondents will use the form annually, and it will take each respondent approximately 5 minutes to complete their responses.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 167 hours, which is equal to 2,000 (# of respondents) * .0833333 (5 minutes).

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: May 20, 2021.

**Melody Braswell,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2021–10993 Filed 5–24–21; 8:45 am]

**BILLING CODE 4410–FY–P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to The National Cooperative Research and Production Act of 1993—IMS Global Learning Consortium, Inc.

Notice is hereby given that, on May 3, 2021, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), IMS Global Learning Consortium, Inc. (''IMS Global'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, Conexus AS, Drammen, NORWAY; Dienst Uitvoering Onderwijs (DUO), Zoetermeer, NETHERLANDS; Eanes Independent School District, Austin, TX; Identity Automation, Houston, TX; Pivotal EdTech, Dublin, IRELAND; Prince William County Public Schools, Manassas, VA; Riiid Labs, San Ramon, CA; Seaford School District, Seaford, DE; Tyler Technologies, St. Louis, MO; University of Missouri, Columbia, MO; VerifyEd, Dorset, UNITED KINGDOM; University of Pennsylvania, Philadelphia, PA; and Washington State Board for Community Technical Colleges System, Olympia, WA, have been added as parties to this venture.

Also, Renaissance Learning, Wisconsin Rapids, WI; Hyland Credentials, Westlake, OH; Collective Shift/LRNG, Chicago, IL; Deer Park Independent School District, Deer Park, TX; Digital Promise, Washington, DC; IQ4, Woodcliff Lake, NJ; The Wharton School, University of Pennsylvania, Philadelphia, PA; and Washington State Board for Community Technical Colleges, Olympia, WA, have withdrawn as parties to this venture.

In addition, ClassEDU has changed its name to Class Technologies, Raleigh, NC.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IMS Global intends to file additional written notifications disclosing all changes in membership.

On April 7, 2000, IMS Global filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 13, 2000 (65 FR 55283).

The last notification was filed with the Department on February 17, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 10, 2021 (86 FR 13752).

**Suzanne Morris,**

*Chief, Premerger and Division Statistics, Antitrust Division.*

[FR Doc. 2021–10924 Filed 5–24–21; 8:45 am]

**BILLING CODE 4410–11–P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—MLCommons Association

Notice is hereby given that on April 28, 2021 pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. Section 4301 *et seq.* (the ''Act''), MLCommons Association (''MLCommons'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Super Micro Computer, Inc., San Jose, CA; Moreh Inc., Seoul, REPUBLIC OF KOREA; Mohammed Lataifeh (individual member), Sharjah, UNITED ARAB EMIRATES; Guodong Zhang (individual member), Toronto, CANADA; Hop Services LLC, Atlanta, GA; Lenovo Global Technology (United States) Inc., Morrisville, NC; Daniel Snider (individual member), Toronto, CANADA; Prof. Dr. Philipp Hennig (individual member), Tübingen, GERMANY, Cirrus AI (Pty) Ltd., Noordheuwel, SOUTH AFRICA; Frank Schneider (individual member), Tübingen, GERMANY; Jeyan Thiyagalingam (individual member), Didcot, UNITED KINGDOM; Jiun Jeong (individual member), Seoul, REPUBLIC OF KOREA; Pawel Cyrta (individual member), Warsaw, POLAND; OctoML, Inc., Seattle, WA; NeuReality LTD., Ceaseria, ISRAEL; Mark Marzumder (individual member), Cambridge, MA; Pengxiang Xu (individual member), Shenzhen, PEOPLE'S REPUBLIC OF CHINA; and Gigantor Technologies, Inc., Melbourne Beach, FL have joined as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open and MLCommons intends to file additional written notifications disclosing all changes in membership.

On September 15, 2020, MLCommons filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section6(b) of the Act on September 29, 2020 (85 FR 61032).

The last notice was filed with the Department on February 12, 2021. A

notice was published in the **Federal Register** pursuant to Section 6 (b) of the Act on April 8, 2021 (86 FR 18299).

**Suzanne Morris,**

*Chief, Premerger and Division Statistics, Antitrust Division.*

[FR Doc. 2021–10928 Filed 5–24–21; 8:45 am]

**BILLING CODE 4410–11–P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Southwest Research Institute—Cooperative Research Group on ROS-Industrial Consortium-Americas

Notice is hereby given that, on April 29, 2021, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute—Cooperative Research Group on ROS-Industrial Consortium-Americas (''RIC-Americas'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Analog Devices, Limerick, IRELAND, and Autodesk Inc, San Rafael, CA, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and RIC-Americas intends to file additional written notifications disclosing all changes in membership.

On April 30, 2014, RIC-Americas filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 9, 2014 (79 FR 32999).

The last notification was filed with the Department on March 1, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 8, 2021 (86 FR 18299).

**Suzanne Morris,**

*Chief, Premerger and Division Statistics, Antitrust Division.*

[FR Doc. 2021–10937 Filed 5–24–21; 8:45 am]

**BILLING CODE 4410–11–P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Open Group, L.L.C.

Notice is hereby given that, on May 11, 2021, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), The Open Group, L.L.C. (''TOG'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 4Subsea AS, Asker, NORWAY; ACROSS & AHEAD Advisory GmbH, Cologne, GERMANY; AEM Energy Solutions Sdn. Bhd., Jalan Ampang, MALAYSIA; Ball Aerospace, Boulder, CO; Bhavyam Infotech Pte Ltd, Ubi Crescent City, SINGAPORE; Buurst, Inc., Houston, TX; ChampionX, The Woodlands, TX; Cinergix Pty Ltd, Mentone, AUSTRALIA; Core Laboratories LP, Houston, TX; CourseMonster Pty Ltd, Melbourne, AUSTRALIA; CRI2M SRL, Brussels, BELGIUM; D2IQ, Inc., San Francisco, CA; Data Gumbo Corporation, Houston, TX; Digital Business Consulting LLC, McKinney, TX; digitWin, s.r.o., Bratislava, SLOVAKIA; Eaton Corporation, Syracuse, NY; Energy Systems Catapult Limited, Birmingham, UNITED KINGDOM; Full-Stack Architecture International, LLC, Boca Raton, FL; GeoMark Research, Ltd., Houston, TX; Informatica Corporation, Redwood City, CA; Inter-Coastal Electronics, LLC, Mesa, AZ; IPT Global, LLC, Houston, TX; Lexmark International Incorporated, Lexington, KY; Memorial University of Newfoundland, St. John's, CANADA; Micropac Industries Incorporated, Garland, TX; NEDRA New Digital Resources for Assets, Limited Liability Company, Saint-Petersburg, RUSSIAN FEDERATION; NETGEOMETRY SDN. BHD., Selangor, MALAYSIA; NICON Company, Seoul, REPUBLIC OF KOREA; OhioHealth Corporation, Dublin, OH; OSIsoft, LLC, San Leandro, CA; PA Holdings Limited, London, UNITED KINGDOM; Petrosys Pty Ltd, Adelaide, AUSTRALIA; PIDX International, Houston, TX; Quorum Business Solutions USA, Houston, TX; Radiall USA, Inc., Tempe, AZ; Security Express, Pty Ltd, Roseville, AUSTRALIA; Softdel Systems Private Limited, Pune, INDIA; Spirent Federal Systems Inc, Pleasant Grove, UT; StreamDSP, LLC, Columbus, OH; Talented App, Inc., Boca Raton, FL; The Bardasz Group LLC, Houston, TX; The SABSA Institute C.I.C, Hove, UNITED KINGDOM; The University of Melbourne, School of Computing and Information Systems, Parkville, AUSTRALIA; TNO, Netherlands Organisation for applied scientific research, The Hague, THE NETHERLANDS; University of Houston, Houston, TX; Utthunga Technologies Pvt. Ltd., Bangalore, INDIA; and Wavekoda, The Hague, THE NETHERLANDS, have been added as parties to this venture.

Also, 3ES Innovation Inc., Calgary, CANADA; Aljouf University, Sakaka, SAUDI ARABIA; AVISTA, Incorporated, Platteville, WI; Bliley Technologies, Inc., Erie, PA; China Eastern Airlines, Shanghai, PEOPLE'S REPUBLIC OF CHINA; Concho Resources, Midland, TX; Conf. Inter Das Coop Ligadas ao SICREDI, Porto Alegre, BRAZIL; Confluent, Inc., Mountain View, CA; CRFS, Inc., Chantilly, VA; EnergyIQ LLC, Littleton, CO; Esri South Africa (Pty) Ltd., Johannesburg, SOUTH AFRICA; Fugro (USA), Inc., Houston, TX; General Secretariat of the Council of the European Union, Brussels, BELGIUM; Grupo Magnus SAS, Bogota, COLOMBIA; Hess Corporation, Houston, TX; HighByte Inc., Portland, ME; Industrial Electronic Engineers, Inc., Van Nuys, CA; InovaPrime, Serviços em Tecnologias de Informação, Lda., Lisbon, PORTUGAL; International Foundation for Digital Competences, Zaltbommel, THE NETHERLANDS; J.M. Voith SE & Co. KG/DSG, Heidenheim, GERMANY; MTN Group Management Services, Johannesburg, SOUTH AFRICA; Palm View Consulting, Whitlock, BELGIUM; Physical Optics Corporation, Torrance, CA; Royal Vopak, Rotterdam, THE NETHERLANDS; Strand & Donslund A/S, Søborg, DENMARK; Sykehuspartner HF, Dramman, NORWAY; University of Leeds NIHR Clinical Research Network, Leeds, UNITED KINGDOM; and Woodward Inc., Fort Collins, CO, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and TOG intends to file additional written notifications disclosing all changes in membership.

On April 21, 1997, TOG filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal**

**Register** pursuant to Section 6(b) of the Act on June 13, 1997 (62 FR 32371).

The last notification was filed with the Department on February 8, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 10, 2021 (86 FR 13751).

**Suzanne Morris,**

*Chief, Premerger and Division Statistics, Antitrust Division.*

[FR Doc. 2021–10933 Filed 5–24–21; 8:45 am]

**BILLING CODE 4410–11–P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Dynamic Spectrum Alliance, Inc.

Notice is hereby given that, on May 4, 2021, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Dynamic Spectrum Alliance, Inc. (''DSA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Cisco Systems, Inc., San Jose, CA has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and DSA intends to file additional written notifications disclosing all changes in membership.

On September 1, 2020, DSA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 18, 2020 (85 FR 58390).

The last notification was filed with the Department on February 10, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 10, 2021 (86 FR 13734).

**Suzanne Morris,**

*Chief, Premerger and Division Statistics, Antitrust Division.*

[FR Doc. 2021–10931 Filed 5–24–21; 8:45 am]

**BILLING CODE 4410–11–P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Silicon Integration Initiative, Inc.

Notice is hereby given that, on April 15, 2021 pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Silicon Integration Initiative, Inc. (''Si2'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, AMSIMCEL SRL, Vicovu de Jos, ROMANIA; Frontier Design Automation, Austin, TX; Hongzhunda, Shanghai, PEOPLE'S REPUBLIC OF CHINA; Nanjing Industrial Innovation Center of EDA, Nanjing, PEOPLE'S REPUBLIC OF CHINA; Northrop Grumman Systems Corporation, Linthicum, MD; Phlexing Technology, Hangzhou, PEOPLE'S REPUBLIC OF CHINA; Primarius Technologies Co., Ltd., Shanghai, PEOPLE'S REPUBLIC OF CHINA; Silicon Technologies, Inc., Midvale, UT; and Silintech, Inc., Suzhou, PEOPLE'S REPUBLIC OF CHINA have been added as parties to this venture.

Also, Chengdu Higon IC Design Co., Ltd., Beijing, PEOPLE'S REPUBLIC OF CHINA; HW21 Org Limited, San Francisco, CA; Invecas Inc., Santa Clara, CA; ProPlus Design Solutions, Inc., San Jose, CA; Savarti Company Limited, Milpitas, CA; and Thrace Systems, San Jose, CA, have withdrawn as parties to this venture.

Additionally, Avatar Integrated Systems, Inc., Santa Clara, CA, was acquired by existing member Siemens Industry Software, Inc., Wilsonville, OR; AWR/a National Instruments Corporation, El Segundo, CA, was acquired by existing member, Cadence Design Systems, San Jose, CA; Broadcom Corporation, Irvine, CA has changed its name to Broadcom, Inc.; Dassault Systèmes, Stuttgart, GERMANY, has changed its name to Dassault Systèmes Deutschland GmbH; Fractal Technologies, Los Gatos, CA, has changed its name to Fractal Technologies, Inc.; GLOBALFOUNDRIES, Santa Clara, CA, has changed its name to GLOBALFOUNDRIES U.S. Inc.; Google Inc., Mountain View, CA, has changed its name to Google LLC; Empyrean Software, San Jose, CA, has changed its name to DaVinchi Inc. dba Empyrean Software; Jedat, Tokyo, JAPAN, has changed its name to Jedat Inc.;

MediaTek, Hsinchu, TAIWAN, has changed its name to MediaTek Inc.; Mentor, a Siemens Business, Wilsonville, OR, has changed its name to Siemens Industry Software, Inc.; Phoelex, Cambridge, UNITED KINGDOM has changed its name to Phoelex LTD; and TowerJazz, Newport Beach, CA, has changed its name to Tower Semiconductor.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Si2 intends to file additional written notifications disclosing all changes in membership.

On December 30, 1988, Si2 filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 13, 1989 (54 FR 10456).

The last notification was filed with the Department on April 23, 2020. A notice was published in the **Federal Register** pursuant the Section 6(b) of the Act on May 19, 2020 (85 FR 29975).

**Suzanne Morris,**

*Chief, Premerger and Division Statistics, Antitrust Division.*

[FR Doc. 2021–10936 Filed 5–24–21; 8:45 am]

**BILLING CODE 4410–11–P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant To the National Cooperative Research and Production Act of 1993—Telemanagement Forum

Notice is hereby given that, on May 3, 2021, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), TM Forum, A New Jersey Non-Profit Corporation (''The Forum'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, the following entities have become members of the Forum: Aaxis Digital, Los Angeles, CA; Advanced Institute of Information Technology (AIIT), Peking University, Hangzhou, PEOPLE'S REPUBLIC OF

CHINA; Brytlyt Limited, Maidstone, UNITED KINGDOM; Elisa Corporation, Helsinki, FINLAND; Epam Systems, Inc., Newtown, PA; Eric G. Troup, Orlando, FL; GeoIdentity Inc., Los Gatos, CA; Getreve Limited, London, UNITED KINGDOM; Hangzhou Eastcom Software Technology Co., Ltd, Hangzhou, PEOPLE'S REPUBLIC OF CHINA; HAWE Telekom Sp. z o.o., Warszawa, POLAND; Ikanotis Partners Ltd, Nicosia, CYPRUS; IntegraTouch, Akron, OH; IQ Hive, Auckland, NEW ZEALAND; Kenneth Dilbeck, Arlington, WA; Lightstorm Telecom Connectivity Private Limited, Delhi, INDIA; MCH Advies & Automatisering B.V., Nieuwegein, NETHERLANDS; Megron Tech Ltd, Swindon, UNITED KINGDOM; Metaswitch Networks, Enfield, UNITED KINGDOM; MetroNet, Evansville, IN; Mobile Telecommunications Limited, Olympia Windhoek, NAMIBIA; NMS Prime, Marienberg, GERMANY; Ovetix, Cape Town, SOUTH AFRICA; Paul Jordan, Witney, UNITED KINGDOM; Rasha Communications Development Ltd, London, UNITED KINGDOM; Safarifone Private Limited, Islamabad, PAKISTAN; Subex Inc., Denver, CO; Surgut State University, Surgut, RUSSIA; Swim.ai, Campbell, CA; Synergy Consulting, Dubai, UNITED ARAB EMIRATES; Teradata Corporation, San Diego, CA; Trextel, Duluth, GA; Vodafone New Zealand Limited, Auckland, NEW ZEALAND; Wavemaker, Mountain View, CA.

Also, the following members have changed their names: Accedian Networks to Accedian, Saint-Laurent, CANADA; AWTG Ltd to AWTG Limited, London, UNITED KINGDOM; CenturyLink, Inc. to Lumen, Monroe, LA; Gfi World to Inetum, Saint-Ouen, FRANCE; Innovation to Innovation Consulting Group, Riyadh, KINGDOM OF SAUDI ARABIA; Intrasoft International SA Luxembourg to INTRASOFT International S.A, Luxembourg, LUXEMBOURG; Jabb Technical Solutions, LLC to JAB Technology Solutions LLC, Bayonne, NJ; Sparkle to Telecom Italia Sparkle S.p.A., Rome, ITALY; Symbiosis Institute of Telecom Management to Symbiosis Institute of Digital and Telecom Management, Pune, INDIA; TATIC SOLUCOES EM INFORMATICA LTDA to Tatic Soluções em Informática Ltda, Belo Horizonte, BRAZIL; Timir LTD to TIMIR, TOO, Almaty, KAZAKHSTAN; Z-Lift to Z-Lift Solutions Inc., Makati City, PHILIPPINES.

In addition, the following parties have withdrawn as parties to this venture: Aarav Solutions, Bangalore, INDIA; ALFASATCOM JSC, Moscow, RUSSIA; Amalgamotion PTY, East Lindfield, AUSTRALIA; Calicsi LTD, Muscat, OMAN; Cardinality Ltd, Guildford, UNITED KINGDOM; Celfinet, Lisbon, PORTUGAL; Connected Places Catapult, London, UNITED KINGDOM; DataProbity, Stuart, FL; Digiglu Ltd, Hatfield, UNITED KINGDOM; FICO, San Diego, CA; Fundacao Universidade do Contestado—Engenharia Eletrica/ Telecomunicacoes, Canoinhas, BRAZIL; Innowave Technologies, Lisbon, PORTUGAL; Jaks Tech Solutions LLP, Madurai, INDIA; KDext j.d.o.o., Zagreb, CROATIA; LG Uplus Corp, Seoul, SOUTH KOREA; Liquid Telecom, London, UNITED KINGDOM; LMU Munich, Munich, GERMANY; Loyola University New Orleans College of Business, Business Administration, New Orleans, LA; MACCSA (Multinational Alliance for Collaborative Cyber Situational Awareness), Shrewton, UNITED KINGDOM; Mercy College—School of Liberal Arts, Dobbs Ferry, NY; Mindarray Systems Pvt. Ltd, Ahmedabad, INDIA; National Network New Media Center of Engineering Technology Research, Institute of Acoustics, CAS, Beijing, PEOPLE'S REPUBLIC OF CHINA; Nomensa, Bristol, UNITED KINGDOM; Nuviso Networks Pvt Ltd, Bengaluru, INDIA; Poznan University of Technology, Politechnika Poznanska, Poznan, POLAND; Red Dawn Consulting, Northwood, UNITED KINGDOM; Science Applications International Corporation, Reston, VA; Sonogy Research LLC, Florham Park, NJ; Southern Polytechnic State University—Department of Information Technology, Marietta, GA; SPPrac, Cape Town, SOUTH AFRICA; Symbox Ltd, Theale, UNITED KINGDOM; TÜBITAK BILGEM Software Research Technologies Institute, Gebze, TURKEY; TWI, Cambridge, UNITED KINGDOM; University of Cape Town, Western Cape, SOUTH AFRICA; University of Reading—School of Systems Engineering, Reading, UNITED KINGDOM; Verbio Inc, Palo Alto, CA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open and TM Forum intends to file additional written notifications disclosing all changes in membership.

On October 21, 1988, TM Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 8, 1988 (53 FR 49615).

The last notification was filed with the Department on January 27, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 10, 2021 (85 FR 13753).

**Suzanne Morris,**

*Chief, Premerger and Division Statistics, Antitrust Division.*

[FR Doc. 2021–10932 Filed 5–24–21; 8:45 am]

**BILLING CODE 4410–11–P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—RailPulse, LLC

Notice is hereby given that, on April 20, 2021, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), RailPulse, LLC (''RailPulse'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: Norfolk Southern Railway Company, Norfolk, VA; Genessee & Wyoming Inc., Darien, CT; GATX Corporation, Chicago, IL; Trinity Industries, Inc., Dallas, TX; and Watco Companies, LLC, Pittsburg, KS.

The general area of RailPulse's planned activities is as follows. RailPulse will seek to (i) collect data on rail shipments as they move on and across railroads in the North American rail network; (ii) establish a technology platform to collect data from onboard GPS and sensors to research and improve service levels, visibility, safety, and productivity and efficiency of the movement of railcars in North American rail-based supply chains; and (iii) use the technology platform that they create to provide efficiencies and safety benefits to the rail industry, rail customers, railcar owners and lessees, and the public at large and to support growth in the North American rail industry. RailPulse will not be involved

in the collection of data related to pricing or other commercial terms.

**Suzanne Morris,**

*Chief, Premerger and Division Statistics, Antitrust Division.*

[FR Doc. 2021–10934 Filed 5–24–21; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to The National Cooperative Research and Production Act of 1993—Border Security Technology Consortium

Notice is hereby given that, on April 23, 2021, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Border Security Technology Consortium (''BSTC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Colvin Run Networks Inc., Leesburg, VA; DroneShield LLC, Warrenton, VA; Pyramid Systems, Inc., Fairfax, VA; and Raytheon Company, Waltham, MA have been added as parties to this venture.

Also, Gatekeeper Inc., Sterling, VA; Hamilton Sundstrand Corporation, San Dimas, CA; Land Sea Air Autonomy, Finksburg, MD; Mobilestack Inc, Dublin, CA; and Priority 5 Holdings, Inc., Needham, MA have withdrawn as a party to this venture. No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and BSTC intends to file additional written notifications disclosing all changes in membership.

On May 30, 2012, BSTC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 18, 2012 (77 FR 36292).

The last notification was filed with the Department on January 12, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on January 28, 2021 (86 FR 7416).

**Suzanne Morris,**

*Chief, Premerger and Division Statistics, Antitrust Division.*

[FR Doc. 2021–10925 Filed 5–24–21; 8:45 am]

**BILLING CODE 4410–11–P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Open Source Imaging Consortium, Inc.

Notice is hereby given that, on May 5, 2021, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Open Source Imaging Consortium, Inc. (''Open Source Imaging Consortium'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Pavilhao Pereira Filho Hospital, Porto Alegre, BRAZIL; Medical University of Vienna, Vienna, AUSTRIA; Royal Brompton Hospital, London, UNITED KINGDOM; The Research Institute of St. Joseph's, Ontario, CANADA; and Thirona B.V., Nijmegen, NETHERLANDS have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Open Source Imaging Consortium intends to file additional written notifications disclosing all changes in membership.

On March 20, 2019, Open Source Imaging Consortium filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on April 12, 2019 (84 FR 14973).

The last notification was filed with the Department on February 4, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 10, 2021 (86 FR 13751).

**Suzanne Morris,**

*Chief, Premerger and Division Statistics, Antitrust Division.*

[FR Doc. 2021–10926 Filed 5–24–21; 8:45 am]

**BILLING CODE 4410–11–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. DEA–839]**

### Bulk Manufacturer of Controlled Substances Application: American Radiolabeled Chem

**AGENCY:** Drug Enforcement Administration, Justice.

**ACTION:** Notice of application.

**SUMMARY:** American Radiolabeled Chem has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

**DATES:** Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before July 26, 2021. Such persons may also file a written request for a hearing on the application on or before July 26, 2021.

**ADDRESSES:** Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 1301.33(a), this is notice that on March 31, 2021, American Radiolabeled Chem, 101 Arc Drive, Saint Louis, Missouri 63146–3502, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substances:

| Controlled substance | Drug code | Schedule |
|---|---|---|
| Gamma Hydroxybutyric Acid | 2010 | I |
| Ibogaine | 7260 | I |
| Lysergic acid diethylamide | 7315 | I |
| Tetrahydrocannabinols | 7370 | I |
| Dimethyltryptamine | 7435 | I |
| 1-[1-(2-Thienyl) cyclohexyl]piperidine. | 7470 | I |
| Dihydromorphine | 9145 | I |
| Heroin | 9200 | I |
| Normorphine | 9313 | I |
| Amphetamine | 1100 | II |
| Methamphetamine | 1105 | II |
| Amobarbital | 2125 | II |
| Phencyclidine | 7471 | II |
| Phenylacetone | 8501 | II |
| Cocaine | 9041 | II |
| Codeine | 9050 | II |
| Dohydrocodeine | 9120 | II |
| Oxycodone | 9143 | II |
| Hydromorphone | 9150 | II |
| Ecgonine | 9180 | II |
| Hydrocodone | 9193 | II |
| Meperidine | 9230 | II |
| Metazocine | 9240 | II |
| Methadone | 9250 | II |
| Dextropropoxyphene, bulk (non-dosage forms). | 9273 | II |
| Morphine | 9300 | II |
| Oripavine | 9330 | II |

| Controlled substance | Drug code | Schedule |
|---|---|---|
| Thebaine | 9333 | II |
| Oxymorphone | 9652 | II |
| Phenazocine | 9715 | II |
| Carfentanil | 9743 | II |
| Fentanyl | 9801 | II |

The company plans to bulk manufacture the listed controlled substances for internal use or for sale to its customers. The company plans to manufacture small quantities of the above-listed controlled substances as radiolabeled compounds for biochemical research. No other activities for these drug codes are authorized for this registration.

**William T. McDermott,**

*Assistant Administrator.*

[FR Doc. 2021–10996 Filed 5–24–21; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. DEA–838]**

### Importer of Controlled Substances Application: SpecGX, LLC

**AGENCY:** Drug Enforcement Administration, Justice.

**ACTION:** Notice of application.

**SUMMARY:** SpecGX, LLC. has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to Supplemental Information listed below for further drug information.

**DATES:** Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before June 24, 2021. Such persons may also file a written request for a hearing on the application on or before June 24, 2021.

**ADDRESSES:** Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 1301.34(a), this is notice that on February 5, 2021, SpecGX LLC, 3600 North 2nd Street, Saint Louis, Missouri 63147, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

| Controlled substance | Drug code | Schedule |
|---|---|---|
| Marihuana | 7360 | I |
| Phenylacetone | 8501 | II |
| Coca Leaves | 9040 | II |
| Thebaine | 9333 | II |
| Opium, Raw | 9600 | II |
| Poppy Straw Concentrate | 9670 | II |
| Tapentadol | 9780 | II |

The company plans to import the listed controlled substances for bulk manufacture into Active Pharmaceutical Ingredients (API) for distribution to its customers. In reference to Tapentadol (9780) and Thebaine (9333), the company plans to import intermediate forms of these controlled substances for further manufacturing prior to distribution to its customers. In reference to drug code 7360 (Marihuana), the company plans to import synthetic cannabinol. No other activity for this drug is authorized for this registration. Placement of these codes onto the company's registration does not translate into automatic approval of subsequent permit applications to import controlled substances.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2).

Authorization will not extend the import of Food and Drug Administration-approved or non-approved finished forms for commercial sale.

**William T. McDermott,**

*Assistant Administrator.*

[FR Doc. 2021–10995 Filed 5–24–21; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF JUSTICE

**[OMB Number 1105–0008]**

### Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Currently Approved Collection; Claim for Damage, Injury, or Death

**AGENCY:** Civil Division, Department of Justice.

**ACTION:** 60-Day notice.

**SUMMARY:** The Civil Division, Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

**DATES:** Comments are encouraged and will be accepted for 60 days until July 26, 2021.

**FOR FURTHER INFORMATION CONTACT:** Comments are encouraged and all comments should reference the 8 digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please contact James G. Touhey, Jr., Director, Torts Branch, Civil Division, U.S. Department of Justice, P.O. Box 888, Benjamin Franklin Station, Washington, DC 20044, Telephone: (202) 616–4400.

Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Room 10235, 725 17th Street NW, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov.*

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

### Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *The Title of the Form/Collection:* Claim for Damage, Injury, or Death.

3. *The agency form number, if any, and the applicable component of the*

*Department sponsoring the collection:* The form number is CIV SF 95. The applicable component within the Department of Justice is the Civil Division.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Other: Businesses or other for-profit, Non-for-profit institutions, and State, Local, or Tribal Governments. Abstract: This form is used by those persons making a claim against the United States Government under the Federal Tort Claims Act.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that there will be 100,000 respondents who will each require 6 hours to respond.

6. *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual burden hours to complete the certification form is 600,000 hours.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: May 19, 2021.

**Melody Braswell,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2021–10966 Filed 5–24–21; 8:45 am]

**BILLING CODE 4410–12–P**

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

### State All Payer Claims Databases Advisory Committee—Notice of Virtual Meeting

**AGENCY:** Employee Benefits Security Administration (EBSA), Department of Labor (DOL).

**ACTION:** Notice.

**SUMMARY:** This notice announces the second meeting of the State All Payer Claims Databases Advisory Committee (hereinafter the Committee). This notice provides information to members of the public who may be interested in attending the meeting or providing written comments related to the work of the Committee. Notice of this meeting is required under the Federal Advisory Committee Act (FACA).

**DATES:** The second meeting of the State All Payer Claims Databases Advisory Committee will be held virtually on June 11, 2021.

1. *Deadline for Registration without Oral Presentation: June 9, 2021.* Individuals can register for the meeting by visiting the Committee website: *https://www.dol.gov/agencies/ebsa/about-ebsa/about-us/state-all-payer-claims-databases-advisory-committee.*

2. *Deadline for Registration of Oral Presentations: June 7, 2021.* Requests should be submitted by email to *SAPCDAC@dol.gov.*

3. *Deadline for Submission of Oral Remarks and Written Comments: June 7, 2021.* Remarks and comments should be submitted by email to *SAPCDAC@dol.gov.*

4. *Deadline for Requesting Special Accommodations: June 7, 2021.* Requests should be submitted by email to *SAPCDAC@dol.gov.*

**ADDRESSES:** The meeting will be held via webinar. The webinar link and log-in information will be available at DOL's Committee website: *https://www.dol.gov/agencies/ebsa/about-ebsa/about-us/state-all-payer-claims-databases-advisory-committee.*

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Schumacher, Designated Federal Officer, EBSA, DOL, by sending an email to *SAPCDAC@dol.gov.* For press inquiries please contact Grant Vaught, Office of Public Affairs, DOL at 202–693–4672.

**SUPPLEMENTARY INFORMATION:** The Committee is mandated by section 735 of the Employee Retirement Income Security Act of 1974 as added by section 115(b) of the No Surprises Act, enacted as part of the Consolidated Appropriations Act, 2021, div. BB, tit. I, Public Law 116–260 (Dec. 27, 2020). The Committee is governed by the provisions of the FACA, as amended, 5 U.S.C. App. 2.

The Committee will advise the Secretary of Labor on the standardized reporting format for the voluntary reporting by group health plans to State All Payer Claims Databases. Reporting will include medical claims, pharmacy claims, dental claims, and eligibility and provider files collected from private and public payers. The Committee will also advise the Secretary on what guidance is necessary to provide to States on the process by which States may collect such data in the standardized reporting format.

The Committee will be responsible for issuing a report that includes recommendations on the establishment of the format and guidance to the Secretary of Labor and certain congressional committees no later than 180 days after the date of enactment of the Consolidated Appropriations Act, 2021.

The second meeting of the Committee will be held on June 11, 2021 via webinar. The meeting will begin at 9:30 a.m. and end at approximately 5:00 p.m., with a one hour break for lunch. The meeting will focus on the various issues related to all payer claims databases as well as a general discussion of the work plan for the report that must be submitted by the committee. Additional details about the agenda items and topics, as well as agenda updates, will be available at on the Committee's website: *https://www.dol.gov/agencies/ebsa/about-ebsa/about-us/state-all-payer-claims-databases-advisory-committee.*

Dated: May 19, 2021.

**Ali Khawar,**

*Acting Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor.*

[FR Doc. 2021–10930 Filed 5–24–21; 8:45 am]

**BILLING CODE 4510–29–P**

## NATIONAL CAPITAL PLANNING COMMISSION

### Revised Adopted Submission Guidelines

**AGENCY:** National Capital Planning Commission.

**ACTION:** Notice of final adoption and effective date.

**SUMMARY:** At its May 6, 2021 monthly meeting, the National Capital Planning Commission (NCPC or Commission) adopted revised Submission Guidelines related to concept review of Master Plans and the purpose, need, and timing of an Information Presentations. The amended guidelines recommend an early concept review of complex master plans to ensure timely input from the Commission before a master plan advances to draft and final review. The amendments regarding Information Presentations identify the types of projects for which an Information Presentation is advisable and establish the appropriate timing for the presentation. Federal and non-federal agency applicants whose development proposals and plans are subject to statutory mandated Commission plan and project review must submit their proposals to the Commission following a process laid out in the Submission Guidelines.

**DATES:** The revised Submission Guidelines will become effective June 24, 2021.

**ADDRESSES:** The revised adopted Submission Guidelines are available online at: *https://www.ncpc.gov/docs/Submission_Guidelines_May2021.pdf.*

**FOR FURTHER INFORMATION CONTACT:** Matt Flis at (202) 482–7236 or *info@ncpc.gov.*

**Authority:** 40 U.S.C. 8721(e)(2).

Dated: May 19, 2021.

**Anne R. Schuyler,**

*General Counsel.*

[FR Doc. 2021–10954 Filed 5–24–21; 8:45 am]

**BILLING CODE P**

## NATIONAL CREDIT UNION ADMINISTRATION

**[NCUA–2021–0038]**

## Policy for Setting the Normal Operating Level

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Notice; request for comment.

**SUMMARY:** The NCUA Board (Board) is requesting public comments on the policy to set the National Credit Union Share Insurance Fund (Insurance Fund) Normal Operating Level.

**DATES:** Comments must be received on or before July 26, 2021.

**ADDRESSES:** You may submit comments by any one of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal:* Follow the instructions for submitting comments for NCUA–2021–0038.
- *Fax:* (703) 518–6319. Include ''[Your name]—Comments on Policy for Setting the Normal Operating Level'' in the subject line.
- *Mail:* Address to Melane Conyers-Ausbrooks, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mailing address.

*Public Inspection:* You may view all public comments as submitted on the Federal eRulemaking Portal, except for those we cannot post for technical reasons. The NCUA will not edit or remove any identifying or contact information from the public comments submitted. Due to social distancing guidelines, the usual opportunity to inspect paper copies of comments in the NCUA's law library is not currently available. After social distancing measures are relaxed, visitors may make an appointment to review paper copies by calling (703) 518–6540 or emailing *OGCMail@ncua.gov.*

**FOR FURTHER INFORMATION CONTACT:** Russell Moore or Amy Ward, Risk Analysis Officers, Office of Examination and Insurance, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314 or telephone: (703) 518–6383 or (703) 819–1770.

**SUPPLEMENTARY INFORMATION**

### I. Background

On September 28, 2017, the Board approved the following actions: [1]

- Closing the Temporary Corporate Credit Union Stabilization Fund (Stabilization Fund) and distributing its funds, property, and other assets and liabilities to the Insurance Fund, effective October 1, 2017.
- Setting the Normal Operating Level of the Insurance Fund to 1.39 percent, effective September 28, 2017.
- Adopting the policy for setting the Normal Operating Level, as outlined below.

*Policy for Setting the Normal Operating Level*

The policy for setting the Normal Operating Level adopted in 2017 established a periodic review of the equity needs of the Insurance Fund, the results of which are to be communicated to stakeholders.[2] At least annually, NCUA staff will review the level at which the NOL is set and report this information to the Board. Board action is only necessary when a change in the NOL is determined to be warranted. The policy establishes that any change to the Normal Operating Level of more than one basis point [3] shall be made only after a public announcement of the proposed adjustment and opportunity for comment. Further, in soliciting comment, the NCUA will issue a public report, including data supporting the proposal. The policy establishes the following objectives that the Board will seek to satisfy when setting the Normal Operating Level:

- Retain public confidence in federal share insurance;
- Prevent impairment of the one percent contributed capital deposit; [4] and
- Ensure the Insurance Fund can withstand a moderate recession without the equity ratio declining below 1.20 percent over a five-year period.

The current economic landscape and pending resolution of the obligations associated with the corporate credit union asset management estates and NCUA Guaranteed Notes (NGN) Program discussed later in this document warrant that the NCUA re-evaluate the current Normal Operating Level policy.

### II. Legal Authority

Per the Federal Credit Union Act (Act), the Normal Operating Level is an equity ratio set by the Board and may not be less than 1.20 percent and not more than 1.50 percent.[5] The Board has historically set the Normal Operating Level as the target equity ratio for the Insurance Fund.

The Insurance Fund's calendar year-end equity ratio is part of the statutory basis to determine whether the NCUA must make a distribution to insured credit unions.[6] The Act states the Board shall effect a pro rata distribution to insured credit unions after each calendar year if, as of the end of that calendar year—

- Any loans to the Fund from the Federal Government, and any interest on those loans, have been repaid;
- The Fund's equity ratio exceeds the Normal Operating Level; and
- The Fund's available assets ratio exceeds 1.0 percent.[7]

The provisions of the Act are implemented at 12 CFR part 741 of the NCUA's regulations.

### III. Current Normal Operating Level Methodology and Process

To implement the current approved policy, the NCUA developed a calculation based on projections related to the following factors:

- The modeled performance of the Insurance Fund over a five-year period, assuming a moderate recession. The stress scenario entails estimating three primary drivers of outcomes: insurance losses, insured share growth, and yield on investments. The NCUA's analysis is based on the Federal Reserve's adverse economic scenario; however, the Federal Reserve did not publish an adverse scenario in 2020 or 2021. This necessitates the NCUA develop an adverse scenario based on the Federal Reserve's published baseline and severely adverse scenarios.

[1] 82 FR 42298 (Oct. 4, 2017).

[2] As noted, the Board adopted this policy for setting the Normal Operating Level in 2017. The Board emphasizes that, as a general statement of the NCUA's policy regarding setting the Normal Operating Level, the Board is not required to follow the notice-and-comment rulemaking process when revising this policy. *See* 5 U.S.C. 553(b)(3)(a). Nevertheless, the Board is voluntarily soliciting public input on this policy.

[3] One basis point is one hundredth of one percent.

[4] Federally insured credit unions are required to maintain a deposit equal to one percent of their insured shares with the Insurance Fund. 12 U.S.C. 1782(c)(1)(A)(i).

[5] 12 U.S.C. 1782(h)(4).

[6] The equity ratio is also part of the statutory basis for determining whether a premium or Insurance Fund restoration plan is necessary.

[7] 12 U.S.C. 1782(c)(3). This section is also subject to 12 U.S.C. 1790e(e).

• The modeled potential decline in value of the Insurance Fund's claims on the corporate asset management estates in a moderate recession; and

• The projected equity ratio decline through the end of the following year without an economic downturn.

As noted, the current economic landscape and pending events related to the corporate asset management estates and NGN Program warrant a re-evaluation of the current Normal Operating Level policy. The current policy objectives include ensuring the Insurance Fund can withstand a moderate recession without the equity ratio declining below 1.2 percent over a five-year period. The economic conditions posed by the pandemic, including industry-wide, unprecedented share growth resulted in an equity ratio of 1.26 percent as of December 31, 2020. These issues have forced the NCUA to consider the ongoing feasibility of using a moderate recession and a five-year performance period as the basis for stressing the equity needs of the Insurance Fund.

Additionally, the asset management estates of the five failed corporate credit unions support the NGN program created as part of the Corporate System Resolution. The last of the NGNs is scheduled to mature on June 12, 2021. The amount of time needed after the last NGN matures to fully liquidate all the assets and satisfy all the liabilities of the corporate asset management estates will depend on market factors and ongoing litigation. The risk associated with the Insurance Fund's claims on, and obligations related to the corporate asset management estates will decline and end as the estates are wound down and closed. More information regarding the NGN program and the Corporate System Resolution may be found on the NCUA's public website.[8]

Finally, the projected equity ratio decline through the end of the following year, assuming economic stability and normal growth, was originally devised as a backstop to ensure the Insurance Fund could stay above 1.20 percent under a moderate recession during the remaining life of the NGNs. With the upcoming maturity of the NGNs and pending conclusion of the corporate asset management estates, this factor may not be necessary going forward.

## IV. Request for Comment

The Board seeks comments on the policy and approach for setting the Normal Operating Level of the Insurance Fund. Commenters are also encouraged to discuss any other relevant issues they believe the Board should consider. In particular, the Board is interested in comments addressing the following questions:

• Should a moderate recession be the basis for evaluating the Insurance Fund performance during an economic downturn, or should the NCUA change the policy to consider a severe recession?

• What data source(s) should the NCUA use for determining the characteristics of a potential moderate or severe recession—the Federal Reserve scenario, an independent source, or the NCUA's judgment?

• Should the NCUA continue modeling the performance of the Insurance Fund over a five-year period or a longer or shorter period?

• How should the NCUA utilize the modeled potential decline in value of the Insurance Fund's claims on the corporate asset management estates going forward until the estates are fully resolved?

• Should the NCUA continue to incorporate in the Normal Operating Level analysis the projected equity ratio decline through the end of the following year without an economic downturn? Should this period be longer or shorter, or not factored into the analysis at all.

• Given forecasting uncertainties and timing challenges, would it be reasonable for the NCUA to change the requirement to request public comment only if the Normal Operating Level were to change by a larger amount than just one basis point?

• Should the Normal Operating Level be re-evaluated in the midst of an economic downturn or should it be left unchanged until the onset of an economic recovery?

• Should the Normal Operative Level be re-evaluated on qualitative factors based on the COVID–19 pandemic?

• Is there any other information that the NCUA Board should consider when setting the NOL?

Commenters are encouraged to provide the specific basis for their comments and, to the extent feasible, documentation to support any recommendations. The Board will consider the comments, and if appropriate, issue a revised policy and publish it in the **Federal Register**. Should the NCUA implement any changes, the earliest they would take effect is the end of 2021.

By the National Credit Union Administration Board.

**Melane Conyers-Ausbrooks,**

*Secretary of the Board.*

[FR Doc. 2021–11056 Filed 5–24–21; 8:45 am]

**BILLING CODE 7535–01–P**

[8] *https://www.ncua.gov/support-services.*

## NATIONAL CREDIT UNION ADMINISTRATION

### Submission for OMB Review; Comment Request

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Notice.

**SUMMARY:** The National Credit Union Administration (NCUA) 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.

**DATES:** Comments should be received on or before June 24, 2021 to be assured of consideration.

**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:** Copies of the submission may be obtained by contacting Mackie Malaka at (703) 548–2704, emailing *PRAComments@ncua.gov,* or viewing the entire information collection request at *www.reginfo.gov.*

**SUPPLEMENTARY INFORMATION:**

*OMB Number:* 3133–0195.

*Type of Review:* Extension of a currently approved collection.

*Title:* Minority Depository Institution Preservation Program.

*Abstract:* The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) (Pub. L. 111–203, 124 Stat. 1376) amended Financial Institution Reform, Recovery, and Enforcement Act (FIRREA) § 308 to require the NCUA, Office of the Comptroller of Currency, and the Federal Reserve Board to establish a program to comply with its goals to preserve and encourage Minority Depository Institutions (MDIs). The NCUA Board issued Interpretive Ruling and Policy Statement (IRPS) 13–1 establishing a MDI preservation program to comply with FIRREA § 308 goals. The IRPS identifies the procedure for a federally insured credit union to determine and document its ability to designate itself as a MDI, resulting in the ability to participate in the Program.

*Affected Public:* Private Sector: Not-for-profit institutions.

*Estimated Total Annual Burden Hours:* 38.

*Reason for Change:* Changes are attributed to current updated data since the last previous submission.

By Melane Conyers-Ausbrooks, Secretary of the Board, the National Credit Union Administration, on May 19, 2021.

Dated: May 19, 2021.

**Mackie I. Malaka,**

*NCUA PRA Clearance Officer.*

[FR Doc. 2021–10943 Filed 5–24–21; 8:45 am]

**BILLING CODE 7535–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–461, 50–346, 50–341, 50–352, and 50–353; NRC–2020–0110]**

## Issuance of Multiple Exemptions in Response to COVID–19 Public Health Emergency

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Exemptions; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) issued four exemptions in response to requests from three licensees. The exemptions afford these licensees temporary relief from certain requirements under NRC regulations. The exemptions are in response to the licensees' requests for relief due to the coronavirus 2019 disease (COVID–19) public health emergency (PHE). The NRC is issuing a single notice to announce the issuance of the exemptions.

**DATES:** During the period from April 6, 2021, to April 29, 2021, the NRC granted four exemptions in response to requests submitted by three licensees from March 4, 2021, to April 20, 2021.

**ADDRESSES:** Please refer to Docket ID NRC–2020–0110 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0110. 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 individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.*
- *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 the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.

**FOR FURTHER INFORMATION CONTACT:** James Danna, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–7422, email: *James.Danna@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

During the period from April 6, 2021, to April 29, 2021, the NRC granted four exemptions in response to requests submitted by three licensees from March 4, 2021, to April 20, 2021. These exemptions temporarily allow the licensees to deviate from certain requirements (as cited in this notice) of various parts of chapter I of title 10 of the *Code of Federal Regulations* (10 CFR).

The exemptions from certain requirements of 10 CFR part 26, ''Fitness for Duty Programs,'' for DTE Electric Company (for Fermi, Unit 2), and Exelon Generation Company, LLC (for Clinton Power Station, Unit 1 and Limerick Generating Station, Units 1 and 2), afford these licensees temporary relief from the work-hour control requirements under 10 CFR 26.205(d)(1) through (d)(7). The exemptions from 10 CFR 26.205(d)(1) through (d)(7) ensure that the control of work hours and management of worker fatigue does not unduly limit licensee flexibility in using personnel resources to most effectively manage the impacts of the COVID–19 PHE on maintaining the safe operation of these facilities. Specifically, these licensees have stated that their staffing levels are affected or are expected to be affected by the COVID–19 PHE, and they can no longer meet or likely will not meet the work-hour controls of 10 CFR 26.205(d)(1) through (d)(7). These licensees have committed to effecting site-specific COVID–19 PHE fatigue-management controls for personnel specified in 10 CFR 26.4(a).

The exemption from certain requirements of 10 CFR part 50, appendix E, ''Emergency Planning and Preparedness for Production and Utilization Facilities,'' section IV.F., ''Training,'' for Energy Harbor Nuclear Corp. (for Davis-Besse Nuclear Power Station, Unit No. 1), grants a temporary exemption from the offsite biennial emergency preparedness exercise requirement. The exemption affords this licensee temporary relief from the requirements of 10 CFR part 50, appendix E, regarding the requirement offsite response organization (ORO) participation in the biennial emergency preparedness exercise for calendar year 2021. This exemption will not adversely affect the emergency response capability of the facility because the licensee has conducted numerous drills, exercises, and other training activities that have exercised the licensee's emergency response strategies since the last evaluated biennial emergency preparedness exercise and that State, county and local OROs have participated.

The NRC is providing compiled tables of exemptions using a single **Federal Register** notice for COVID–19 related exemptions instead of issuing individual **Federal Register** notices for each exemption. The compiled tables in this notice provide transparency regarding the number and type of exemptions the NRC has issued. Additionally, the NRC publishes tables of approved regulatory actions related to the COVID–19 PHE on its public website at *https://www.nrc.gov/about-nrc/covid-19/reactors/licensing-actions.html.*

### II. Availability of Documents

The tables in this notice provide the facility name, docket number, document description, and ADAMS accession number for each exemption issued. Additional details on each exemption issued, including the exemption request submitted by the respective licensee and the NRC's decision, are provided in each exemption approval listed in the tables in this notice. For additional directions on accessing information in ADAMS, see the **ADDRESSES** section of this document.

CLINTON POWER STATION, UNIT 1

[Docket No. 50–461]

| Document description | ADAMS accession No. |
|---|---|
| Clinton Power Station, Unit 1—COVID–19 Related Request for Exemption from 10 CFR part 26 Work Hours Requirements, dated April 20, 2021. | ML21111A004 |
| Clinton Power Station, Unit 1—Exemption from Specific Requirements of 10 CFR part 26 (EPID L–2021–LLE–0067 [COVID–19]), dated April 29, 2021. | ML21112A007 |

DAVIS-BESSE NUCLEAR POWER STATION, UNIT 1

[Docket No. 50–346]

| Document description | ADAMS accession No. |
|---|---|
| Davis-Besse Nuclear Power Station, Unit 1—Request for One-Time Exemption from 10 CFR part 50, appendix E, Biennial Emergency Preparedness Exercise Requirements due to COVID–19 Pandemic, dated March 15, 2021. | ML21074A367 |
| Davis-Besse Nuclear Power Station, Unit 1—Temporary Exemption from Certain Biennial Emergency Preparedness Exercise Requirements of 10 CFR part 50, appendix E, section IV.F (EPID L–2021–LLE–0018 [COVID–19]), dated April 19, 2021. | ML21098A180 |

FERMI, UNIT 2

[Docket No. 50–341]

| Document description | ADAMS accession No. |
|---|---|
| Fermi, Unit 2—Work Hour Limits Exemption Request due to COVID–19, dated April 19, 2021 | ML21109A136 |
| Fermi, Unit 2—Exemption from Select Requirements of 10 CFR part 26 (EPID L–2021–LLE–0025 [COVID–19]), dated April 22, 2021. | ML21109A374 |

LIMERICK GENERATING STATION, UNITS 1 AND 2

[Docket Nos. 50–352 and 50–353]

| Document description | ADAMS accession No. |
|---|---|
| Limerick Generating Station, Units 1 and 2—COVID–19 Related Request for Exemption from 10 CFR part 26 Work Hours Requirements, dated March 4, 2021. | ML21064A002 |
| Limerick Generating Station, Units 1 and 2—Exemption from Specific Requirements of 10 CFR part 26 (EPID L–2021–LLE–0017 [COVID–19]), dated April 6, 2021. | ML21078A050 |

Dated: May 19, 2021.

For the Nuclear Regulatory Commission.

**James G. Danna,**

*Chief, Plant Licensing Branch I, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 2021–10923 Filed 5–24–21; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2021–0096]**

## Control of Heavy Loads at Nuclear Facilities

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Draft regulatory guide; extension of comment period.

**SUMMARY:** On May 4, 2021, the U.S. Nuclear Regulatory Commission (NRC) solicited comments on draft regulatory guide (DG), DG–1381, ''Control of Heavy Loads at Nuclear Facilities.'' The public comment period was originally scheduled to close on June 3, 2021. The NRC has decided to extend the public comment period to allow more time for members of the public to develop and submit their comments.

**DATES:** The due date for comments requested in the document published on May 4, 2021 (86 FR 23750) is extended another 30 days. Comments should be filed no later than July 5, 2021. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

**ADDRESSES:** You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal Rulemaking website:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0096. 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.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Steven R. Jones, Office of Nuclear

Reactor Regulation, telephone: 301–415–2712, email: *Steve.Jones@nrc.gov;* or Stanley Gardocki, Office of Nuclear Regulatory Research, telephone: 301–415–1067, email: *Stanley.Gardocki@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

**SUPPLEMENTARY INFORMATION:**

## I. Obtaining Information and Submitting Comments

### *A. Obtaining Information*

Please refer to Docket ID NRC–2021–0096 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0096.
- *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.*
- *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.

### *B. Submitting Comments*

The NRC encourages electronic comment submission through the Federal Rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2021–0096 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

## II. Discussion

On May 4, 2021, the NRC published a document in the **Federal Register** (86 FR 23750) requesting comments on DG–1381, ''Control of Heavy Loads at Nuclear Facilities.'' This DG is a proposed new regulatory guide to endorse selected national consensus standards related to heavy load handling that replace NRC technical reports. The national consensus standards provide greater flexibility in the selection of lifting equipment and have incorporated recent operating experience to provide a more accurate risk-informed perspective of heavy load handling activities. This is a new regulatory guide incorporating guidance for risk-informing heavy load handling activities. The public comment period was originally scheduled to close on June 3, 2021. Upon the request of industry, specifically Nuclear Energy Institute, the NRC has decided to extend the public comment period on this document until July 5, 2021, to allow more time for members of the public to submit their comments.

Dated: May 19, 2021.

For the Nuclear Regulatory Commission.

**Meraj Rahimi,**

*Chief, Regulatory Guidance and Generic Issues Branch, Division of Engineering, Office of Nuclear Regulatory Research.*

[FR Doc. 2021–10945 Filed 5–24–21; 8:45 am]

**BILLING CODE 7590–01–P**

## POSTAL REGULATORY COMMISSION

**[Docket Nos. MC2021–93 and CP2021–96]**

## New Postal Products

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* May 27, 2021.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202–789–6820.

**SUPPLEMENTARY INFORMATION:**

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I. Introduction
II. Docketed Proceeding(s)

## I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

**II. Docketed Proceeding(s)**

1. *Docket No(s).:* MC2021–93 and CP2021–96; *Filing Title:* USPS Request to Add Priority Mail Contract 701 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* May 19, 2021; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* May 27, 2021.

This Notice will be published in the **Federal Register**.

**Jennie L. Jbara,**

*Alternate Certifying Officer.*

[FR Doc. 2021–10977 Filed 5–24–21; 8:45 am]

**BILLING CODE 7710–FW–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 34273; File No. 812–15173]**

### Calamos Investment Trust, et al.

May 19, 2021.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice.

Notice of an application for an order pursuant to: (a) Section 6(c) of the Investment Company Act of 1940 (''Act'') granting an exemption from sections 18(f) and 21(b) of the Act; (b) section 12(d)(1)(J) of the Act granting an exemption from section 12(d)(l) of the Act; (c) sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1), 17(a)(2) and 17(a)(3) of the Act; and (d) section 17(d) of the Act and rule 17d–l under the Act to permit certain joint arrangements and transactions. Applicants request an order that would permit certain registered management investment companies to participate in a joint lending and borrowing facility.

**APPLICANTS:** Calamos Investment Trust (''Calamos''), registered under the Act as an open-end management investment company on behalf of all existing series; [1] and Calamos Advisors LLC (''CAI''), registered as an investment adviser under the Investment Advisers Act of 1940.

**FILING DATES:** The application was filed on October 26, 2020 and amended on February 2, 2021.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by emailing the Commission's Secretary at *Secretarys-Office@sec.gov* and serving applicants with a copy of the request by email. Hearing requests should be received by the Commission by 5:30 p.m. on June 14, 2021 and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov*.

**ADDRESSES:** The Commission: *Secretarys-Office@sec.gov*. Applicants: J. Christopher Jackson, *cjackson@calamos.com* (with a copy to Paulita Pike, Esq., *paulita.pike@ropesgray.com,* and to Rita Rubin, Esq., *rita.rubin@ropesgray.com*).

**FOR FURTHER INFORMATION CONTACT:** Harry Eisenstein, Senior Special Counsel, at (202) 551–6764 and Holly Hunter-Ceci, Assistant Chief Counsel, at (202) 551–6825 (Division of lnvestment Management, Chief Counsel's Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or an applicant using the Company name box, at http://*www.sec.gov*/search/search.htm or by calling (202) 551–8090.

**Summary of the Application:**

1. Applicants request an order that would permit the applicants to participate in an interfund lending facility where each Fund could lend money directly to and borrow money directly from other Funds to cover unanticipated cash shortfalls, such as unanticipated redemptions or trade fails.[2] The Funds will not borrow under the facility for leverage purposes and the loans' duration will be no more than seven days.[3]

2. Applicants anticipate that the proposed facility would provide a borrowing Fund with a source of liquidity at a rate lower than the bank borrowing rate at times when the cash position of the Fund is insufficient to meet temporary cash requirements. In addition, Funds making short-term cash loans directly to other Funds would earn interest at a rate higher than they otherwise could obtain from investing their cash in repurchase agreements or certain other short-term money market instruments. Thus, applicants assert that the facility would benefit both borrowing and lending Funds.

3. Applicants agree that any order granting the requested relief will be subject to the terms and conditions stated in the application. Among others, the Adviser, through certain members of the Adviser' administrative and other personnel (the ''InterFund Program Team''), would administer the facility as a disinterested fiduciary as part of its duties under the investment management agreements with each Fund and would receive no additional fee as compensation for its services in connection with the administration of the facility. The facility would be subject to oversight and certain approvals by the Funds' Boards, including, among others, approval of the interest rate formula and of the method for allocating loans across Funds, as well as review of the process in place to evaluate the liquidity implications for the Funds. A Fund's aggregate outstanding interfund loans will not exceed 15% of its current net assets, and the Fund's loans to any one Fund will not exceed 5% of the lending Fund's net assets.[4]

4. Applicants assert that the facility does not raise the concerns underlying section 12(d)(l) of the Act given that the Funds are part of the same group of investment companies and there will be no duplicative costs or fees to the Funds.[5] Applicants also assert that the

[1] Certain of the Funds (defined below) may be money market funds that comply with Rule 2a–7 under the Act (each a ''Money Market Fund''). None of the existing Funds is a Money Market Fund, but if Money Market Funds rely on this relief in the future, they typically will not participate as borrowers because such Funds rarely need to borrow cash to meet redemptions.

[2] Applicants request that the order apply to the Applicants and to any existing or future registered open-end management investment company or series thereof for which CAL or any successor thereto or an investment adviser controlling, controlled by, or under common control (within the meaning of Section 2(a)(9) of the Act) with CAL or any successor thereto serves as investment adviser (each such investment adviser entity being included in the term ''Adviser,'' and each such investment company, or series thereof, a ''Fund'' and collectively the ''Funds''). For purposes of the requested order, ''successor'' is limited to any entity that results from a reorganization into another jurisdiction or a change in the type of a business organization.

[3] Any Fund, however, will be able to call a loan on one business day's notice.

[4] Under certain circumstances, a borrowing Fund will be required to pledge collateral to secure the loan.

[5] Applicants state that the obligation to repay an interfund loan could be deemed to constitute a security for the purposes of sections 17(a)(1) and 12(d)(1) of the Act.

proposed transactions do not raise the concerns underlying sections 17(a)(l), 17(a)(3), 17(d) and 21(b) of the Act as the Funds would not engage in lending transactions that unfairly benefit insiders or are detrimental to the Funds. Applicants state that the facility will offer both reduced borrowing costs and enhanced returns on loaned funds to all participating Funds and each Fund would have an equal opportunity to borrow and lend on equal terms based on an interest rate formula that is objective and verifiable. With respect to the relief from section 17(a)(2) of the Act, applicants note that any collateral pledged to secure an interfund loan would be subject to the same conditions imposed by any other lender to a Fund that imposes conditions on the quality of or access to collateral for a borrowing (if the lender is another Fund) or the same or better conditions (in any other circumstance).[6]

5. Applicants also believe that the limited relief from section 18(f)(1) of the Act that is necessary to implement the facility (because the lending Funds are not banks) is appropriate in light of the conditions and safeguards described in the application and because the open-end Funds would remain subject to the requirement of section 18(f)(1) that all borrowings of the open-end Fund, including combined interfund loans and bank borrowings, have at least 300% asset coverage.

6. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(l)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(l) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Rule 17d–l(b) under the Act provides that in passing upon an application filed under the rule, the Commission will consider whether the participation of the registered investment company in a joint enterprise, joint arrangement or profit sharing plan on the basis proposed is consistent with the provisions, policies and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of the other participants.

For the Commission, by the Division of Investment Management, under delegated authority.

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021–10960 Filed 5–24–21; 8:45 am]

**BILLING CODE 8011–01–P**

[6] Applicants state that any pledge of securities to secure an interfund loan could constitute a purchase of securities for purposes of section 17(a)(2) of the Act.

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–91937; File No. SR–FINRA–2021–010]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Amend the Requirements for Covered Agency Transactions Under FINRA Rule 4210 (Margin Requirements) as Approved Pursuant to SR–FINRA–2015–036

May 19, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 7, 2021, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. 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

FINRA is proposing to amend the requirements for Covered Agency Transactions under FINRA Rule 4210 (Margin Requirements) as approved by the SEC pursuant to SR–FINRA–2015–036. The proposed rule change would amend, under FINRA Rule 4210, paragraphs (e)(2)(H), (e)(2)(I), (f)(6), and Supplementary Material .02 through .05, each as amended or established pursuant to SR–FINRA–2015–036.

The text of the proposed rule change is available on FINRA's website at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

On October 6, 2015, FINRA filed with the Commission proposed rule change SR–FINRA–2015–036, which proposed to amend FINRA Rule 4210 to establish margin requirements for: (1) To Be Announced (''TBA'') transactions,[3] inclusive of adjustable rate mortgage (''ARM'') transactions; (2) Specified Pool Transactions;[4] and (3) transactions in Collateralized Mortgage Obligations (''CMOs''),[5] issued in conformity with a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] FINRA Rule 6710(u) defines ''TBA'' to mean a transaction in an Agency Pass-Through Mortgage-Backed Security (''MBS'') or a Small Business Administration (''SBA'')-Backed Asset-Backed Security (''ABS'') where the parties agree that the seller will deliver to the buyer a pool or pools of a specified face amount and meeting certain other criteria but the specific pool or pools to be delivered at settlement is not specified at the Time of Execution, and includes TBA transactions for good delivery and TBA transactions not for good delivery. Agency Pass-Through MBS and SBA-Backed ABS are defined under FINRA Rule 6710(v) and FINRA Rule 6710(bb), respectively. The term ''Time of Execution'' is defined under FINRA Rule 6710(d).

[4] FINRA Rule 6710(x) defines Specified Pool Transaction to mean a transaction in an Agency Pass-Through MBS or an SBA-Backed ABS requiring the delivery at settlement of a pool or pools that is identified by a unique pool identification number at the time of execution.

[5] FINRA Rule 6710(dd) defines CMO to mean a type of Securitized Product backed by Agency Pass-Through MBS, mortgage loans, certificates backed by project loans or construction loans, other types of MBS or assets derivative of MBS, structured in multiple classes or tranches with each class or tranche entitled to receive distributions of principal or interest according to the requirements adopted for the specific class or tranche, and includes a real estate mortgage investment conduit (''REMIC''). The

Continued

program of an agency [6] or Government-Sponsored Enterprise (''GSE''),[7] with forward settlement dates, as further defined under FINRA Rule 4210(e)(2)(H)(i)c. pursuant to the rule change (collectively, defined under the rule change as ''Covered Agency Transactions'').[8]

In proposing the margin requirements, FINRA pointed out that the rulemaking was necessary to address the potential risk arising from unsecured credit exposures that exist in the Covered Agency Transaction market.[9] FINRA noted that unsecured credit exposures in the Covered Agency Transaction market could lead to financial losses by dealers. Further, FINRA noted that permitting counterparties to participate in the Covered Agency Transaction market without posting margin can facilitate increased leverage by customers, thereby potentially posing a risk to the dealer extending credit and to the marketplace as a whole.[10]

The Commission approved SR–FINRA–2015–036 on June 15, 2016 (the ''Approval Date'').[11] Pursuant to Partial Amendment No. 3 to SR–FINRA–2015–036, FINRA announced in *Regulatory Notice* 16–31 that the rule change would become effective on December 15, 2017, 18 months from the Approval Date, except that the risk limit determination requirements as set forth in paragraphs (e)(2)(F), (e)(2)(G) and (e)(2)(H) of Rule 4210 and in new Supplementary Material .05, each as respectively amended or established by SR–FINRA–2015–036 (collectively, the ''risk limit determination requirements''), would become effective on December 15, 2016, six months from the Approval Date.[12]

Industry participants requested that FINRA reconsider the potential impact of certain requirements pursuant to SR–FINRA–2015–036 on smaller and medium-sized firms, and that FINRA extend the implementation date of the requirements pending such reconsideration to reduce potential uncertainty in the Covered Agency Transaction market. In Partial Amendment No. 3 to SR–FINRA–2015–036, FINRA stated that it would monitor the impact of the requirements pursuant to that rulemaking and, if the requirements prove overly onerous or otherwise are shown to negatively impact the market, FINRA would consider revisiting such requirements as may be necessary to mitigate the rule's impact.[13] In response to the concerns of industry participants, FINRA has engaged in extensive dialogue, both with industry participants and other regulators, including staff of the SEC and the Federal Reserve System, for the purpose of reconsidering the requirements. Further, pending this period of dialogue and reconsideration, FINRA has extended the implementation date of the requirements pursuant to SR–FINRA–2015–036 (other than the risk limit determination requirements that became effective on December 15, 2016) on several occasions, most recently to October 26, 2021 (the ''October 26, 2021, implementation date''),[14] and has published various guidance to assist members.[15]

FINRA notes that, in the period since the Approval Date, there has been opportunity to discern with greater clarity the potential impact, on both firms and their customers, of the requirements pursuant to SR–FINRA–2015–036. Members have told FINRA that the requirements, as currently approved, favor larger firms over smaller firms because larger firms would have more market power to negotiate margin agreements [16] with their customers. Members have pointed out that non-FINRA member bank dealers and other entities are able to participate in the Covered Agency Transaction market without being subject to FINRA Rule 4210, which thereby places FINRA member broker-dealers at a competitive disadvantage. Some smaller members told FINRA that, among other things, having the option to take a capital charge in lieu of collecting margin for their customers' mark to market losses would help alleviate this competitive disadvantage, though it would not fully resolve the disparity that results from being subject to Rule 4210 when non-FINRA member bank dealers are not.

## A. Summary of Proposed Amendments

Taking into account FINRA's dialogue with members,[17] and the overall

term ''Securitized Product'' is defined under FINRA Rule 6710(m).

[6] FINRA Rule 6710(k) defines ''agency'' to mean a United States executive agency as defined in 5 U.S.C. 105 that is authorized to issue debt directly or through a related entity, such as a government corporation, or to guarantee the repayment of principal or interest of a debt security issued by another entity. The term excludes the U.S. Department of the Treasury in the exercise of its authority to issue U.S. Treasury Securities as defined under FINRA Rule 6710(p). Under 5 U.S.C. 105, the term ''executive agency'' is defined to mean an ''Executive department, a Government corporation, and an independent establishment.''

[7] FINRA Rule 6710(n) defines GSE to have the meaning set forth in 2 U.S.C. 622(8). Under 2 U.S.C. 622(8), a GSE is defined, in part, to mean a corporate entity created by a law of the United States that has a Federal charter authorized by law, is privately owned, is under the direction of a board of directors, a majority of which is elected by private owners, and, among other things, is a financial institution with power to make loans or loan guarantees for limited purposes such as to provide credit for specific borrowers or one sector and raise funds by borrowing (which does not carry the full faith and credit of the Federal Government) or to guarantee the debt of others in unlimited amounts.

[8] The proposed rule change would redesignate the current definition of Covered Agency Transactions, as set forth in paragraph (e)(2)(H)(i)c., as paragraph (e)(2)(H)(i)b., without any change. *See* Exhibit 5. For purposes of this filing, all references to provisions under Rule 4210 are to provisions as amended or established pursuant to SR–FINRA–2015–036 (for convenience, also referred to in this filing as the ''current rule''), except where otherwise indicated.

[9] *See* Securities Exchange Act Release No. 76148 (October 14, 2015), 80 FR 63603 (October 20, 2015) (Notice of Filing of Proposed Rule Change; File No. SR–FINRA–2015–036) (FINRA's filing proposing SR–FINRA–2015–036, referred to as the ''Original Proposal'').

[10] *See* Original Proposal, 80 FR at 63604. FINRA further pointed out that the rulemaking was necessary given that FINRA's existing requirements, prior to the rulemaking, did not address the Covered Agency Transaction market generally, and given that existing industry best practices guidelines, such as set forth by the Treasury Market Practices Group (''TMPG''), are recommendations and not rule requirements. *Id.*

[11] *See* Securities Exchange Act Release No. 78081 (June 15, 2016), 81 FR 40364 (June 21, 2016) (Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval to a Proposed Rule Change to Amend FINRA Rule 4210 (Margin Requirements) to Establish Margin Requirements for the TBA Market, as Modified by Amendment Nos. 1, 2, and 3; File No. SR–FINRA–2015–036) (approving SR–FINRA–2015–036, referred to as the ''Approval Order'').

[12] *See* Partial Amendment No. 3 to SR–FINRA–2015–036 and *Regulatory Notice* 16–31 (August 2016), both available at: <*www.finra.org*>.

[13] *See* note 12 *supra.*

[14] *See* Securities Exchange Act Release No. 90852 (January 5, 2021), 86 FR 2021 (January 11, 2021) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Implementation Date of Certain Amendments to FINRA Rule 4210 Approved Pursuant to SR–FINRA–2015–036; File No. SR–FINRA–2020–046). As discussed further below, FINRA plans to file a separate proposed rule change that would further adjust the October 26, 2021, implementation date to align with the effective date of the amendments to SR–FINRA–2015–036 as set forth in this proposed rule change.

[15] For example, FINRA made available a set of Frequently Asked Questions & Guidance to clarify certain of the requirements, available at: <*www.finra.org*>. Further, staff of the SEC's Division of Trading and Markets made available a set of Frequently Asked Questions regarding SEA Rule 15c3–1 and Rule 15c3–3 in connection with Covered Agency Transactions under FINRA Rule 4210, also available at: <*www.finra.org*>.

[16] For example, larger firms would have more market power to negotiate Master Securities Forward Transaction Agreements (''MSFTAs'') or customer account agreements.

[17] As discussed further below, this included outreach to several members active in the Covered Agency Transaction market regarding the volatility experienced in that market following the outbreak of the COVID–19 pandemic in early 2020. The SEC staff has issued a report addressing the market stress during and following the COVID–19 shock. *See* SEC Division of Economic and Risk Analysis, U.S. Credit Markets: Interconnectedness and the Effects of the COVID–19 Economic Shock (October 2020), available at: <*https://www.sec.gov/files/US-Credit-Markets_COVID-19_Report.pdf*> (the ''DERA Report'').

purpose of the margin amendments, FINRA is proposing revisions to the Covered Agency Transaction requirements as approved pursuant to SR–FINRA–2015–036. Broadly, FINRA proposes:

- To eliminate the two percent maintenance margin requirement that applies to non-exempt [18] accounts pursuant to paragraph (e)(2)(H)(ii)e. under Rule 4210. This would eliminate the need for members to distinguish exempt account customers from other customers (''non-exempt accounts'') for purposes of Covered Agency Transaction margin. As such, without regard to a counterparty's exempt or non-exempt account status, members would collect margin for each counterparty's excess mark to market loss, as discussed in further detail below, unless otherwise provided by the rule;
- subject to specified conditions and limitations, to permit members to take a capital charge in lieu of collecting margin for excess net mark to market losses on Covered Agency Transactions. These conditions and limitations are designed to help protect the financial stability of members that opt to take capital charges while restricting the ability of the larger members to use their capital in lieu of collecting margin to compete unfairly with smaller members; and
- to make revisions designed to streamline, consolidate and clarify the Covered Agency Transaction rule language. These revisions will preserve and clarify key exceptions to the requirements, including for example the $250,000 de minimis transfer exception [19] and the $10 million gross open position exception [20] established pursuant to SR–FINRA–2015–036.

The proposed amendments are discussed in detail below.

B. Detailed Discussion of Proposed Amendments

1. Elimination of Maintenance Margin Requirement; Application of Mark to Market Loss to Both Exempt and Non-Exempt Accounts

Paragraph (e)(2)(H)(ii)e. of the rule addresses Covered Agency Transactions with counterparties that are non-exempt accounts and broadly provides that maintenance margin, defined under the current rule to mean margin equal to two percent of the contract value of the net long or net short position, by CUSIP, with the counterparty, plus any net mark to market loss on such transactions, shall be required margin, subject to specified exceptions under the rule.[21] By contrast, paragraph (e)(2)(H)(ii)d. of the rule broadly provides that on transactions with counterparties that are exempt accounts no maintenance margin shall be required. Such transactions must be marked to the market daily and the member must collect any net mark to market loss, subject to specified exceptions under the rule.[22]

Members expressed concern that the two-track treatment of exempt versus non-exempt accounts is burdensome because members are obliged under the current rule to obtain and assess the financial information needed to determine which counterparties must be treated as non-exempt accounts.[23] Further, based on feedback from members since the Approval Date and additional observation of market conditions, FINRA believes that the potential risk that the maintenance margin requirement was intended to address when originally proposed [24] is not significant enough to warrant the burdens and competitive disadvantage that the requirement imposes. Members pointed out that, in practice, the maintenance margin requirement would apply to relatively few accounts that participate in the Covered Agency Transaction market. Yet, monitoring and collecting maintenance margin for such accounts is operationally burdensome and out of proportion with the number and size of the affected accounts. Further, bank dealers are not subject to the requirement to collect maintenance margin from their customers, which significantly would disadvantage FINRA members in competition with bank dealers. To address these concerns, FINRA is proposing to eliminate paragraph (e)(2)(H)(ii)d. and paragraph (e)(2)(H)(ii)e. of Rule 4210 as established pursuant to the Approval Order, and to adopt in lieu new paragraph (e)(2)(H)(ii)c., which provides that members shall collect margin for each counterparty's [25] excess net mark to

[18] The term ''exempt account'' is defined under FINRA Rule 4210(a)(13). Broadly, an exempt account means a FINRA member, non-FINRA member registered broker-dealer, account that is a ''designated account'' under FINRA Rule 4210(a)(4) (specifically, a bank as defined under Exchange Act Section 3(a)(6), a savings association as defined under Section 3(b) of the Federal Deposit Insurance Act, the deposits of which are insured by the Federal Deposit Insurance Corporation, an insurance company as defined under Section 2(a)(17) of the Investment Company Act, an investment company registered with the Commission under the Investment Company Act, a state or political subdivision thereof, or a pension plan or profit sharing plan subject to the Employee Retirement Income Security Act or of an agency of the United States or of a state or political subdivision thereof), and any person that has a net worth of at least $45 million and financial assets of at least $40 million for purposes of paragraphs (e)(2)(F), (e)(2)(G) and (e)(2)(H) of the rule, as set forth under paragraph (a)(13)(B)(i) of Rule 4210, and meets specified conditions as set forth under paragraph (a)(13)(B)(ii).

[19] Subject to specified conditions, the current rule provides for an aggregate $250,000 de minimis transfer amount with a single counterparty, so that if the aggregate required but uncollected maintenance margin or mark to market loss does not exceed that amount, the margin need not be collected or charged to net capital. *See* Approval Order, 81 FR at 40367; *see also* paragraph (e)(2)(H)(ii)f. of the current rule in Exhibit 5.

[20] The current rule provides that the margin requirements for Covered Agency Transactions do not apply to a counterparty that has gross open positions in Covered Agency Transactions with the member amounting to $10 million or less if the counterparty regularly settles its Covered Agency Transactions on a Delivery Versus Payment (''DVP'') basis or for cash and meets other specified conditions. *See* paragraph (e)(2)(H)(ii)c. of the current rule in Exhibit 5.

[21] *See* Approval Order, 81 FR at 40367; *see also* paragraph (e)(2)(H)(ii)e. of the current rule in Exhibit 5. The rule further sets forth specified requirements for net capital deductions and the liquidation of positions in the event the uncollected maintenance margin and mark to market loss (defined together under paragraph (e)(2)(H)(i)d. of the current rule as the ''deficiency'') is not satisfied. In short, the rule provides that if the deficiency is not satisfied by the close of business on the next business day after the business day on which the deficiency arises, the member shall be required to deduct the amount of the deficiency from net capital as provided in SEA Rule 15c3–1 until such time the deficiency is satisfied; under the rule, if such deficiency is not satisfied within five business days from the date the deficiency was created, the member must promptly liquidate positions to satisfy the deficiency, unless FINRA has specifically granted the member additional time. As discussed in further detail below, the proposed rule change would eliminate current paragraph (e)(2)(H)(ii)e. in its entirety.

[22] *See* Approval Order, 81 FR at 40367; *see also* paragraph (e)(2)(H)(ii)d. of the current rule in Exhibit 5. Similar to paragraph (e)(2)(H)(ii)e., the current rule provides that if the mark to market loss is not satisfied by the close of business on the next business day after the business day on which the mark to market loss arises, the member is required to deduct the amount of the mark to market loss from net capital as provided in SEA Rule 15c3–1 until such time the mark to market loss is satisfied; if such mark to market loss is not satisfied within five business days from the date the loss was created, the member must promptly liquidate positions to satisfy the mark to market loss, unless FINRA has specifically granted the member additional time. Again, as discussed in further detail below, the proposed rule change would eliminate current paragraph (e)(2)(H)(ii)d. in its entirety.

[23] Further, members expressed concern that some asset manager counterparties face constraints with regard to custody of assets at broker-dealers and that, because of these constraints, some members need to enter into separate custodial agreements with third party banks to hold the maintenance margin that they collect from these asset managers. Members expressed concern that this imposes operational burdens both on themselves and their client counterparties, who may, as a consequence, choose to limit their dealings with smaller broker-dealers.

[24] *See* Original Proposal, 80 FR at 63608.

[25] Current paragraph (e)(2)(H)(i)b. defines the term ''counterparty'' to mean any person that enters into a Covered Agency Transaction with a member and includes a ''customer'' as defined in paragraph

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market loss,[26] unless otherwise provided under proposed new paragraph (e)(2)(H)(ii)d. of the rule, as discussed further below. As such, both exempt and non-exempt accounts would receive the same margin treatment for purposes of Covered Agency Transactions under paragraph (e)(2)(H).[27]

2. Option for Capital Charge in Lieu of Mark to Market Margin

Proposed new paragraph (e)(2)(H)(ii)d. of the rule is designed, subject to specified conditions and limitations, to permit members the option to take a capital charge in lieu of collecting margin for a counterparty's excess net mark to market loss (that is, as discussed above, the net mark to market loss to the extent it exceeds $250,000). Informed by FINRA's engagement with members, FINRA believes this approach is appropriate because it would help alleviate the competitive disadvantage of smaller firms vis-à-vis larger firms. Smaller firms expressed concern that larger firms can leverage their greater size and scale in obtaining margining agreements with their counterparties, and that counterparties would prefer to transact with larger firms with which margining agreements can more readily be obtained, or with banks that are not subject to margin requirements under Rule 4210. Smaller firms told FINRA that having the option to take a capital charge, in lieu of collecting margin, would help alleviate the competitive disadvantage of needing to obtain margining agreements with such counterparties because there would be an alternative to collecting margin. To this end, as noted above, the proposed rule includes conditions and limitations that are designed to help protect the financial stability of members that opt to take capital charges while restricting the ability of the larger members to use their capital to compete unfairly with smaller members. Specifically, the proposed new paragraph provides that a member need not collect margin for a counterparty's excess net mark to market loss under paragraph (e)(2)(H)(ii)c. of the rule, provided that:

- The member must deduct the amount of the counterparty's unmargined excess net mark to market loss from the member's net capital computed as provided in SEA Rule 15c3–1, if the counterparty is a non-margin counterparty [28] or if the excess net mark to market loss has not been margined or eliminated by the close of business on the next business day after the business day on which such excess net mark to market loss arises; [29]
- if the member has any non-margin counterparties, the member must establish and enforce risk management procedures reasonably designed to ensure that the member would not exceed either of the limits specified in paragraph (e)(2)(I)(i) of the rule, as proposed to be revised pursuant to this rule change,[30] and that the member's net capital deductions under proposed paragraph (e)(2)(H)(ii)d.1. of the rule for all accounts combined will not exceed $25 million; [31]
- if the member's net capital deductions under paragraph (e)(2)(H)(ii)d.1. of the rule for all accounts combined exceed $25 million for five consecutive business days, the member must give prompt written notice to FINRA. If the member's net capital deductions under paragraph (e)(2)(H)(ii)d.1. of the rule for all accounts combined exceed the lesser of $30 million or 25% of the member's tentative net capital, as such term is defined in SEA Rule 15c3–1, for five consecutive business days, the member may not enter into any new Covered Agency Transactions with any non-margin counterparty other than risk-reducing transactions, and must also, to the extent of its rights, promptly collect margin for each counterparty's excess net mark to market loss and promptly liquidate the Covered Agency transactions of any counterparty whose excess net mark to market loss is not margined or eliminated within five business days from the date it arises, unless FINRA has specifically granted the member additional time; [32] and
- the member must submit to FINRA such information regarding its unmargined net mark to market losses, non-margin counterparties and related capital charges, in such form and manner, as FINRA shall prescribe by Regulatory Notice or similar communication.[33]

(a)(3) under Rule 4210. The proposed rule change would redesignate the definition of counterparty as paragraph (e)(2)(H)(i)a. under the rule and revise the definition to provide that the term ''counterparty'' means any person, including any ''customer'' as defined in paragraph (a)(3) of the rule, that is a party to a Covered Agency Transaction with, or guaranteed by, a member. FINRA believes that including transactions guaranteed by a member is a useful clarifying change in the context of Covered Agency Transactions. In connection with this change, FINRA proposes to add new Supplemental Material .02, which would provide that, for purposes of paragraph (e)(2)(H), a member is deemed to have ''guaranteed'' a transaction if the member has become liable for the performance of either party's obligations under the transaction. *See* proposed new Supplemental Material .02 in Exhibit 5. Accordingly, if a clearing broker were to guarantee to an introduced customer an introducing broker's obligations under a Covered Agency Transaction between that introducing firm and customer, the introducing broker would be considered a ''counterparty'' of the clearing broker for purposes of paragraph (e)(2)(H).

[26] FINRA proposes to delete the current definition of ''mark to market loss'' under paragraph (e)(2)(H)(i)g. as adopted pursuant to the Approval Order and to replace it with a definition of ''net mark to market loss'' under proposed new paragraph (e)(2)(H)(i)d. Under the new definition, a counterparty's ''net mark to market loss'' means (1) the sum of such counterparty's losses, if any, resulting from marking to market the counterparty's Covered Agency Transactions with the member, or guaranteed to a third party by the member, reduced to the extent of the member's legally enforceable right of offset or security by (2) the sum of such counterparty's gains, if any, resulting from: (a) Marking to market the counterparty's Covered Agency Transactions with the member, guaranteed to the counterparty by the member, cleared by the member through a registered clearing agency, or in which the member has a first-priority perfected security interest; and (b) any ''in the money,'' as defined in paragraph (f)(2)(E)(iii) of Rule 4210, amounts of the counterparty's long standby transactions written by the member, guaranteed to the counterparty by the member, cleared by the member through a registered clearing agency, or in which the member has a first-priority perfected security interest. Under proposed new paragraph (e)(2)(H)(i)c., a counterparty's ''excess'' net mark to market loss is defined to mean such counterparty's net mark to market loss to the extent it exceeds $250,000. As such, by specifying excess net mark to market loss, FINRA notes that the proposed rule preserves the $250,000 de minimis transfer exception set forth under paragraph (e)(2)(H)(ii)f. as adopted pursuant to the Approval Order. Further, FINRA notes that, in the interest of clarity, proposed new paragraph (e)(2)(H)(ii)c. expressly provides that members would not be required to collect margin, or take capital charges, for counterparties' mark to market losses on Covered Agency Transactions other than excess net mark to market losses. Last, as discussed further below, the proposed rule change would delete paragraph (e)(2)(H)(ii)f. in the interest of consolidating the rule language.

[27] Current paragraph (e)(2)(H)(ii)d. of the rule contains provisions designed to permit members to treat mortgage bankers, as defined pursuant to current paragraph (e)(2)(H)(i)h. of the rule, as exempt accounts under specified conditions. Because the proposed rule change eliminates the distinction between exempt and non-exempt accounts for purposes of Covered Agency Transactions, this language is no longer needed and will be deleted.

[28] Proposed new paragraph (e)(2)(H)(i)e. defines a counterparty as a ''non-margin counterparty'' if the member: (1) Does not have a right under a written agreement or otherwise to collect margin for such counterparty's excess net mark to market loss and to liquidate such counterparty's Covered Agency Transactions if any such excess net mark to market loss is not margined or eliminated within five business days from the date it arises; or (2) does not regularly collect margin for such counterparty's excess net mark to market loss.

[29] *See* proposed paragraph (e)(2)(H)(ii)d.1. in Exhibit 5.

[30] Current paragraph (e)(2)(I) sets forth specified concentration thresholds. As discussed further below, the rule change would make conforming revisions to the rule.

[31] *See* proposed paragraph (e)(2)(H)(ii)d.2. in Exhibit 5.

[32] *See* proposed paragraph (e)(2)(H)(ii)d.3. in Exhibit 5.

[33] *See* proposed paragraph (e)(2)(H)(ii)d.4. in Exhibit 5.

3. Streamlining and Consolidation of Rule Language; Conforming Revisions

In support of the amendments discussed above, FINRA is proposing several amendments to the current rule designed to streamline and consolidate the rule language and otherwise make conforming revisions:

• The rule change consolidates language related to the $250,000 de minimis transfer exception and the $10 million gross open position exception while, as discussed above, preserving these exceptions in substance. The $250,000 de minimis transfer exception is preserved because paragraph (e)(2)(H)(ii)c. under the revised rule specifies that the members shall collect margin for each counterparty's excess net mark to margin loss, unless otherwise provided under paragraph (e)(2)(H)(ii)d. of the rule (that is, as discussed above, the provisions under the proposed rule that permit a member to take a capital charge in lieu of collecting margin, subject to specified conditions). The rule change deletes paragraph (e)(2)(H)(ii)f., which currently addresses the de minimis exception and would be rendered redundant. With respect to the current $10 million gross open position exception, FINRA proposes to revise paragraph (e)(2)(H)(ii)a. of the rule, which specifies counterparties that are excepted from the rule's margin requirements, to include a ''small cash counterparty'' among the enumerated entities included in the exception. Proposed new paragraph (e)(2)(H)(i)h. would provide that a counterparty is a ''small cash counterparty'' if:

○ The absolute dollar value of all of such counterparty's open Covered Agency Transactions with, or guaranteed by, the member is $10 million or less in the aggregate, when computed net of any settled position of the counterparty held at the member that is deliverable under such open Covered Agency Transactions and which the counterparty intends to deliver; [34]

○ the original contractual settlement date for all such open Covered Agency Transactions is in the month of the trade date for such transactions or in the month succeeding the trade date for such transactions; [35]

○ the counterparty regularly settles its Covered Agency Transactions on a DVP basis or for cash; [36] and

○ the counterparty does not, in connection with its Covered Agency Transactions with, or guaranteed by, the member, engage in dollar rolls, as defined in Rule 6710(z), or round robin trades,[37] or use other financing techniques.[38]

The above elements are substantially similar to the elements that are currently associated with the exception as set forth under current paragraph (e)(2)(H)(ii)c.2., which would be deleted, along with the definition of ''gross open position'' under paragraph (e)(2)(H)(i)e., which would be rendered redundant. The new proposed language reflects that the scope of transactions addressed by the rule include Covered Agency Transactions with a counterparty that are guaranteed by the member.

• FINRA proposes to delete the definition of ''bilateral transaction'' set forth in current paragraph (e)(2)(H)(i)a. The definition is in connection with the provisions under the current rule relating to margin treatment for exempt accounts under paragraph (e)(2)(H)(ii)d. and for non-exempt accounts under paragraph (e)(2)(H)(ii)e., both of which paragraphs, as discussed above, FINRA proposes to delete pursuant to the rule change. Further, FINRA notes that the term ''bilateral transaction'' is unduly narrow given that the proposed revised definition of ''counterparty,'' as discussed above, would have the effect of clarifying that the rule's scope includes transactions guaranteed by the member.

• FINRA proposes to delete the definition of the term ''deficiency'' set forth in current paragraph (e)(2)(H)(i)d. Under the current rule, the term is designed in part to reference required but uncollected maintenance margin for Covered Agency Transactions. Because the rule change proposes to eliminate such maintenance margin, the term is not needed.

• Current paragraph (e)(2)(H)(ii)a. addresses the scope of paragraph (e)(2)(H) and certain types of counterparties that are excepted from the rule, provided the member makes and enforces written risk limits pursuant to paragraph (e)(2)(H)(ii)b. Current paragraph (e)(2)(H)(ii)b. contains the core language under the rule relating to risk limits. FINRA is proposing to revise both paragraphs so as to conform with the rule change and to consolidate the language relating to written risk limits in these paragraphs within paragraph (e)(2)(H)(ii)b. Paragraph (e)(2)(H)(ii)a.1. would be revised to read: ''1. a member is not required to collect margin, or to take capital charges in lieu of collecting such margin, for a counterparty's excess net mark to market loss if such counterparty is a small cash counterparty, registered clearing agency, Federal banking agency, as defined in 12 U.S.C. 1813(z), central bank, multinational central bank, foreign sovereign, multilateral development bank, or the Bank for International Settlements; and . . .'' [39] Paragraph (e)(2)(H)(ii)a.2. would be revised to read: ''2. a member is not required to include a counterparty's Covered Agency Transactions in multifamily housing securities or project loan program securities in the computation of such counterparty's net mark to market loss, provided . . .'' [40] Paragraph (e)(2)(H)(ii)a.2.A. would not be changed, other than to be redesignated as part of part of (e)(2)(H)(ii)a.2. Paragraph (e)(2)(H)(ii)a.2.B. would be eliminated as redundant [41] because, correspondingly, paragraph (e)(2)(H)(ii)b. would be revised to read: ''A member that engages in Covered Agency Transactions with any counterparty shall make a determination in writing of a risk limit for each such counterparty, including any counterparty specified in paragraph (e)(2)(H)(ii)a.1. of this Rule, that the member shall enforce. The risk limit for

[34] *See* proposed paragraph (e)(2)(H)(i)h.1. in Exhibit 5.

[35] *See* proposed paragraph (e)(2)(H)(i)h.2. in Exhibit 5.

[36] *See* proposed paragraph (e)(2)(H)(i)h.3. in Exhibit 5.

[37] The term ''round robin'' is defined under current paragraph (e)(2)(H)(i)i. of the rule and, pursuant to the rule change, would be redesignated as paragraph (e)(2)(H)(i)g., without any change.

[38] *See* proposed paragraph (e)(2)(H)(i)h.4. in Exhibit 5.

[39] The proposed new term ''small cash counterparty'' is discussed above. The proposed language in the paragraph reflects FINRA's proposed establishment of the option to take a net capital charge in lieu of collecting margin. Further, FINRA notes that, for clarity, the proposed rule change adds registered clearing agencies to the types of counterparties that are within the exception pursuant to paragraph (e)(2)(H)(ii)a. as revised. This preserves the treatment of registered clearing agencies under the rule in light of the proposed deletion of current paragraph (e)(2)(H)(ii)c. In this regard, also in the interest of clarity, FINRA proposes to add new paragraph (e)(2)(H)(i)f. by way of defining the term ''registered clearing agency.''

[40] Under current paragraph (e)(2)(H)(ii)a.2., a member is not required to apply the margin requirements of paragraph (e)(2)(H) to Covered Agency Transactions with a counterparty in multifamily housing securities or project loan program securities, provided the securities meet the specified conditions under the rule and the member makes and enforces the written risk limit determinations as specified under the rule. FINRA notes that the proposed rule change does not change the treatment of multifamily housing securities or project loan program securities under the current rule other than to clarify, in express terms, that a member is not required to include a counterparty's Covered Agency Transactions in multifamily housing securities or project loan program securities in the computation of such counterparty's net mark to market loss.

[41] *See* proposed paragraph (e)(2)(H)(ii)a. in Exhibit 5.

a counterparty shall cover all of the counterparty's Covered Agency Transactions with the member or guaranteed to a third party by the member, including Covered Agency Transactions specified in paragraph (e)(2)(H)(ii)a.2. of this Rule. The risk limit determination shall be made by a designated credit risk officer or credit risk committee in accordance with the member's written risk policies and procedures.'' [42]

• Paragraph (e)(2)(I) under Rule 4210 addresses concentration thresholds. FINRA is proposing to make revisions to align the paragraph with the proposed new language as to paragraph (e)(2)(H), in particular the elimination of the maintenance margin requirement and the introduction of the proposed new term ''small cash counterparty.'' Specifically, FINRA proposes to revise the opening sentence of the paragraph to read: ''In the event that (i) the net capital deductions taken by a member as a result of marked to the market losses incurred under paragraphs (e)(2)(F), (e)(2)(G) (exclusive of the percentage requirements established thereunder), or (e)(2)(H)(ii)d.1. of this Rule, plus any unmargined net mark to market losses below $250,000 or of small cash counterparties exceed . . .'' [43] Current paragraph (e)(2)(I)(i)c. would be redesignated as (e)(2)(I)(ii) and would read: ''(*ii*) such excess as calculated in *paragraph (e)(2)(I)(i)* of this Rule continues to exist on the fifth business day after it was incurred . . .'' The final clause of the paragraph would be revised to read: ''. . . the member shall give prompt written notice to FINRA and shall not enter into any new transaction(s) subject to the provisions of paragraphs (e)(2)(F), (e)(2)(G) or (e)(2)(H) of this Rule that would result in an increase in the amount of such excess.''

• Paragraph (f)(6) under Rule 4210 addresses the time within which margin or ''mark to market'' must be obtained. FINRA proposes to delete the phrase ''other than that required under paragraph (e)(2)(H) of this Rule,'' so the rule, as revised, would read: ''The amount of margin or 'mark to market' required by any provision of this Rule shall be obtained as promptly as possible and in any event within 15 business days from the date such deficiency occurred, unless FINRA has specifically granted the member additional time.'' FINRA believes this is appropriate given the proposed elimination of current paragraph (e)(2)(H)(ii)d. and paragraph (e)(2)(H)(ii)e. of the rule, both of which set forth, among other things, specified time frames for collection of mark to market losses or deficiencies, as appropriate, and liquidation of positions that are specific to Covered Agency Transactions.

• Current Supplemental Material .02 addresses the requirement for monitoring procedures with respect to mortgage bankers, for purposes of treating them as exempt accounts pursuant to current paragraph (e)(2)(H)(ii)d. Current Supplemental Material .03 addresses how the cure of mark to market loss or deficiency, as defined under the current rule, may cure the need to liquidate positions. Current Supplemental Material .04 addresses determining whether an account qualifies as an exempt account. The proposed rule change would render each of these provisions unnecessary, given that the rule change eliminates the need to distinguish exempt versus non-exempt accounts, including, as discussed above, the language targeted toward mortgage bankers, and eliminates the liquidation provisions under current paragraph (e)(2)(H)(ii)d. and paragraph (e)(2)(H)(ii)e. of the rule. FINRA proposes to redesignate current Supplemental Material .05 as Supplemental Material .03.[44]

If the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be no later than 120 days following publication of the *Regulatory Notice* announcing Commission approval.[45] Further, FINRA plans to file a separate proposed rule change that would adjust the October 26, 2021, implementation date for the requirements pursuant to SR–FINRA–2015–036 (other than the risk limit determination requirements that became effective on December 15, 2016) to align with the effective date of the amendments to SR–FINRA–2015–036 as set forth in this proposed rule change. FINRA believes this alignment is appropriate in the interest of regulatory clarity.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[46] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Based on extensive engagement with industry participants, FINRA believes that the proposed rule change is consistent with the Act because, by eliminating the maintenance margin requirement for Covered Agency Transactions and by permitting members, under specified conditions, to take a capital charge in lieu of collecting margin, the proposed amendments will alleviate the negative competitive impact that the requirements pursuant to SR–FINRA–2015–036 could have for smaller firms. Smaller firms told FINRA that the requirements pursuant to SR–FINRA–2015–036, absent the proposed revisions by FINRA, would have the effect of favoring larger firms that could leverage their greater size and scale and non-member banks that are not subject to the requirements of FINRA rules. The proposed rule change, by alleviating this disadvantage, would help promote competition by leveling the playing field among participants in the Covered Agency Transaction market, thereby reducing disruption in the Covered Agency Transaction market without the loss of investor protection.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Economic Impact Assessment

FINRA has undertaken an economic impact assessment, as set forth below, to further analyze the regulatory need for the proposed rule change, its potential economic impacts, including anticipated costs, benefits, and distributional and competitive effects, relative to the current baseline, and the alternatives FINRA considered in assessing how best to meet its regulatory objective.

A. Regulatory Need

In Partial Amendment No. 3 to SR–FINRA–2015–036, FINRA stated that it would monitor the impact of the requirements specified in the rule change, inclusive of any potential intended or unintended regulatory, economic or competitive consequences.

[42] *See* proposed paragraph (e)(2)(H)(ii)b. in Exhibit 5.

[43] *See* proposed paragraph (e)(2)(I) in Exhibit 5.

[44] *See* the Supplemental Material provisions in Exhibit 5.

[45] FINRA notes that the proposed rule change would not impact members that are funding portals or that have elected to be treated as capital acquisition brokers (''CABs''), given that such members are not subject to Rule 4210.

[46] 15 U.S.C. 78*o*–3(b)(6).

In response to concerns raised by industry participants regarding the impacts of the requirements, FINRA has engaged in extensive dialogue with industry participants, staff of the SEC and the Federal Reserve System, to reconsider the specified requirements, and to propose any necessary amendments to the requirements adopted pursuant to SR–FINRA–2015–036.

B. Economic Baseline

The economic baseline for the proposed rule change is based on (1) the existing state of the market and firm practices, (2) Rule 4210 prior to the amendments pursuant to SR–FINRA–2015–036 (for convenience, ''pre-revision Rule 4210''), and (3) the amendments pursuant to SR–FINRA–2015–036 that, other than the risk limit determination requirements that became effective on December 15, 2016, would be implemented on the October 26, 2021, implementation date.

Through several discussions and consultations with member firms and other relevant stakeholders since the SEC approved SR–FINRA–2015–036, FINRA has learned about some of the unintended consequences identified as part of the rulemaking. A particular aspect that has been identified is with respect to competition among FINRA members firms, and between member and non-member firms. The outbreak of the COVID–19 pandemic in early 2020 affected the financial system, increasing volatility in different markets, including the Covered Agency Transaction market.[47] This exogenous shock to the market took place while FINRA was well into the process of evaluating feedback and concerns raised regarding the margin requirements for trading in this market. FINRA sought feedback, and discussed with several firms, the impact on the Covered Agency Transaction market of the increased volatility, including the impact of the margin requirements pursuant to SR–FINRA–2015–036 and the requirements as they would be amended pursuant to this rule filing. Overall, firms that participated in the outreach were supportive of the proposed rule amendments as set forth in this filing.

Market participants indicated that the order and timing of official sector activities, including the Federal Reserve Board's federal funds rate cut and its quantitative easing measures, including purchases of U.S. Treasury securities (''UST'') and mortgage-based securities (''MBS''), and the mortgage loan forbearance relief provided under the Coronavirus Aid, Relief, and Economic Security Act (the ''CARES Act''),[48] as amended, were coincident with short-term significant increases in volatility in UST and MBS pricing, resulting in increased margin calls, lower counterparty liquidity, and an adverse effect on related hedges. Most of the firms that participated in FINRA's outreach efforts had signed with their counterparties margining agreements (MSFTAs or customer account agreements), giving the firms the ability to collect margin when necessary. These firms reported that in most cases, clients met their margin calls, with uncollected margin amounts being charged against the firm's capital, in accordance with pre-revision Rule 4210 and, in some cases, the requirements pursuant to SR–FINRA–2015–036 and the SEC staff's related guidance regarding SEA Rule 15c3–1 and Rule 15c3–3.[49] Thus, FINRA learned that firms have in principle already adjusted to the requirements of SR–FINRA–2015–036, which as such is an appropriate baseline for the proposed rule change.

The economic baseline considers the impact of the proposed rule change against the obligations, costs, and benefits associated with the requirements of SR–FINRA–2015–036. FINRA recognizes that some firms might continue to operate under the requirements of pre-revision Rule 4210, versus the requirements of SR–FINRA–2015–036. In establishing the rule change pursuant to SR–FINRA–2015–036, FINRA provided an analysis of the economic baseline that existed pre-2015 (the year that FINRA filed SR–FINRA–2015–036 with the SEC), and the potential economic impacts of the proposed changes pursuant to SR–FINRA–2015–036.[50] FINRA understands that the individual impacts experienced as a result of the proposed rule change as set forth is this filing will depend upon the extent to which member firms wholly adopted, partially adopted or are waiting to implement the requirements of SR–FINRA–2015–036.

C. Economic Impacts

FINRA has analyzed the potential costs and benefits of the proposed rule change, and the different parties that are expected to be affected. FINRA has identified member firms that engage in Covered Agency Transactions and their customers as the parties to be mainly affected by the proposed rule change. The proposed rule change is expected to provide relief to member firms, while promoting competition without diminishing investor protections.

Anticipated Benefits

FINRA believes that the proposed rule change would provide several direct benefits to member firms. First, the removal of the two percent maintenance margin requirement on non-exempt accounts would benefit member firms by reducing costs arising from two main channels. First, firms would no longer incur costs associated with distinguishing between exempt and non-exempt accounts. Second, the proposed rule change would provide operational relief with respect to obtaining custody and related agreements in connection with the need to collect maintenance margin. FINRA understands that the requirement to collect maintenance margin has led firms to enter into separate custodial agreements with third party banks to hold the maintenance margin where counterparties are constrained from custodying assets direct with broker-dealers. This resulted in an operational burden to both the member firms and their counterparties. Anecdotally, mid-size and smaller member firms have claimed an additional indirect cost to the current rule, specifically, that this operational burden has resulted in counterparties reducing the number of member firms with which they transact.

Second, the proposed rule change would permit member firms the option to take a capital charge in lieu of collecting margin for a counterparty's excess net mark to market loss. The proposal would allow member firms to do so subject to specified conditions and limitations as discussed above, and would preserve the substance of the exceptions permitted under the current rule.[51] These conditions and limitations are designed to help protect the financial stability of members that opt to take capital charges. The proposed limit on the capital charges taken by the firm in lieu of collecting margin provides guardrails to ensure that large member firms do not use this provision to corner the market in these securities.

FINRA has learned that allowing firms to take a capital charge in lieu of collecting margin would further benefit them by decreasing operational burdens. These burdens arise from the costs

[47] *See* the DERA Report, note 17 *supra. See also* Federal Reserve Bank of New York Staff Reports, It's What You Say and What You Buy: A Holistic Evaluation of the Corporate Credit Facilities (July 2020), available at: <*https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr935.pdf*>.

[48] Public Law 116–136, 134 Stat. 281 (2020).

[49] *See* the SEC staff Frequently Asked Question set as referenced in note 15 *supra.*

[50] *See* the Original Proposal as referenced in note 9 *supra.*

[51] *See,* for example, note 19 and note 20 *supra.*

associated with obtaining the required margin agreements from counterparties, and from the competitive advantage large dealers have, stemming from their ability to enter into MSFTAs with trading counterparties. Finally, FINRA believes that this provision would result in a transfer of the risk from the customer to the member firm. This would benefit the firm's customers and trading counterparties by reducing their costs and decreasing their risk exposure. As such, this could serve as an additional incentive to establishing trading relationships.

FINRA believes that, in addition to the main benefits discussed above, member firms would benefit from the streamlining of the rule text and clarifications provided throughout, including the provisions and exceptions as discussed above and set forth by the rule. One such example is the proposed change to the definition of counterparty in the rule. The proposed definition is expected to reduce costs associated with determining liability and responsibilities when establishing the contractual relationship between the member firm and its counterparty. A second example is the proposed amendment that defines the required margin by reference to the proposed new defined term ''excess net mark to market loss.'' The proposed language streamlines and clarifies the language pursuant to SR–FINRA–2015–036 with regard to the $250,000 de minimis transfer amount, thereby making it easier to determine the applicable margin.[52] This is expected to reduce the costs associated with determining the margin requirements when establishing trading relationships.

Anticipated Costs

FINRA notes that while the choice by member firms to commit capital in lieu of margin has anticipated benefits, as discussed above, such choice can also potentially result in some costs. The magnitude of these costs depends on the firm's trading activity, its access to capital, and the capital reserves necessary to fulfill the firm's margin obligations. As firms are not required to commit capital in lieu of margin, FINRA expects that firms will only do so when they believe it appropriately balances benefits and risks.

Moreover, the member firm's decision to take a capital charge in lieu of capital has additional associated costs. Taking a capital charge reduces the amount of excess net capital a firm has available for other uses and exposes the firm to financial and business risk if its counterparties fails to deliver. Additional related costs could stem from the necessary compliance systems needed to make sure the permitted limits on taking such capital charges are met, and the costs related to when the firm needs to keep to these limits for an extended period, as set forth in the proposed rule text.

Anticipated Competitive Effects

Collectively, the proposed rule change is expected to potentially level the playing field both between regional and primary broker-dealer members and between member firms and non-FINRA member regional banks. While FINRA has no direct measure of trading activity by non-member firms, it is expected that the main provisions of the proposed rule change would reduce incentives to limit trading relationships with FINRA member firms on account of the regulatory-imposed costs. Decreasing the costs associated with the collection of maintenance margin, and the ability to take a capital charge in lieu of collecting margin, would lower the overall costs associated with engaging in Covered Agency Transactions. FINRA believes that this would ultimately lower the barriers to entry into the Covered Agency Transaction market and increase competition. The magnitude of the competitive impact depends on the extent to which the requirements pursuant to SR–FINRA–2015–036 have already impacted market participant behavior. Finally, the collective impacts described above are expected to benefit the investor community, by providing investors more options for trading in this market.

D. Alternatives Considered

FINRA considered various alternatives to the proposed rule amendments. For example, with regard to the provisions under proposed paragraph (e)(2)(H)(ii)d.3. that specify the $30 million or 25% of tentative net capital thresholds,[53] FINRA considered imposing the specified consequences as set forth under the proposal as soon as a member exceeds a limit of $25 million in capital charges in lieu of collecting margin. Industry participants expressed concern that the abrupt imposition of such consequences in cases of market stress, without allowing time for the member to collect margin, would be burdensome to firms. FINRA believes this concern is valid and as such is proposing that incurring capital charges in excess of $25 million for five consecutive business days will require notice to FINRA, while incurring capital charges in excess of $30 million or 25% of a firm's tentative net capital for five consecutive business days will also require firms to take the specified steps to manage their risk.

FINRA believes that the proposal strikes an appropriate balance between regulatory burdens and the ability of member firms to compete in these markets, as well as member firms' financial responsibility and operational risk considerations and compliance.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization 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–FINRA–2021–010 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2021–010. 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

[52] *See* note 26 *supra.*

[53] *See* proposed Rule 4210(e)(2)(H)(ii)d.3. in Exhibit 5.

post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2021–010 and should be submitted on or before June 15, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[54]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021–10959 Filed 5–24–21; 8:45 am]

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[54] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–91947; File No. SR–NASDAQ–2020–057]**

## Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Order Approving a Proposed Rule Change, as Modified by Amendment No. 2, To Allow Companies To List in Connection With a Direct Listing With a Primary Offering in Which the Company Will Sell Shares Itself in the Opening Auction on the First Day of Trading on Nasdaq and To Explain How the Opening Transaction for Such a Listing Will Be Effected

May 19, 2021.

### I. Introduction

On September 4, 2020, The Nasdaq Stock Market LLC (''Nasdaq'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to allow companies to list in connection with a primary offering in which the company will sell shares itself in the opening auction on the first day of trading on the Exchange and to explain how the opening transaction for such a listing will be effected. The proposed rule change was published for comment in the **Federal Register** on September 21, 2020.[3] On November 4, 2020, pursuant to Section 19(b)(2) of the Exchange Act,[4] the Commission designated a longer period within which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On December 17, 2020, the Commission instituted proceedings under Section 19(b)(2)(B) of the Exchange Act[6] to determine whether to approve or disapprove the proposed rule change.[7] On February 22, 2021, the Exchange filed Amendment No. 1 to the proposed rule change, which superseded the proposed rule change as originally filed.[8] The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on March 2, 2021.[9] On March 17, 2021, the Commission extended the time period for approving or disapproving the proposal to May 19, 2021.[10] On April 30, 2021, the Exchange filed Amendment No. 2 to the proposed rule change, which superseded the proposed rule change, as modified by Amendment No. 1.[11] The Commission is approving the proposed rule change, as modified by Amendment No. 2.

### II. Description of the Proposal, as Modified by Amendment No. 2

Listing Rule IM–5315–1 provides additional listing requirements for listing a company that has not previously had its common equity securities registered under the Exchange Act on the Nasdaq Global Select Market at the time of effectiveness of a registration statement[12] filed solely for the purpose of allowing existing shareholders to sell their shares (a ''Selling Shareholder Direct Listing''). To allow a company to also sell shares on its own behalf in connection with its initial listing upon effectiveness of a registration statement, without a traditional underwritten public offering, the Exchange has proposed to adopt Listing Rule IM–5315–2. This proposed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 89878 (September 15, 2020), 85 FR 59349 (September 21, 2020). Comments received on the proposal are available on the Commission's website at: *https://www.sec.gov/comments/sr-nasdaq-2020-057/srnasdaq2020057.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 90331 (November 4, 2020), 85 FR 71708 (November 10, 2020).

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 90717 (December 17, 2020), 85 FR 84025 (December 23, 2020) (''Order Instituting Proceedings'' or ''OIP'').

[8] Amendment No. 1 to the proposed rule change revised the proposal to (1) add to the requirements that must be satisfied before a security can be released for trading in the cross that the actual price calculated by the cross must be at or above the lowest price and at or below the highest price of the price range established by the issuer in its effective registration statement; (2) revise the fourth tie-breaker used in calculating the Current Reference Price (as defined below) to provide that this tie-breaker will be the price that is closest to the lowest price of the price range disclosed by the issuer in its effective registration statement; (3) revise the price to be used by Nasdaq for purposes of qualifying a security for listing to provide that Nasdaq will use a price per share equal to the lowest price in the price range disclosed by the issuer in its effective registration statement to determine whether the company has met the applicable Market Value of Unrestricted Publicly Held Shares (as defined below), bid price, and market capitalization requirements; (4) add that, notwithstanding the provisions of Rule 4120(c)(8)(A), Nasdaq, in consultation with the financial advisor to the issuer, will make the determination of whether the security is ready to trade as described in Rule 4120(c)(8)(A), and Nasdaq will make the determination of whether to postpone or reschedule the offering, but will do so only if there is insufficient buy interest to satisfy the CDL Order and all other market orders, or if the actual price calculated by the cross is outside the price range established by the issuer in its effective registration statement; and (5) make minor technical changes to improve the clarity of the proposal. Amendment No. 1 to the proposed rule change is available on the Commission's website at *https://www.sec.gov/comments/sr-nasdaq-2020-057/srnasdaq2020057-8400450-229459.pdf.*

[9] *See* Securities Exchange Act Release No. 91205 (February 24, 2021), 86 FR 12245 (March 2, 2021) (''Notice'').

[10] *See* Securities Exchange Act Release No. 91345 (March 17, 2021), 86 FR 15530 (March 23, 2021).

[11] Amendment No. 2 to the proposed rule change revised the proposal to (1) clarify Nasdaq's intent in Amendment No. 1 that in a Direct Listing with a Capital Raise, Nasdaq alone would make a determination of whether to postpone and reschedule the offering, and would not postpone and reschedule if (i) all market orders will be executed in the cross, and (ii) the actual price calculated by the cross is at or above the lowest price and at or below the highest price of the price range established by the issuer in its effective registration statement; and (2) make minor technical and conforming changes to improve the clarity of the proposal. Because the changes in Amendment No. 2 to the proposed rule change do not materially alter the substance of the proposed rule change or make conforming or technical amendments, Amendment No. 2. is not subject to notice and comment. Amendment No. 2 to the proposed rule change is available on the Commission's website at *https://www.sec.gov/comments/sr-nasdaq-2020-057/srnasdaq2020057-8746216-237241.pdf.*

[12] The reference to a registration statement refers to a registration statement effective under the Securities Act of 1933 (''Securities Act'').

rule would allow a company that has not previously had its common equity securities registered under the Exchange Act to list its common equity securities on the Nasdaq Global Select Market at the time of effectiveness of a registration statement pursuant to which the company itself will sell shares in the opening auction on the first day of trading on the Exchange (a ''Direct Listing with a Capital Raise'').[13]

In considering a Selling Shareholder Direct Listing, Listing Rule IM–5315–1 currently provides that the Exchange will determine that such company has met the applicable Market Value of Unrestricted Publicly Held Shares [14] requirement based on the lesser of: (i) An independent third-party valuation of the company (a ''Valuation''); [15] and (ii) the most recent trading price for the company's common stock in a Private Placement Market [16] where there has been sustained recent trading. For a security that has not had sustained recent trading in a Private Placement Market prior to listing, the Exchange will determine that such company has met the Market Value of Unrestricted Publicly Held Shares requirement if the company satisfies the applicable Market Value of Unrestricted Publicly Held Shares requirement and provides a Valuation evidencing a Market Value of Publicly Held Shares of at least $250,000,000.

With respect to a Direct Listing with a Capital Raise, the Exchange has proposed that, in determining whether a company satisfies the Market Value of Unrestricted Publicly Held Shares requirement for initial listing on the Nasdaq Global Select Market, the Exchange will deem such company to have met the applicable requirement if the amount of the company's Unrestricted Publicly Held Shares before the offering, along with the market value of the shares to be sold by the company in the Exchange's opening auction in the Direct Listing with a Capital Raise is at least $110 million (or $100 million, if the company has stockholders' equity of at least $110 million).[17] The Exchange has proposed to calculate the Market Value of Unrestricted Publicly Held Shares, for this purpose, using a price per share equal to the lowest price of the price range disclosed by the issuer in its effective registration statement.[18] The Exchange also proposes to determine whether the company has met the applicable bid price and market capitalization requirements based on the same share price.[19]

The Exchange states that, except as proposed for a Direct Listing with a Capital Raise, its listing rules generally do not include shares held by officers, directors, or owners of more than 10% of the company's common stock in calculations of Publicly Held Shares.[20] In qualifying companies for listing in a Direct Listing with a Capital Raise, however, all shares sold by the company in the offering and all shares held by public holders prior to the offering will be included in the calculation of Publicly Held Shares. According to the Exchange, such investors may acquire in secondary market trades shares sold by the issuer in a Direct Listing with a Capital Raise that were included when calculating whether the issuer met the Market Value of Unrestricted Publicly Held Shares requirement for initial listing.[21] The Exchange states, however, that a company listing in conjunction with a Direct Listing with a Capital Raise will be required to have a Market Value of Unrestricted Publicly Held Shares that is much higher than the Exchange's $45 million Market Value of Unrestricted Publicly Held Shares requirement that applies to a traditional underwritten initial public offering (''IPO'').[22] The Exchange further states that this heightened requirement, along with the ability of all investors to purchase shares in the opening process on the Exchange, should result in companies using a Direct Listing with a Capital Raise having adequate public float and a liquid trading market after the completion of the opening auction.[23]

The Exchange also states that it believes that it is consistent with the protection of investors to calculate the security's bid price and values derived from the security's price using a price per share equal to the lowest price of the price range disclosed by the issuer in its effective registration statement.[24] The Exchange states that it will allow the

[13] *See* proposed Listing Rule IM–5315–2. A Direct Listing with a Capital Raise would include listings where either: (i) Only the company itself is selling shares in the opening auction on the first day of trading; or (ii) the company is selling shares and selling shareholders may also sell shares in such opening auction. *See id.* The Commission notes that while the Exchange's current rules also permit Selling Shareholder Direct Listings on the Nasdaq Global Market and Nasdaq Capital Market (*see* Listing Rules IM–5405–1 and IM–5505–1), the current proposal would only provide for a Direct Listing with a Capital Raise on the Nasdaq Global Select Market.

[14] ''Restricted Securities'' means securities that are subject to resale restrictions for any reason, including, but not limited to, securities: (1) Acquired directly or indirectly from the issuer or an affiliate of the issuer in unregistered offerings such as private placements or Regulation D offerings; (2) acquired through an employee stock benefit plan or as compensation for professional services; (3) acquired in reliance on Regulation S, which cannot be resold within the United States; (4) subject to a lockup agreement or a similar contractual restriction; or (5) considered ''restricted securities'' under Rule 144. *See* Listing Rule 5005(a)(37). ''Unrestricted Securities'' means securities that are not Restricted Securities. *See* Listing Rule 5005(a)(46). ''Unrestricted Publicly Held Shares'' means the Publicly Held Shares that are Unrestricted Securities. *See* Listing Rule 5005(a)(45). *See also* Listing Rule 5005(a)(23) and (35) for definitions of ''Market Value'' and ''Publicly Held Shares.''

[15] Listing Rule IM–5315–1 describes the requirement for a Valuation, including the experience and independence of the entity providing the Valuation.

[16] The Exchange defines ''Private Placement Market'' in Listing Rule 5005(a)(34) as a trading system for unregistered securities operated by a national securities exchange or a registered broker-dealer.

[17] *See* proposed Listing Rule IM–5315–2. *See also* Listing Rule 5315(f)(2)(A) and (B) (requiring a Market Value of Unrestricted Publicly Held Shares for initial listing on the Nasdaq Global Select Market, not in connection with an IPO, of at least $110 million; or at least $100 million, if the company has stockholders' equity of at least $110 million).

[18] *See* proposed Listing Rule IM–5315–2. The Exchange states that, for example, if the company is selling five million shares in the opening auction and there are 45 million shares issued and outstanding immediately prior to the listing that are eligible for inclusion as Unrestricted Publicly Held Shares based on disclosure in the company's registration statement, then the Exchange would calculate the Market Value of Unrestricted Publicly Held Shares based on a combined total of 50 million shares. If the lowest price of the price range disclosed in the company's registration statement is $10 per share, the Exchange will attribute to the company a Market Value of Unrestricted Publicly Held Shares of $500 million, based on a $10 price per share. *See* Notice, *supra* note 9, 86 FR 12246 n.15. The Exchange also states that, as described below, the opening auction would not execute at a price that is below the bottom of the disclosed range, so this is the minimum price at which the company could list in connection with a Direct Listing with a Capital Raise. *See id.* at 12246 n.14.

[19] *See* proposed Listing Rule IM–5315–2.

[20] *See* Notice, *supra* note 9, 86 FR 12246. The Exchange states that these types of inside investors may purchase shares sold by the company in the opening auction, and purchase shares sold by other shareholders or sell their own shares in the opening auction and in trading after the opening auction, to the extent not inconsistent with general anti-manipulation provisions, Regulation M, and other applicable securities laws. *See id.*

[21] *See* Notice, *supra* note 9, 86 FR 12246. The Exchange states that it expects that a company expecting to sell a significant portion of its shares to officers, directors, and existing significant shareholders would not undertake a public listing through a Direct Listing with a Capital Raise, but rather would raise capital in a private placement or a similar transaction instead. *See id.* at 12248.

[22] *See* Notice, *supra* note 9, 86 FR 12246. *See also* Listing Rule 5315(f)(2)(C) (requiring a Market Value of Unrestricted Publicly Held Shares for initial listing on the Nasdaq Global Select Market, in connection with an IPO, of at least $45 million). The Exchange also states that, unlike a company listing in connection with a Selling Shareholder Direct Listing that could qualify for the price-based initial listing requirements based on a Valuation, a company listing in connection with a Direct Listing with a Capital Raise, like an IPO, must qualify for such requirements based on the minimum price at which it could sell shares in the offering. *See id.* at 12248.

[23] *See* Notice, *supra* note 9, 86 FR 12246.

[24] *See* Notice, *supra* note 9, 86 FR 12248.

opening auction, otherwise known as the Nasdaq Halt Cross,[25] to take place at a price as low as this price, but no lower, and so this is the minimum price at which a company could be listed.[26]

The Exchange states that any company listing in connection with a Direct Listing with a Capital Raise would continue to be subject to, and required to meet, all other applicable initial listing requirements. According to the Exchange, this would include the requirements to have the applicable number of shareholders and at least 1,250,000 Unrestricted Publicly Held Shares outstanding at the time of initial listing, and the requirement to have a price per share of at least $4.00 at the time of initial listing.[27]

In addition, the Exchange has proposed to amend Rule 4702 to add a new order type, the ''Company Direct Listing Order'' or ''CDL Order,'' which would be used by the issuer in a Direct Listing with a Capital Raise. This would be a market order entered for the quantity of shares offered by the issuer, as disclosed in an effective registration statement for the offering, that will execute at the price determined in the Nasdaq Halt Cross.[28] A CDL Order may be entered only on behalf of the issuer and the CDL Order may not be cancelled or modified. Only one Nasdaq member, representing the issuer, may enter a CDL Order during a Direct Listing with a Capital Raise. The price of the CDL Order would be set in accordance with Rule 4120(c)(9)(B) that requires, among other things, that the CDL Order is executed at or above the lowest price and at or below the highest price of the price range established by the issuer in its effective registration statement. The CDL Order must be executed in full at the price determined in the Nasdaq Halt Cross, and all orders priced better than the price determined in the Nasdaq Halt Cross also would need to be satisfied.[29]

The Exchange has proposed that securities listing in connection with a Direct Listing with a Capital Raise must begin trading on the Exchange following the initial pricing through the Nasdaq Halt Cross, which is described in Rules 4120(c)(9) and 4753.[30] As described in detail below, the Exchange has proposed to modify Rule 4120(c)(9) with respect to certain functions that are performed by an underwriter in an IPO or a financial advisor in a Selling Shareholder Direct Listing, to require that in the case of a Direct Listing with a Capital Raise, Nasdaq, in consultation with the financial advisor to the issuer, would make the determination of whether the security is ready to trade and Nasdaq would determine whether to postpone and reschedule the offering as described in Rule 4120(c)(8)(A).[31] The Exchange states that the requirement that the company begin trading of the company's securities following the initial pricing through the Nasdaq Halt Cross will promote fair and orderly markets by protecting against volatility in the pricing and initial trading of securities covered by the proposal, because a substantial number of orders are expected to be executed in the Nasdaq Halt Cross at a single price rather than in the secondary trading at fluctuating prices.[32] In addition, the Exchange has proposed to amend Rule 4120(c)(9) to specify that any services provided by such financial advisor to the issuer of a security under Rules 4120(c)(8) and 4120(c)(9)(A) and (B), including a company listing in connection with a Direct Listing with a Capital Raise, must be provided in a manner that is consistent with all federal securities laws, including Regulation M and other anti-manipulation requirements.[33]

With respect to the Nasdaq Halt Cross, the Exchange has proposed that, in the case of a Direct Listing with a Capital Raise, a security shall not be released for trading by Nasdaq unless the actual price calculated by the cross is at or above the lowest price and at or below the highest price of the price range established by the issuer in its effective registration statement.[34] This requirement would be in addition to the existing process described in Rule 4120(c)(8)(A)(i), (ii), and (iii), as modified by the proposed changes to Rule 4120(c)(9).[35]

Current Rules 4120(c)(8) and (9) provide that the underwriter of the IPO, or the financial advisor in a Selling Shareholder Direct Listing, respectively, provide notice to Nasdaq that the security subject to the Nasdaq Halt Cross is ''ready to trade.'' [36] These rules also provide that the underwriter of the IPO, or the financial advisor in a Selling Shareholder Direct Listing, with concurrence of Nasdaq, may determine at any point during the Nasdaq Halt Cross process up through the conclusion of the pre-launch period to postpone and reschedule the pricing of the security subject to the Nasdaq Halt Cross. The Exchange has proposed to require that in the case of a Direct Listing with a Capital Raise, for purposes of releasing securities for trading on the first day of listing, Nasdaq, in consultation with the financial advisor to the issuer, would make the determination of whether the

[25] ''Nasdaq Halt Cross'' means the process for determining the price at which Eligible Interest shall be executed at the open of trading for a halted security and for executing that Eligible Interest. *See* Rule 4753(a)(4). ''Eligible Interest'' means any quotation or any order that has been entered into the system and designated with a time-in-force that would allow the order to be in force at the time of the Halt Cross. *See* Rule 4753(a)(5). Pursuant to Rule 4120, the Exchange will halt trading in a security that is the subject of an IPO (or direct listing), and terminate that halt when the Exchange releases the security for trading upon certain conditions being met, as discussed further below. *See* Rule 4120(a)(7) and (c)(8).

[26] *See* Notice, *supra* note 9, 86 FR 12248.

[27] *See* Notice, *supra* note 9, 86 FR 12246 (citing Listing Rules 5315(e)(1) and (2) and 5315(f)(1)).

[28] *See* proposed Rule 4702(b)(16)(A) and (B).

[29] *See* proposed Rule 4702(b)(16)(A); Notice, *supra* note 9, 86 FR 12247. The Exchange states that the proposed CDL Order is similar in some respects to a limit order because it cannot execute at a price less than the lowest price in the price range disclosed by the issuer in its effective registration statement. The Exchange also states that, as a market order, the CDL Order is guaranteed to execute in the Nasdaq Halt Cross. *See* Notice, *supra* note 9, 86 FR 12247 n.20.

[30] *See* proposed Listing Rule IM–5315–2. Rule 4120(c)(9) states that the process for halting and initial pricing of a security that is subject to an IPO is also available for the initial pricing of any other security that has not been listed on a national securities exchange immediately prior to the initial pricing, if a broker-dealer serving in the role of financial advisor to the issuer is willing to perform the functions under Rule 4120(c)(8) that are performed by an underwriter with respect to an IPO, and if more than one broker-dealer is serving in the role of financial advisor, the issuer must designate one to perform these functions. The Exchange proposes to renumber this provision as Rule 4120(c)(9)(A). *See* proposed Rule 4120(c)(9)(A).

[31] *See* Amendment No. 2, *supra* note 11, at 14 n.19. As discussed further below, Nasdaq will postpone the offering only if there is insufficient buy interest to satisfy the CDL Order and all other market orders, or if the actual price calculated by the cross is outside the price range established by the issuer in its effective registration statement.

[32] *See* Notice, *supra* note 9, 86 FR 12248.

[33] *See* proposed Rule 4120(c)(9)(A). The Exchange states that this change will also apply to Selling Shareholder Direct Listings under Listing Rules IM–5315–1, IM–5405–1, and IM–5505–1. *See* Notice, *supra* note 9, 86 FR 12248.

[34] *See* proposed Rule 4120(c)(9)(B).

[35] Rule 4120(c)(8)(A) provides that a security will not be released for trading until (i) Nasdaq receives notice from the underwriter of the IPO or financial advisor in the case of a Selling Shareholder Direct Listing that the security is ready to trade; (ii) the system verifies that all market orders will be executed in the cross; and (iii) the price determined in the cross satisfies a price validation test, in which the actual price of the cross may not deviate from the expected price of the cross that was last displayed to the underwriter or financial advisor by an amount greater than the selected price band of between $0 and $0.50.

[36] Rule 4120(c)(8)(A)(i) provides that Nasdaq receives notice from the underwriter of the IPO that the security is ready to trade. The Exchanges states that the Nasdaq system will calculate the Current Reference Price at that time and display it to the underwriter. If the underwriter then approves proceeding, the Nasdaq system will conduct certain validation checks. According to the Exchange, under the proposal, Nasdaq would take over these functions of the underwriter. *See* Notice, *supra* note 9, 86 FR 12247 n.23. *See also* Rule 4853(a)(3) for a description of the ''Current Reference Price.''

security is ready to trade.[37] Once Nasdaq has determined that the security is ready to trade, Nasdaq shall release the security for trading if (i) all market orders will be executed in the Nasdaq Halt Cross; and (ii) the actual price calculated by the Nasdaq Halt Cross is at or above the lowest price and at or below the highest price of the price range established by the issuer in its effective registration statement. Nasdaq shall postpone and reschedule the offering only if either or both such conditions are not met.[38]

According to the Exchange, if there is insufficient buy interest to satisfy the CDL Order, and all other market orders, as required by the proposal, or if the actual price calculated by the Nasdaq Halt Cross is outside the price range established by the issuer in its effective registration statement, the Nasdaq Halt Cross would not be allowed to proceed and such security would not begin trading.[39] The Exchange represents that, if the Nasdaq Halt Cross cannot be conducted because these conditions are not met, the Exchange would postpone and reschedule the offering and notify market participants via a Trader Update that the Direct Listing with a Capital Raise scheduled for that date has been cancelled and any orders for that security that have been entered on the Exchange, including the CDL Order, would be cancelled back to the entering firms.[40] The Exchange further states that because the CDL Order will be a market order, if the Nasdaq Halt Cross proceeds, that order will execute in full in the Nasdaq Halt Cross, along with orders priced at or better than the price determined in the Nasdaq Halt Cross.

The Exchange states that, unlike in an IPO, a company listing through a Direct Listing with a Capital Raise would not have an underwriter to guarantee that a specified number of shares would be sold by the company at a price consistent with disclosure in the company's effective registration statement. However, the Exchange states that this would be achieved through the proposed requirements that (1) the Nasdaq Halt Cross occur only if the CDL Order, which must be equal to the total number of shares disclosed as being offered by the company in the effective registration statement, is executed in full; and (2) the Nasdaq Halt Cross occur at a price per share that is within the price range disclosed by the issuer in its effective registration statement.[41] The Exchange states that it believes that the CDL Order and related provisions would clearly define the method by which the issuer participates in the opening auction, to prevent the issuer from being in a position to improperly influence the price discovery process, and assures an auction that is consistent with the disclosures in the registration statement.[42]

Finally, the Exchange has proposed to make adjustments to how it would calculate the Current Reference Price, which is disseminated in the Nasdaq Order Imbalance Indicator,[43] and the price at which the Nasdaq Halt Cross would execute, for a Direct Listing with a Capital Raise. In each case, where there are multiple prices that would satisfy the conditions for determining the price, the Exchange would modify the fourth tie-breaker for a Direct Listing with a Capital Raise to use the lowest price of the price range disclosed by the issuer in its effective registration statement.[44]

## III. Discussion and Commission Findings

The Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.[45] In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with Section 6(b)(5) of the Exchange Act,[46] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission has consistently recognized the importance and significance of national securities exchange listing standards. Among other things, such listing standards help ensure that exchange-listed companies will have sufficient public float, investor base, and trading interest to provide the depth and liquidity necessary to promote fair and orderly markets.[47] The standards, collectively, also provide investors and market participants with some level of assurance that the listed company has the resources, policies, and procedures

[37] *See* proposed Rule 4120(c)(9)(B).

[38] *See* proposed Rule 4120(c)(9)(B).

[39] *See* Notice, *supra* note 9, 86 FR 12247. The Exchange states that Nasdaq alone would make any determination to postpone and reschedule the offering and would do so only in the narrowly defined circumstances described in proposed Rule 4120(c)(9)(B). *See* Amendment No. 2, *supra* note 11, at 15 n.19. The Exchange also states that the price bands established by Rule 4120(c)(8) cannot act to cause the Nasdaq Halt Cross to occur outside of the price range disclosed by the issuer in its effective registration statement, because the actual price calculated by the Nasdaq Halt Cross is required to be at or above the lowest price and at or below the highest price of the price range established by the issuer in its effective registration statement. *See* Notice, *supra* note 9, 86 FR 12248.

[40] *See* Notice, *supra* note 9, 86 FR 12247–48.

[41] *See* Notice, *supra* note 9, 86 FR 12249.

[42] *See* Notice, *supra* note 9, 86 FR 12249. The Exchange states that, specifically, the CDL Order entered on the company's behalf could not be executed at a price below the low end or above the high end of the price range in the company's effective registration statement, and, as a market order, the full quantity of shares in the CDL Order would have to be executed in the opening auction. The Exchange states that, in addition, the CDL Order would not be able to be modified and the financial advisor to the company would be unable to reschedule the offering once it began. *See id.*

[43] *See* Rule 4853(a)(3) for a description of the ''Order Imbalance Indicator.''

[44] *See* proposed Rule 4753(a)(3)(A)(iv)(c) and (b)(2)(D)(iii). The Exchange states that the fourth tie-breaker used to calculate the Current Reference Price for an IPO is the price that is closest to the issuer's IPO price, and that a Direct Listing with a Capital Raise is similar to an IPO in that the company sells securities in the offering. *See* Notice, *supra* note 9, 86 FR 12249. The Exchange also proposes non-substantive changes to renumber the other alternatives for the fourth tie-breaker. *See* proposed Rule 4753(a)(3)(A)(iv) and (b)(2)(D).

[45] 15 U.S.C. 78f(b). In approving this proposed rule change, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[46] 15 U.S.C. 78f(b)(5).

[47] The Commission has stated in approving national securities exchange listing requirements that the development and enforcement of adequate standards governing the listing of securities on an exchange is an activity of critical importance to the financial markets and the investing public. In addition, once a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue to ensure that it continues to meet the exchange's standards for market depth and liquidity so that fair and orderly markets can be maintained. *See, e.g.,* Securities Exchange Act Release Nos. 90768 (December 22, 2020), 85 FR 85807, 85811 n.55 (December 29, 2020) (SR–NYSE–2019–67) (''NYSE 2020 Order''); 82627 (February 2, 2018), 83 FR 5650, 5653 n.53 (February 8, 2018) (SR–NYSE–2017–30) (''NYSE 2018 Order''); 81856 (October 11, 2017), 82 FR 48296, 48298 (October 17, 2017) (SR–NYSE–2017–31); 81079 (July 5, 2017), 82 FR 32022, 32023 (July 11, 2017) (SR–NYSE–2017–11). The Commission has stated that adequate listing standards, by promoting fair and orderly markets, are consistent with Section 6(b)(5) of the Exchange Act, in that they are, among other things, designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest. *See, e.g.,* NYSE 2020 Order, 85 FR 85811 n.55; NYSE 2018 Order, 83 FR 5653 n.53; Securities Exchange Act Release Nos. 87648 (December 3, 2019), 84 FR 67308, 67314 n.42 (December 9, 2019) (SR–NASDAQ–2019–059); 88716 (April 21, 2020), 85 FR 23393, 23395 n.22 (April 27, 2020) (SR–NASDAQ–2020–001).

to comply with the requirements of the Exchange Act and Exchange rules.[48]

The Exchange's listing standards currently provide the Exchange with discretion to list a company whose stock has not been previously registered under the Exchange Act, where such company is listing in connection with a Selling Shareholder Direct Listing.[49] The Exchange has proposed to allow companies to list in connection with a Direct Listing with a Capital Raise, which would provide a company the option, without a firm commitment underwritten offering, of selling shares to raise capital in the opening auction upon initial listing on the Exchange.[50] The Commission notes that recently it approved a proposal by the New York Stock Exchange to allow a direct listing with a primary offering.[51]

As explained further below, the following aspects of the proposal, as modified by Amendment No. 2, demonstrate that it is reasonably designed to be consistent with the protection of investors and the maintenance of fair and orderly markets, as well as the facilitation of capital formation: (i) Addition of the CDL Order type and other requirements that address how the issuer will participate in the opening auction; (ii) addition of the requirement that the opening price must occur at or above the lowest price and at or below the highest price of the price range established by the issuer in its effective registration statement; (iii) discussion of the role of financial advisors and addition of requirements providing that only Nasdaq, in consultation with the financial advisor, may determine that the security is ready to trade and limiting the circumstances pursuant to which Nasdaq could postpone or reschedule the offering; (iv) addition of language reminding financial advisors that specified activities are to be conducted in a manner that is consistent with the federal securities laws, including Regulation M and other anti-manipulation requirements; and (v) clarification of how market value will be determined for qualifying the company's securities for listing.

The Commission discusses below the Exchange's proposal to allow a Direct Listing with a Capital Raise. First, the Commission addresses the Exchange's proposed market value of unrestricted publicly-held shares requirement for a Direct Listing with a Capital Raise. Second, the Commission addresses concerns it raised in the Order Instituting Proceedings about the initial listing opening auction process for Direct Listings with a Capital Raise and the role of financial advisors in the Exchange's proposed rule change, prior to the changes made by Amendment Nos. 1 and 2. As discussed below, in the amended proposal the Exchange made several modifications to its proposal that were designed to address these concerns.[52] Finally, the Commission addresses a commenter's concerns about whether the proposal is consistent with investor protection and the public interest given the lack of traditional underwriter involvement in a Direct Listing with a Capital Raise and concerns about Securities Act Section 11 liability.[53] As discussed throughout this order, the Commission concludes that the Exchange has met its burden to demonstrate that its proposal is consistent with the Exchange Act, and therefore finds the proposed rule change to be consistent with the Exchange Act.

### *A. Aggregated Market Value of Unrestricted Publicly Held Shares Requirement*

The Exchange has proposed that it will deem a company to have met the Market Value of Unrestricted Publicly Held Shares requirement if the amount of the company's Unrestricted Publicly Held Shares before the offering along with the market value of the shares to be sold by the company in the Exchange's opening auction in the Direct Listing with a Capital Raise is at least $110 million (or $100 million, if the company has stockholders' equity of at least $110 million). The Exchange would calculate the Market Value of Unrestricted Publicly Held Shares using a price per share equal to the lowest price of the price range disclosed by the issuer in its effective registration statement.[54] According to the Exchange, a company may list in connection with a traditional underwritten IPO with a minimum $45 million Market Value of Unrestricted Publicly Held Shares. The Exchange states that the ''heightened requirement'' for a Direct Listing with a Capital Raise, ''along with the ability of all investors to purchase shares in the opening process on the Exchange, should result in companies using a Direct Listing with a Capital Raise having adequate public float and a liquid trading market after completion of the opening auction.'' [55]

The Exchange has shown that the proposed aggregate Market Value of Unrestricted Publicly Held Shares requirement provides the Exchange with a reasonable level of assurance that the

[48] ''Meaningful listing standards are also important given investor expectations regarding the nature of securities that have achieved a national securities exchange listing, and the role of a national securities exchange in overseeing its market and assuring compliance with its listing standards.'' Securities Exchange Act Release No. 65708 (November 8, 2011), 76 FR 70799, 70802 (November 15, 2011) (SR–NASDAQ–2011–073). *See also* NYSE 2020 Order, *supra* note 47, 85 FR 85811 n.56; Securities Exchange Act Release Nos. 65709 (November 8, 2011), 76 FR 70795 (November 15, 2011) (SR–NYSE–2011–38); 88389 (March 16, 2020), 85 FR 16163 (March 20, 2020) (SR–NASDAQ–2019–089). The Exchange, in addition to requiring companies seeking to list to meet the quantitative initial listing standards and once listed the quantitative continued listing standards, also requires listed companies to meet other qualitative requirements. *See, e.g.,* Listing Rules 5600 Series, Corporate Governance Requirements.

[49] *See* Nasdaq Listing Rules IM–5315–1, IM–5405–1, and IM–5505–1. *See also* Securities Exchange Act Release Nos. 85156 (February 15, 2019), 84 FR 5787 (February 22, 2019) (SR–NASDAQ–2019–001) (notice of filing and immediate effectiveness of proposal to adopt listing standards for direct listings on Nasdaq Global Select Market); 87648 (December 3, 2019), 84 FR 67308 (December 9, 2019) (SR–NASDAQ–2019–059) (order granting approval of proposal to adopt requirements for the Nasdaq Capital and Global Markets applicable to direct listings).

[50] *See* proposed Listing Rule IM–5315–2. In contrast, Listing Rule IM–5315–1 states that it permits companies ''to list on the Nasdaq Global Select Market, provided the Company meets all applicable initial listing requirements and lists at the time of effectiveness of a registration statement filed solely for the purpose of allowing existing shareholders to sell their shares. This Interpretive Material describes when a Company whose stock is not previously registered under the Exchange Act may list on the Nasdaq Global Select Market, where such Company is listing without a related underwritten offering upon effectiveness of a registration statement registering only the resale of shares sold by the company in earlier private placements.'' Listing Rule IM–5315–1.

[51] *See* NYSE 2020 Order, *supra* note 47.

[52] *See supra* notes 8 and 11. In the amended filing, the Exchange states that, following approval of this proposed rule change, the Exchange intends to file a separate proposal with the Commission that will seek to modify the process for a Direct Listing with a Capital Raise so that it would operate in a manner similar to the initial proposal, and the Exchange will seek to address the remaining issues raised in the Order Instituting Proceedings. *See* Notice, *supra* note 9, 86 FR 12245 n.9. This approval order pertains only to Nasdaq's current proposal before the Commission, and any new rules or changes to the rules being approved would require the Exchange to file a new proposed rule change pursuant to Section 19(b) of the Exchange Act.

[53] In addition to the comments discussed below, one commenter stated general support for Nasdaq's proposed method of opening the transaction. *See* Letter from Rahul Chaudhary (October 13, 2020).

[54] *See supra* notes 17–18 and accompanying text.

[55] Notice, *supra* note 9, 86 FR 12248. As described above, in determining that a company has met the Market Value of Unrestricted Publicly Held Shares requirement, the Exchange will consider the market value of all shares sold by the company in the opening auction, rather than excluding shares that may be purchased by officers, directors, or owners of more than 10% of the company's common stock, notwithstanding that generally the Exchange's listing standards exclude shares held by such insiders from its calculations of publicly-held shares. The Exchange states that it expects that a company expecting to sell a significant portion of its shares to these insiders would not undertake a public listing through a Direct Listing with a Capital Raise, but would raise capital in a private placement or similar transaction instead. *See id.*

company's market value supports listing on the Exchange and the maintenance of fair and orderly markets.[56] The Commission reaches this conclusion because the proposed market value standard for listing a Direct Listing with a Capital Raise is more than two times greater than the market value standard that currently exists under Exchange rules for an Exchange listing of an IPO. The proposed requirement is also comparable to the Market Value of Unrestricted Publicly Held Shares requirement used by the Exchange for initial listing in other contexts.[57] Specifically, the Exchange's proposed Market Value of Unrestricted Publicly Held Shares requirement of at least $110 million (or $100 million, if the company has stockholders' equity of at least $110 million) is the same Market Value of Unrestricted Publicly Held Shares requirement applied to companies that list their primary equity securities on the Exchange, other than in the case of an IPO or spin-off,[58] in addition to being higher than the $45 million Market Value of Unrestricted Publicly Held Shares requirement applied to IPOs and spin-offs.[59]

Further, as described below, using the lowest price in the price range established by the issuer in its registration statement to determine the minimum market value is a reasonable and conservative approach because the Direct Listing with a Capital Raise will not proceed at a lower price.

*B. Opening Auction Process for Direct Listing With a Capital Raise and Role of Financial Advisors*

As discussed above, the Exchange has proposed to add the CDL Order as a new order type to be used in a Direct Listing with a Capital Raise. An issuer would be required to submit a CDL Order in the opening auction for the full quantity of offered shares, as reflected in the effective registration statement, and the CDL Order must be executed in full. Although the CDL Order would be entered as a market order, it would only execute at a price at or above the lowest price and at or below the highest price of the price range established by the issuer in its effective registration statement. The CDL Order cannot be modified or cancelled by the issuer once entered.[60]

In the Order Instituting Proceedings, the Commission raised concerns about provisions in the original proposal regarding the price at which the Nasdaq Halt Cross could proceed on the first day of trading, and whether that price would be consistent with the disclosures in the issuer's Securities Act registration statement.[61] Specifically, the Commission expressed concern about the lack of a proposed maximum price, above which the cross could not proceed, and that, without an upside limit, it was not clear how the issuer could ensure that the issuer's Securities Act registration statement would cover the full amount of securities to be sold in the offering.[62] The Commission also expressed concern about a provision in the original proposal that would have allowed the opening cross to occur at a price up to 20% below the price range disclosed by the issuer in its effective registration statement, and that the Exchange had not explained how investors would know the minimum price at which the company could sell shares in the offering. Further, the Commission raised a concern that it was unclear from the proposed rules that the cross would not occur at a price that is below the price 20% below the disclosed price range due to the application of an existing provision that permits an underwriter or financial advisor to select price bands of up to $0.50 outside of the expected cross price and still have the cross proceed if the actual price is within the price band.

In the amended proposal, the Exchange modified the permissible price range for the opening cross and provided that Nasdaq would release a security for trading only if the actual price calculated by the cross is at or above the lowest price and at or below the highest price of the price range established by the issuer in its effective registration statement.[63] The

[56] A significant number of exchange-listed IPOs in the recent years had proceeds that fell below the $110 million threshold. Using information from Thomson Reuters SDC Platinum New Issues database, the Commission staff concluded that, among 146 exchange-listed IPOs conducted during the 2019 calendar year, the median offer size was $106.7 million. Among 196 exchange-listed IPOs conducted during the 2020 calendar year, the median offer size was $175.4 million. Further, staff concluded that approximately 51.4 percent of the companies that went public via the IPO in 2019 and 33.7 percent of the companies that went public via the IPO in 2020 (63.6 percent in 2019 and 34.6 percent in 2020 among NASDAQ IPOs only) had an offer size that fell below $110 million. Similarly, academic research finds that the median proceeds raised in exchange-listed IPOs in the United States were approximately $121 million during the 2019 calendar year and $188 million during the 2020 calendar year. *See* Jay R. Ritter, Initial Public Offerings: Updated Statistics tbl.4f (March 10, 2021), *available at https://site.warrington.ufl.edu/ritter/files/IPO-Statistics.pdf.*

[57] *See supra* notes 17 and 22 and accompanying text.

[58] The existing market value requirement of at least $110 million (or $100 million, if the company has a stockholders' equity of at least $110 million) in Listing Rule 5315(f)(2)(A) and (B) is a longstanding requirement that has supported the listing of companies on the Exchange since 2009. *See* Securities Exchange Act Release No. 53799 (May 12, 2006), 71 FR 29195 (May 19, 2006) (SR–NASDAQ–2006–007) (creating the Nasdaq Global Select Market and implementing initial listing requirements for that market). In 2019, when approving a proposal by Nasdaq to require that the calculation of market value of publicly-held shares be limited to unrestricted securities, the Commission stated that it believed that the revisions ''should help to ensure that the Exchange lists only securities with a sufficient market, with adequate depth and liquidity, and with sufficient investor interest to support an exchange listing.'' Securities Exchange Act Release No. 86314 (July 5, 2019), 84 FR 33102, 33111 (July 11, 2019) (SR–NASDAQ–2019–009). The Exchange also applies this same market value requirement to Selling Shareholder Direct Listings if the company's security has had sustained recent trading in a Private Placement Market. *See* Listing Rule IM–5315–1(a); Securities Exchange Act Release No. 85156 (February 15, 2019), 84 FR 5787 (February 22, 2019) (SR–NASDAQ–2019–001).

[59] The existing $45 million market value requirement in Listing Rule 5315(f)(2)(C) is a longstanding requirement that has supported the listing of companies on the Exchange that are suitable for listing and has existed since 2010. *See* Securities Exchange Act Release No. 61904 (April 14, 2010), 75 FR 20651 (April 20, 2010) (SR–NASDAQ–2010–047) (lowering the market value of publicly-held shares requirement for the listing of IPOs, affiliates, or spin-offs from $70 million to $45 million).

[60] *See supra* notes 28–29 and accompanying text. In addition, as discussed above, the Exchange proposes that it would modify the fourth tie-breaker used for the Current Reference Price disseminated in its Order Imbalance Indicator and for the price at which the Nasdaq Halt Cross will execute to equal the lowest price of the price range reflected in the effective registration statement. *See supra* notes 43–44 and accompanying text. The Commission believes that this is a reasonable price to use because the auction cannot occur at a lower price.

[61] If that price were not consistent with the disclosures in the issuer's Securities Act registration statement, in addition to any issues under the Securities Act, there would be concerns about whether the proposal was consistent with Section (6)(b)(5) under the Exchange Act, including whether the proposal was designed to prevent fraudulent and manipulative acts and practices, and to protect investors and the public interest.

[62] One commenter stated that it shared this concern. *See* Letter from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors (January 13, 2021) (''CII Letter II''). In the Order Instituting Proceedings, the Commission stated, among other things, that although issuers may file additional Securities Act registration statements to register additional securities needed to complete an offering, Section 5 of the Securities Act requires all of the related registration statements to be effective prior to the time of sale. To the extent Nasdaq's original proposal may have resulted in issuers needing to register additional securities beyond those included in an initial Securities Act registration statement, it was not apparent how an issuer could ensure that any additional required registration statement would be effective prior to the time of opening.

[63] With respect to the potential use of price bands allowed by Rule 4120(c)(8), the Exchange states that Nasdaq would set the price bands and that it intends to set these price bands at zero. The Exchange further states that the price bands cannot act to allow the cross to occur outside of the price range disclosed by the issuer in its effective registration statement because, under the proposal as amended, the actual price calculated by the cross is required to be at or above the lowest price and at or below the highest price of the price range

Commission believes that the changes to the proposed pricing provisions that the Exchange made in the amended proposal ensure that the actual price of the cross and the number of shares offered will be consistent with the issuer's disclosures in its effective registration statement. The Commission further believes that these changes adequately address the Commission's concerns arising from the price at which the cross would proceed.

The CDL Order and related opening auction procedures proposed by the Exchange set forth the method by which the issuer participates in the opening auction, help to prevent the issuer from being in a position to improperly influence the price discovery process,[64] and will help result in the Exchange conducting an auction that is otherwise consistent with the disclosures in the registration statement. Specifically, the issuer would be required to submit a CDL Order in the opening auction for the full quantity of offered shares, and the security would only be released for trading in the opening auction at a price that is within the disclosed price range, as reflected in the effective registration statement. Further, the CDL Order cannot be modified or cancelled by the issuer once entered. The Commission notes that it recently approved the use of a similar order for the opening process for a direct listing with primary offering on another national securities exchange, stating that an opening process using such order type provided reasonable assurance that the opening auction and subsequent trading promote fair and orderly markets, and that the proposed rules are designed to prevent fraud and manipulation and protect investors and the public interest, consistent with Section 6(b)(5) under the Exchange Act.[65]

In the Order Instituting Proceedings, the Commission also expressed concern that the proposed rules appeared to permit the issuer's financial advisor broad discretion to postpone the offering, which would effectively cancel the CDL Order. In its original proposal, the Exchange contemplated that the financial advisor in a Direct Listing with a Capital Raise would determine when the security is ready to trade, similar to the role played by an underwriter in an IPO or a financial advisor in a Selling Shareholder Direct Listing, and could also postpone the offering at anytime prior to the opening.[66] In the amended proposal, the Exchange proposed to modify its rules for the opening cross to provide that, for a Direct Listing with a Capital Raise, Nasdaq, in consultation with the financial advisor to the issuer, would make the determination of whether the security is ready to trade, and Nasdaq alone would make the determination of whether to postpone and reschedule the offering, rather than allowing the financial advisor to make these determinations. Nasdaq would postpone and reschedule the offering only if there is insufficient buy interest to satisfy the CDL Order and all other market orders, or if the actual price calculated by the cross is outside the price range established by the issuer in its effective registration statement.

The Commission believes that providing Nasdaq exclusive discretion to determine whether to postpone or reschedule the offering, and limiting that discretion to cases where the CDL Order could not otherwise be executed, adequately addresses the concerns expressed in the Order Instituting Proceedings that the CDL Order, which by its terms may not be cancelled or modified, could indirectly be cancelled by virtue of the financial advisor's broad discretion to postpone or reschedule the offering.[67] This will help ensure that the offering will proceed consistent with the disclosures in the issuer's Securities Act registration statement and, for the reasons noted above, consistent with Section 6(b)(5) of the Exchange Act.

In addition, the proposed rules contain a reminder to the financial advisor that any activities performed under Rules 4120(c)(8) and 4120(c)(9)(A) and (B) must be conducted in a manner that is consistent with the federal securities laws, including Regulation M and other anti-manipulation requirements.[68] This provision will help to ensure compliance by participants in the direct listing process with these important provisions of the federal securities laws and that the proposed changes are consistent with preventing manipulative acts and practices, and protecting investors and the public interest in accordance with Section 6(b)(5) of the Exchange Act.

### *C. Lack of Traditional Underwriter Involvement in a Direct Listing With a Capital Raise and Securities Act Section 11 Standing*

One commenter recommended that the Commission disapprove the proposal because it believes that the proposed expansion of direct listings would compound problems that shareholders face in tracing their share purchases to a registration statement for purposes of claims under Section 11 of the Securities Act and may lead to a decline in effective corporate governance at U.S. public companies.[69] This commenter stated that traceability concerns often arise when there have been successive offerings, as shareholders seek to establish their standing to litigate claims for material misstatements or omissions under Section 11 of the Securities Act.[70] The commenter also stated that investor concerns about the traceability of shares in a direct listing were drawn into sharp focus in current litigation involving a

established by the issuer in its effective registration statement. *See supra* note 39 and accompanying text.

[64] *See supra* note 60 and accompanying text. *See also* proposed Rule 4702(b)(16), which sets forth the requirements the issuer must follow in entering the CDL Order, and proposed Rule 4120(c)(9)(B), which sets forth the requirements for Nasdaq to release the security for trading in the opening auction for a Direct Listing with a Capital Raise.

[65] *See* NYSE 2020 Order, *supra* note 47, 85 FR 85813.

[66] Under current Rule 4120(c)(8) and (9), a security will be released for trading by the Exchange in its opening cross when the Exchange receives notice from the underwriter in an IPO (or the financial advisor in a Selling Shareholder Direct Listing) that the security is ready to trade and the security passes certain validation checks. Specifically, in the case of an IPO, the underwriter will notify the Exchange that the security is ready to trade. Then the Nasdaq system will calculate the Current Reference Price at the time and display it to the underwriter. If the underwriter approves proceeding, the Nasdaq system will conduct validation checks to determine that all market orders will be executed in the cross and that the actual price calculated by the cross does not differ from the price displayed to the underwriter by an amount in excess of the price band selected by the underwriter. In addition, the underwriter may determine at any point during the cross process to postpone and reschedule the offering. In a Selling Shareholder Direct Listing, a financial advisor performs these functions.

[67] *See supra* notes 38–39 and accompanying text.

[68] *See* proposed Rule 4120(c)(9)(A).

[69] *See* Letter from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors, at 2, 4 (October 8, 2020) (''CII Letter I''); CII Letter II, *supra* note 62. The commenter stated that on September 25, 2020, the Commission issued an order granting the Council of Institutional Investors' petition for review of an order, issued by delegated authority, granting approval of a proposed rule change by the New York Stock Exchange LLC relating to a proposed direct listing with a primary offering (''NYSE Proposal''). *See* CII Letter I, at 1–2. This commenter stated that the Exchange's current proposal is similar to the NYSE Proposal and cites its petition for review of the NYSE Proposal as further support for its recommendation that the Commission disapprove Nasdaq's proposal. *See id.* at 1–2 (citing Petition of Council of Institutional Investors for Review of an Order, Issued by Delegated Authority, Granting Approval of a Proposed Rule (September 8, 2020), *available at https://www.sec.gov/rules/sro/nyse/2020/34-89684-petition.pdf*). *See also* NYSE 2020 Order, *supra* note 47 (setting aside previous approval by delegated authority and approving proposed rule change).

[70] *See* CII Letter I, *supra* note 69, at 2–3. The commenter cited to a statement by Commissioners Lee and Crenshaw, issued contemporaneously with the Commission's approval of the NYSE Proposal, that raised a concern about the potential inability of shareholders to recover losses for inaccurate disclosures due to traceability problems. *See* CII Letter II, *supra* note 62, at 3.

direct listing by Slack Technologies, Inc. (''Slack''), which is still under judicial review.[71] The commenter further stated that, independent of the Slack case, direct listings raise important investor issues that the Commission should consider before opening U.S. capital markets up to the potential for a vastly increased number of direct listings.[72] The commenter urged the Commission to explore updating its ''proxy plumbing'' regulations before approving an expanded direct listings regime.[73] In response, the Exchange stated that the Commission has previously considered these concerns and stated that the Commission determined that investor protection concerns relating to tracing challenges are not unique to direct listings.[74]

In addition, this commenter stated that it is concerned that the Exchange's proposal would result in a significant increase in the use of direct listings, and that more direct listings may lead to a decline in the effective corporate governance of U.S. public companies to the detriment of long-term investors and the capital markets generally.[75] The commenter stated that a recent direct listing of Palantir Technologies Inc. had a multi-class structure that is viewed by many market participants as inconsistent with effective governance.[76] In response, the Exchange stated that it believes that the concern about a decline in effective corporate governance is unsubstantiated and challenges in this context are not of such magnitude as to render the proposal inconsistent with the Exchange Act. The Exchange also pointed to the Commission's prior conclusion that it did not view a firm commitment underwriting as necessary to provide adequate investor protection in the context of a registered offering.[77]

As the Commission stated previously, the Securities Act does not require the involvement of an underwriter in registered offerings.[78] Moreover, given the broad definition of ''underwriter'' [79] in the Securities Act, a financial advisor to an issuer engaged in a Direct Listing with a Capital Raise may, depending on the facts and circumstances including the nature and extent of the financial advisor's activities, be deemed a statutory ''underwriter'' with respect to the securities offering, with attendant underwriter liabilities.[80] Thus, the financial advisors to issuers in Direct Listings with a Capital Raise have incentives to engage in robust due diligence, given their reputational interests and potential liability, including as statutory underwriters under the broad definition of that term.[81] Moreover, even absent the involvement of a statutory underwriter, investors would not be precluded from pursuing any claims they may have under the Securities Act for false or misleading offering documents, nor would the absence of a statutory underwriter affect the amount of damages investors may be entitled to recover.

In addition, issuers, officers, directors, and accountants, with their attendant liability, play important roles in assuring that disclosures provided to investors are materially accurate and complete. The Commission therefore does not view a firm commitment underwriting as necessary to provide adequate investor protection in the context of a registered offering. Indeed, exchange-listed companies often engage in offerings that do not involve a firm commitment underwriting.

Moreover, as the Commission stated previously, the commenter's concerns regarding shareholders' ability to pursue claims pursuant to Section 11 of the Securities Act due to traceability issues are not exclusive to nor necessarily inherent in a direct listing with a primary offering, including the proposed Direct Listing with a Capital Raise.[82] Rather, this issue is potentially implicated anytime securities that are not the subject of a recently effective registration statement trade in the same market as those that are so subject. Where a registration statement, at the time of effectiveness, contains an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading, Section 11(a) of the Securities Act provides a cause of action to ''any person acquiring such security,'' unless it is proved that at the time of the acquisition the person ''knew of such untruth or omission.'' [83] In the context of conventional public offerings, courts have interpreted this statutory provision to permit aftermarket purchasers (*i.e.,* those who acquire their securities in secondary market transactions rather than in the initial distribution from the issuer or underwriter) to recover damages under Section 11, but only if they can trace the acquired shares back to the offering covered by the false or misleading registration statement.[84] Tracing is not set forth in Section 11 and is a judicially-developed doctrine. The application of this doctrine and, in particular, the pleading standards and factual proof that potential claimants must satisfy vary depending on the particular facts of the distribution and judicial district, and may be affected by pending litigation.[85]

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[71] *See* CII Letter I, *supra* note 69, at 3. In that case, as noted by the commenter, the defendants sought dismissal of the Section 11 claims on the grounds that the plaintiffs could not trace their purchases to Slack's registration statement. The commenter stated with respect to this case that while the district court denied the motion to dismiss the Section 11 claims, it is uncertain whether the Ninth Circuit Court of Appeals, which has agreed to consider the Section 11 standing issue on an interlocutory basis, will uphold the district court's reasoning. *See id. See also Pirani* v. *Slack Technologies, Inc.,* No. 20–16419 (9th Cir. July 23, 2020), Docket No. 1.

[72] *See* CII Letter I, *supra* note 69, at 3.

[73] *See* CII Letter I, *supra* note 69, at 4.

[74] *See* Notice, *supra* note 9, 86 FR 12249 (citing NYSE 2020 Order, *supra* note 47, 85 FR 85816).

[75] *See* CII Letter I, *supra* note 69, at 4.

[76] *See* CII Letter I, *supra* note 69, at 5. *See also* CII Letter II, *supra* note 62, at 3 (raising a concern about the lack of a firm commitment underwriter).

[77] *See* Notice, *supra* note 9, 86 FR 12250 (citing NYSE 2020 Order, *supra* note 47, 85 FR 85815).

[78] *See, e.g.,* Item 508(c) of Regulation S–K (''Outline briefly the plan of distribution of any securities to be registered that are to be offered otherwise than through underwriters.''). *See also* NYSE 2020 Order, *supra* note 47, 85 FR 85815.

[79] Section 2(a)(11) of the Securities Act defines ''underwriter'' to include ''any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates, or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking.'' For purposes of this definition, ''issuer'' includes, in addition to an issuer, any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer.

[80] Whether a person would be considered a statutory underwriter would be evaluated based on the particular facts and circumstances, in light of the definition of underwriter contained in Section 2(a)(11). *See, e.g., SEC* v. *Platforms Wireless Int'l Corp.,* 617 F.3d 1072 (9th Cir. 2010); *Harden* v. *Raffensperger, Hughes & Co.,* 65 F.3d 1392 (7th Cir. 1995); *SEC* v. *Int'l Chem. Dev. Corp.,* 469 F.2d 20 (10th Cir. 1972); *SEC* v. *Chinese Consol. Benevolent Ass'n,* 120 F.2d 738 (2d Cir.), *cert. denied,* 314 U.S. 618 (1941).

[81] Depending on the facts and circumstances, an analysis of activities engaged in by financial advisors in the context of selling shareholder direct listings could lead to a conclusion that such advisors are statutory underwriters. The Commission understands that practices surrounding direct listings continue to evolve. The Commission will continue to monitor such activities and any developments, and will evaluate whether further action in this area would be appropriate.

[82] *See* NYSE 2020 Order, *supra* note 47, 85 FR 85815.

[83] Section 11(a) of the Securities Act.

[84] *See, e.g., In re Century Aluminum Co. Sec. Litig.,* 729 F.3d 1104 (9th Cir. 2013).

[85] *See, e.g., Pirani* v. *Slack Techs., Inc.,* 2020 U.S. Dist. LEXIS 70177 (N.D. Cal., April 21, 2020) (addressing Securities Act Section 11 standing and stating that ''[i]f the text is ambiguous, the Court 'may [also] use canons of construction, legislative history, and the statute's overall purpose to illuminate Congress's intent.' '' (quoting *Pac. Coast Fed'n of Fishermen's Ass'ns* v. *Glaser,* 945 F.3d 1076 (9th Cir. 2019)).

Although it is possible that aftermarket purchases following a Direct Listing with a Capital Raise may present tracing challenges, it is not yet known whether a court would find that this investor protection concern is applicable to a Direct Listing with a Capital Raise. We expect judicial precedent on traceability in the direct listing context to continue to evolve,[86] but the Commission is not aware of any precedent to date in the direct listing context which prohibits plaintiffs from pursuing Section 11 claims. The Commission is actively monitoring this issue and will be able to respond to such concerns when and if they arise.

With respect to the commenter's concern that Nasdaq's proposal could lead to a significantly increased use of direct listings, we acknowledge that the ability to raise capital in connection with a direct listing may lead more issuers to pursue this alternative method of becoming publicly traded.

With respect to the commenter's concern that Nasdaq's proposal could lead to a decline in effective corporate governance,[87] the commenter suggests that the involvement of banks and underwriters in conventional IPOs may help investors encourage issuers to revise corporate governance arrangements, such as dual-class structures, that are not favored by such investors. The commenter cited as an example a recent secondary direct listing in which founders of the listed company, as a result of the company's multi-class structure, would retain effective voting control over the company as long as they collectively owned a specified minimum amount of the company's shares. Under existing listing rules, nothing precludes companies with multi-class structures that give their founders disproportionate voting rights from listing on an exchange in connection with a traditional firm commitment IPO; indeed, such listings are not uncommon. Moreover, the Commission does not believe that investors will be precluded from raising concerns about governance structures in the context of direct listings; to the extent a company's corporate governance structures are of sufficient concern to investors, they may be able to influence companies' governance practices, notwithstanding the lack of a firm commitment underwriting, through signaling their unwillingness to purchase a company's shares through a direct listing. In this way, investors may be able to persuade companies to adopt preferred governance provisions, whether the company becomes listed through a direct listing or a firm commitment IPO.

The Commission finds that the proposed rule change is consistent with the protection of investors. The proposed rule change will require all Direct Listings with a Capital Raise to be registered under the Securities Act, and thus subject to the existing liability and disclosure framework under the Securities Act for registered offerings. Among other disclosures, these registration statements will require both bona fide price ranges [88] and audited financial statements prepared in accordance with either U.S. GAAP or International Financial Reporting Standards as issued by the International Accounting Standards Board.[89]

The Commission further believes that Direct Listings with a Capital Raise will provide benefits to existing and potential investors relative to firm commitment underwritten offerings.[90] First, because the securities to be issued by the company in connection with a Direct Listing with a Capital Raise would be allocated based on matching buy and sell orders, in accordance with the proposed rules, some investors may be able to purchase securities in a Direct Listing with a Capital Raise who might not otherwise receive an initial allocation in a firm commitment underwritten offering. The proposed rule change therefore has the potential to broaden the scope of investors that are able to purchase securities in an initial public offering, at the initial public offering price, rather than in aftermarket trading.

Second, because the price of securities issued by the company in a Direct Listing with a Capital Raise will be determined based on market interest and the matching of buy and sell orders, Direct Listings with a Capital Raise will provide an alternative way to price securities offerings that may allow for efficiencies in IPO pricing and allocation.[91] In a firm commitment underwritten offering, the offering price is informed by underwriter engagement with potential investors to gauge interest in the offering, but ultimately decided through negotiations between the issuer and the underwriters for the offering. The underwriters then sell the securities to the initial purchasers at the public offering price. When the securities begin trading on the listing exchange, however, the price often varies from the IPO price. The opening auction in a Direct Listing with a Capital Raise provides for a different price discovery method for IPOs which may reduce the spread between the IPO price and subsequent market trades, a potential benefit to existing and potential investors. In this way, the proposed rule change may result in additional investment opportunities while providing companies more options for becoming publicly traded.[92]

The Commission finds that the Exchange's proposal will facilitate the orderly distribution and trading of shares, which promotes fair and orderly markets, and helps the Exchange ensure that its rules prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade and protect investors and the public interest.[93] The proposal also will foster competition by providing an alternative method for companies of sufficient size that decide they would rather not conduct a firm commitment underwritten offering to list on the Exchange, thereby removing potential impediments to free and open markets consistent with Section 6(b)(5) of the Exchange Act while also supporting capital formation. For the reasons discussed above, the Commission finds that, on balance, the proposed rule change to permit Direct Listings with a

[86] For example, the Ninth Circuit Court of Appeals has agreed to consider the issue of Section 11 standing at issue in *Pirani* v. *Slack Techs., Inc.,* 2020 U.S. Dist. LEXIS 70177 (N.D. Cal., April 21, 2020) on an interlocutory basis. *See Pirani* v. *Slack Technologies, Inc.,* No. 20–16419 (9th Cir., July 23, 2020), Docket No. 1.

[87] *See supra* notes 75–77 and accompanying text.

[88] *See, e.g.,* Instruction 1 to Item 501(b)(3) of Regulation S–K.

[89] *See* Rule 4–01(a) of Regulation S–X.

[90] *See also* NYSE 2020 Order, *supra* note 47, 85 FR 85816.

[91] A frequent academic observation of traditional firm commitment underwritten offerings is that the IPO price, established through negotiation between the underwriters and the issuer, is often lower than the price that the issuer could have obtained for the securities, based on a comparison of the IPO price to the closing price on the first day of trading. *See, e.g.,* Patrick M. Corrigan, Article: The Seller's Curse and the Underwriter's Pricing Pivot: A Behavioral Theory of IPO Pricing, 13 Va. L. & Bus. Rev. 335; Jay R. Ritter, Initial Public Offerings: Underpricing tbl.1 (December 29, 2020), *available at https://site.warrington.ufl.edu/ritter/files/IPOs-Underpricing.pdf.*

[92] While the Commission acknowledges the possibility that some companies may pursue a Direct Listing with a Capital Raise instead of a traditional IPO, these two listing methods may not be substitutable in a wide variety of instances. For example, some issuers may require the assistance of underwriters to develop a broad investor base sufficient to support a liquid trading market; others may believe a traditional firm commitment IPO is preferable given the benefits to brand recognition that can result from roadshows and other marketing efforts that often accompany such offerings. Thus, we do not anticipate that all companies that are eligible to go public through a Direct Listing with a Capital Raise will choose to do so; the method chosen will depend on each issuer's unique characteristics.

[93] *See* 15 U.S.C. 78f(b)(5). *See also* 15 U.S.C. 78k–1(a)(1)(C)(i).

Capital Raise is consistent with the Exchange Act.

## IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Exchange Act,[94] that the proposed rule change (SR–NASDAQ–2020–057), as modified by Amendment No. 2 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[95]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021–10968 Filed 5–24–21; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–91936; No. SR–NYSEArca–2021–41]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the NYSE Arca Options Fee Schedule

May 19, 2021.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on May 12, 2021, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the NYSE Arca Options Fee Schedule (''Fee Schedule'') to adopt a new incentive program for Floor Brokers. The Exchange proposes to implement the fee change effective May 12, 2021.[4] The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of this filing is to modify the Fee Schedule to introduce the Floor Broker Professional Customer Manual Program (the ''Program''), a new incentive program intended to encourage Floor Brokers to increase their Professional Customer billable volume on the Exchange.[5]

Specifically, the Exchange proposes that the Program would offer Floor Brokers a credit of $0.13 on each billable Professional Customer contract that exceeds a baseline average daily volume (''ADV'') for the month, as specified below.

The Exchange proposes to implement the rule change on May 12, 2021. The Exchange further proposes that the Program expire at the close of business on June 30, 2021.

Proposed Rule Change

As proposed, the Program would provide that a Floor Broker would earn a credit of $0.13 per contract (the ''Credit'') for Professional Customer volume in each month that the Floor Broker achieves certain Professional Customer ADV in billable ADV. The Exchanges proposes that the calculation of Professional Customer ADV for purposes of the Program will include Manual executions by a Floor Broker on behalf of a Professional Customer, but exclude any Professional Customer QCC volume, Firm Facilitation trades, and any volume calculated to achieve the Strategy Execution Fee Cap (regardless of whether the cap is achieved).[6] That is, any volume (or contract side) for which a Floor Broker is (potentially) not billed, including because of monthly fee caps, would not count towards qualifying for the Program because Floor Brokers are already eligible for incentives to execute such transactions.

To qualify for the proposed Program, a Floor Broker must execute 60% over the greater of:

(i) 20,000 ADV in contract sides, or

(ii) the Floor Broker's Professional Customer Manual Transaction ADV in contract sides during the second half of 2020 (*i.e.,* July–December 2020).[7]

The Exchange believes that a qualifying threshold of 60% over 20,000 contract sides in Professional Customer Manual Transaction ADV is reasonable for a Floor Broker, including one that may be new to the Exchange, to achieve based on the volume executed by Floor Brokers in 2020. Similarly, the Exchange believes that the alternative threshold of a 60% increase over a Floor Broker's Professional Customer Manual Transaction ADV in contract sides during the second half of 2020 is reasonable for those Floor Brokers that achieve more than 20,000 ADV billable contract sides, given the increased options volume executed by Floor Brokers in the past year.

The Exchange believes the proposed Credit would encourage Floor Brokers to seek out, and increase, Professional Customer order flow for execution on the Exchange. The Exchange's fees are constrained by intermarket competition, as OTP Holders and OTP Firms (collectively, ''OTP Holders'') may direct their order flow to any of the 16 options exchanges, including those that may offer similar incentives. Thus, OTP Holders have a choice of where they direct their order flow. Fees and credits for Floor Broker activity are designed to encourage Floor Brokers to execute a variety of transaction types on the Exchange, and the Program is intended to augment those fees and credits by offering an incentive to encourage the execution of Professional Customer billable volume. The Exchange notes that all market participants stand to benefit from any increase in billable volume by Floor Brokers, which promotes market depth, facilitates tighter spreads, and enhances price discovery, and may lead to a

[94] 15 U.S.C. 78s(b)(2).

[95] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange originally filed to amend the Fee Schedule on May 3, 2021 (SR–NYSEArca–2021–35) and withdrew such filing on May 12, 2021.

[5] *See* proposed Fee Schedule, FB PROFESSIONAL CUSTOMER MANUAL PROGRAM.

[6] *See id.*

[7] *See id.*

corresponding increase in order flow from other market participants.

The Exchange proposes that the Program expire at the close of business on June 30, 2021 because, among other reasons, the Exchange cannot predict with certainty whether the proposed Program will achieve its intended goal of incentivizing Floor Brokers to increase their Professional Customer billable volume on the Exchange. However, the Exchange notes that all Floor Brokers have the opportunity to qualify for the Credit available through the Program, and the Exchange believes that the proposed alternative thresholds to qualify for the Credit are attainable by Floor Brokers, as described above.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[9] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Rule Change Is Reasonable

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [10]

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[11] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in March 2021, the Exchange had less than 11% market share of executed volume of multiply-listed equity & ETF options trades.[12]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

The Exchange believes that the proposed Program, which offers two alternative methods to qualify, is reasonable because it is designed to incent Floor Brokers to increase the amount of Professional Customer billable order flow directed to the Exchange. The Exchange notes that all market participants stand to benefit from any increase in billable volume by Floor Brokers, which promotes market depth, facilitates tighter spreads and enhances price discovery, and may lead to a corresponding increase in order flow from other market participants.

The Exchange's fees and credits for Floor Broker activity are designed to encourage Floor Brokers to execute a variety of transaction types on the Exchange, and the Program is intended to augment those fees and credits with an incentive to encourage Floor Brokers to execute Professional Customer billable volume. The Exchange believes it is reasonable to only include Professional Customer transactions for which a Floor Broker is billed in the calculation of eligible volume for the Program because Floor Brokers are already incented to execute transactions for which there is no charge (*e.g.,* Firm Facilitation trades) or those on which monthly fees are capped (*e.g.,* the Strategy Execution Fee Cap).

Finally, to the extent the proposed Program attracts greater volume and liquidity, the Exchange believes the proposed change would improve the Exchange's overall competitiveness and strengthen its market quality for all market participants. In the backdrop of the competitive environment in which the Exchange operates, the proposed rule change is a reasonable attempt by the Exchange to increase the depth of its market and improve its market share relative to its competitors. The proposed rule change is designed to incent OTP Holders to direct liquidity to the Exchange, thereby promoting market depth, price discovery and improvement and enhancing order execution opportunities for market participants.

The Proposed Rule Change Is an Equitable Allocation of Credits and Fees

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits. The proposal is based on the amount and type of business transacted on the Exchange, and Floor Brokers can opt to attempt to trade sufficient volume to qualify for the Credit or not. All Floor Brokers have the opportunity to qualify for the same Credit under two alternatives means offered (*i.e.,* the greater of at least 60% over 20,000 contract sides in Professional Customer Manual billable ADV or a 60% increase over the Floor Broker's Professional Customer Manual billable ADV in contract sides during the second half of 2020).

Moreover, the proposed Credit is designed to incent Floor Brokers to encourage OTP Holders to aggregate their executions—particularly Professional Customer billable volume—at the Exchange as a primary execution venue. To the extent that the proposed change attracts more Professional Customer billable volume to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for, among other things, order execution. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange thereby improving market-wide quality and price discovery.

The Proposed Rule Change Is Not Unfairly Discriminatory

The Exchange believes that the proposed change is not unfairly discriminatory because the Program and Credit thereunder would be available to all Floor Brokers on an equal and non-discriminatory basis. The proposed Program is not unfairly discriminatory to non-Floor Brokers because it is intended to encourage the important role performed by Floor Brokers in facilitating the execution of orders via open outcry and providing opportunities to obtain price improvement, a function which the

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4) and (5).

[10] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7–10–04) (''Reg NMS Adopting Release'').

[11] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: *https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics.*

[12] Based on OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, *see id.,* the Exchange's market share in equity-based options decreased slightly from 11.10% for the month of March 2020 to 10.16% for the month of March 2021.

Exchange wishes to support for the benefit of all market participants.

The proposed Program is also based on the amount and type of business transacted on the Exchange, and Floor Brokers are not obligated to try to qualify for the Program. Rather, the proposed Program is designed to encourage these participants to utilize the Exchange as a primary trading venue (if they have not done so previously) or increase Professional Customer Manual billable volume sent to the Exchange. To the extent that the proposed change attracts more order flow to the Exchange (and, specifically, to the Floor), this increased order flow would continue to make the Exchange a more competitive venue for order execution. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange thereby improving market-wide quality and price discovery. The resulting increased volume and liquidity would provide more trading opportunities and tighter spreads to all market participants and thus would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would be consistent with charges for similar business at other markets. As a result, the Exchange believes that the proposed changes further the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [13]

*Intramarket Competition.* The proposed Credit is designed to assist Floor Brokers in (continuing to) attract additional Professional Customer order flow to the Exchange, and, specifically, to the Floor, which would enhance the quality of quoting and may increase the volumes of contracts traded on the Exchange. To the extent that the proposed change imposes an additional competitive burden on non-Floor Brokers, the Exchange believes that offering an incentive to Floor Brokers via the proposed Program does not constitute an undue burden on competition in light of Floor Brokers' role in facilitating the execution of orders via open outcry and providing market participants with opportunities for price improvement.

To the extent that this function is achieved, all of the Exchange's market participants should benefit from the improved market liquidity. Enhanced market quality and increased transaction volume that results from the anticipated increase in order flow directed to the Exchange will benefit all market participants and improve competition on the Exchange.

*Intermarket Competition.* The Exchange operates in a highly competitive market in which market participants can readily favor one of the 16 competing option exchanges if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange Based on publicly-available information, and excluding index-based options, no single exchange currently has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[14] Therefore, no exchange currently possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in March 2021, the Exchange had less than 11% market share of executed volume of multiply-listed equity & ETF options trades.[15]

The Exchange believes that the proposed Credit reflects this competitive environment because it modifies the Exchange's fees in a manner designed to incent Floor Brokers to direct trading interest to the Exchange, to provide liquidity and to attract order flow. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market quality and increased opportunities for price improvement.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment. The Exchange also believes that the proposed change could promote competition between the Exchange and other execution venues by encouraging additional orders to be sent to the Exchange (and, specifically, to the Floor) for execution.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [16] of the Act and subparagraph (f)(2) of Rule 19b–4 [17] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [18] of the Act to determine whether the proposed rule change should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[13] *See* Reg NMS Adopting Release, *supra* note 10, at 37499.

[14] *See supra* note 11.

[15] Based on OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, *supra* note 11, the Exchange's market share in equity-based options decreased slightly from 11.10% for the month of March 2020 to 10.16% for the month of March 2021.

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(2).

[18] 15 U.S.C. 78s(b)(2)(B).

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2021–41 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2021–41. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NYSEArca–2021–41, and should be submitted on or before June 15, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021–10958 Filed 5–24–21; 8:45 am]

**BILLING CODE 8011–01–P**

[19] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–91935; File No. SR–OCC–2021–004]**

## Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of Proposed Rule Change Relating to Revisions to OCC's Auction Participation Requirements

May 19, 2021.

### I. Introduction

On March 19, 2021, the Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–OCC–2021–004 (''Proposed Rule Change'') pursuant to Section 19(b) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 [2] thereunder to amend the auction participation requirements set forth in Interpretation and Policy (''I&P'') .02(c) to OCC Rule 1104 (Creation of Liquidating Settlement Account).[3] The Proposed Rule Change was published for public comment in the **Federal Register** on April 6, 2021.[4] The Commission has received no comments regarding the Proposed Rule Change. This order approves the Proposed Rule Change.

### II. Background

The Proposed Rule Change by OCC would change I&P .02(c) to OCC Rule 1104 in order to clarify and streamline the process of on-boarding Clearing Members and non-Clearing Members as potential bidders in future auctions of a suspended Clearing Member's remaining portfolio.

Under OCC's current Rules, following the suspension of any Clearing Member, OCC may take a number of steps designed to reasonably ensure that the Clearing Member's suspension is managed in an orderly fashion. Such steps may include liquidating the remaining collateral, open positions, and/or exercised/matured contracts (*i.e.,* the remaining portfolio) of the suspended Clearing Member. I&P .02(a) to OCC Rule 1104 clarifies that OCC ''may elect to use one or more private auctions to liquidate all or any part'' of a suspended Clearing Member's remaining portfolio. In this context, the term ''private auction'' means an auction open to bidders who are invited by OCC and in which such bidders submit bids on a confidential basis.[5]

I&P .02(c) to Rule 1104 establishes certain basic requirements for the prequalification of bidders who may participate in OCC's private auction process. I&P .02(c) states that OCC ''will invite all Clearing Members to apply to become pre-qualified auction bidders'' and that ''[a]ny Clearing Member may be included in the pool of pre-qualified auction bidders by completing required auction documentation in advance.'' Further, I&P .02(c) states that ''[b]y posting notices on the [OCC]'s website from time to time, [OCC] will also invite non-Clearing Members to apply to become pre-qualified auction bidders.'' I&P .02(c) establishes that for a non-Clearing Member to be pre-qualified as an auction bidder, it ''must (i) actively trade in the asset class in which it proposes to submit bids, (ii) actively trade in markets cleared by [OCC], (iii) be sponsored by, and submit its bids through, a Clearing Member that has agreed to guarantee and settle any accepted bid made by such non-Clearing Member and (iv) complete required auction documentation in advance.'' I&P .02(c) also states that OCC ''will endeavor to maintain a pool of pre-qualified auction bidders by periodically reviewing such bidders and their qualifications'' and that OCC ''will promptly notify any pre-qualified auction bidder removed from the pool of pre-qualified auction bidders.''

OCC proposes to revise I&P .02(c) to eliminate the requirement that Clearing Members must first be invited by OCC before Clearing Members may apply to become pre-qualified auction bidders. Instead, the revised language in I&P .02(c) would state that all Clearing Members are invited to participate in auctions of a suspended Clearing Member's remaining portfolio. The proposed revisions would retain the current requirement that, in order for a Clearing Member to be pre-qualified as an auction bidder, the Clearing Member would need to complete any required auction documentation in advance.

OCC also proposes to revise I&P .02(c) to reflect that non-Clearing Members, in order to become pre-qualified auction bidders, would no longer need OCC to post invitation notices to its website from time to time. The proposed revisions to I&P .02(c) would also remove the existing requirements that a non-Clearing Member must actively trade in the asset class in which it proposes to submit bids and must actively trade in markets cleared by

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Notice of Filing *infra* note 4, 86 FR 17868.

[4] Securities Exchange Act Release No. 91445 (Mar. 31, 2021), 86 FR 17868 (Apr. 6, 2021) (File No. SR–OCC–2021–004) (''Notice of Filing'').

[5] Interpretation and Policy .02(a) to OCC Rule 1104.

OCC. OCC proposes to remove trade activity requirements because of its concern that the trading activity review process contemplated by I&P .02(c) could inappropriately limit the number of pre-qualified bidders by excluding, *inter alia,* prospective bidders who did not have sufficient trading activity that was visible to OCC at the time of pre-qualification or review but were suitable bidders at the time of a particular auction.[6] The proposed revisions would retain the other existing requirements that, to become a pre-qualified auction bidder, a non-Clearing Member would need to (i) have a Clearing Member sponsor to submit bids on behalf of the non-Clearing Member, (ii) have a Clearing Member agree to guarantee and settle any accepted bid made by the non-Clearing Member, and (iii) complete any required auction documentation in advance.

Additionally, OCC proposes to remove two sentences related to the administration of OCC's pool of pre-qualified auction bidders. Currently, I&P .02(c) explains that OCC maintains a pool of pre-qualified auction bidders, periodically reviews the pool of such bidders and their qualifications, and notifies any pre-qualified auction bidder that is removed from the pool. OCC proposes to remove the two sentences because OCC asserts that the revised text would eliminate the need for a periodic review and removal process. With the proposed revisions, a Clearing Member that terminates its required auction documentation or ceases to maintain its status as a Clearing Member would no longer be considered a pre-qualified auction bidder. Likewise, a non-Clearing Member whose Clearing Member sponsorship or guarantee is revoked or whose required auction documentation is terminated would no longer be considered a pre-qualified bidder.[7]

The Proposed Rule Change would not make any changes to I&P .02(d) to Rule 1104, which describes the steps that OCC takes to select bidders to participate in a private auction, taking into consideration certain criteria. These criteria include the bidder's (and/or, in the case of a non-Clearing Member bidder, its sponsor Clearing Member's) financial strength, demonstrated activity in the products being auctioned and qualification to clear transactions in the asset class in which it proposes to submit bids.[8] OCC notes that it would continue to perform this pre-auction review as described in I&P .02(d) because it would allow OCC to select bidders for a particular auction based on an objective review that gives due consideration to the specific portfolio that would be auctioned. OCC also believes that reviewing the criteria set forth in I&P .02(d) with respect to a particular auction is the most appropriate way for OCC to identify, monitor, and manage the material risks arising from a non-Clearing Member auction participant in accordance with Rule 17Ad–22(e)(19).[9]

## III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Exchange 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 Exchange Act and the rules and regulations thereunder applicable to such organization.[10] After carefully considering the Proposed Rule Change, the Commission finds that the proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to OCC. More specifically, the Commission finds that the proposal is consistent with Section 17A(b)(3)(F) of the Exchange Act,[11] and Rule 17Ad–22(e)(13) [12] thereunder, as described in detail below.

### *A. Consistency With Section 17A(b)(3)(F) of the Exchange Act*

Section 17A(b)(3)(F) of the Exchange Act requires that the rules of a clearing agency be designed to, among other things, assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[13] Based on its review of the record, and for the reasons described below, the Commission believes that the proposed changes to revise OCC's auction participation requirements as described above is consistent with assuring the safeguarding of securities and funds currently in OCC's custody and control, because the proposed modifications would enhance OCC's ability to hold robust, efficient auctions that would improve the likelihood of the clearing agency having sufficient resources to cover potential credit losses under adverse market conditions.

OCC proposes to revise I&P .02(c) so that all Clearing Members are eligible to become pre-qualified bidders, without requiring invitations from OCC beforehand. This change would help to ensure that Clearing Members understand that receiving an invitation from OCC beforehand is not an administrative obstacle to auction participation. This should help facilitate the on-boarding process for Clearing Members, which in turn could lead to increased Clearing Member participation in the auctions. Second, the proposal to remove administrative obstacles to non-Clearing Member auction participation—specifically, by removing the OCC invitation notice requirement on OCC's website and trading activity requirements to pre-qualify as a bidder generally, since trading activity would be considered later as part of a selection process for participation in a specific auction—could also encourage more non-Clearing Members to become bidders, and increase the number of participants in private auctions overall. Appropriate safeguards would remain in place for non-Clearing Member participation, as OCC would still require a non-Clearing Member to (i) have a Clearing Member sponsor submit bids on behalf of the non-Clearing Member, (ii) have a Clearing Member agree to guarantee and settle any accepted bid made by the non-Clearing Member, and (iii) complete any required auction documentation in advance to become a pre-qualified bidder. By retaining these non-Clearing Member participation requirements, OCC would have the necessary information to continue performing pre-auction reviews of all bidders, whether Clearing Member or non-Clearing Member, on a case-by-case basis using the criteria established in I&P .02(d).

Increasing the total number of auction participants would promote competition and likely generate more competitive bids, which would in turn increase the likelihood that OCC would be able to sell the defaulting Clearing Member's portfolio at a more favorable price. This would minimize OCC's need to draw upon Clearing Members' collateral in OCC's custody or control in the event of a Clearing Member default. Therefore,

[6] *See* Notice of Filing *supra* note 4, 86 FR 17869.

[7] OCC notes that it would continue its current practice of maintaining a list of pre-qualified bidders through OCC's default management testing and review of default management testing results. *Id.*

[8] Interpretation and Policy .02(d) to OCC Rule 1104.

[9] *See* Notice of Filing *supra* note 4, 86 FR 17870. Rule 17Ad–22(e)(19) requires OCC to establish, implement, maintain, and enforce written policies and procedures reasonably designed to identify, monitor, and manage the material risks to OCC arising from arrangements in which firms that are indirect participants in the covered clearing agency rely on the services provided by direct participants to access the covered clearing agency's payment, clearing, or settlement facilities. *See* 17 CFR 240.17Ad–22(e)(19).

[10] 15 U.S.C. 78s(b)(2)(C).

[11] 15 U.S.C. 78q–1(b)(3)(F).

[12] 17 CFR 240.17Ad–22(e)(13).

[13] 15 U.S.C. 78q–1(b)(3)(F).

the Commission believes that the proposal is consistent with assuring the safeguarding of securities and funds which are in OCC's custody or control.

The Commission believes, therefore, that the proposal to modify the auction participation requirements for Clearing Members and non-Clearing Members is consistent with the requirements of Section 17A(b)(3)(F) of the Exchange Act.[14]

*B. Consistency With Rule 17Ad–22(e)(13) Under the Exchange Act*

Rule 17Ad–22(e)(13) under the Exchange Act requires OCC to establish, implement, maintain, and enforce written policies and procedures reasonably designed to ensure the covered clearing agency has the authority and operational capacity to take timely action to contain losses and liquidity demands.[15]

Based on its review of the record, and for the reasons described below, the Commission believes that the proposed changes described above are consistent with Rule 17Ad–22(e)(13) under the Exchange Act. The proposed changes would facilitate on-boarding of potential bidders by removing certain administrative steps in the process of becoming a pre-qualified auction bidder. For example, the proposal would remove an administrative step so that Clearing Members would not need OCC's initial invitation for consideration as a pre-qualified bidder. As long as a Clearing Member completes the required documentation in advance, the Clearing Member could be considered for the pre-qualified bidder pool. Meanwhile, OCC proposes to remove the initial step for OCC to post a website invitation notice to non-Clearing Members from time to time, and to remove existing limitations on non-Clearing Members seeking to become pre-qualified bidders (*e.g.,* that a non-Clearing Member must currently fulfill certain trading activity requirements to pre-qualify as a bidder generally, as opposed to having its trading activity considered later during a selection process for participation in a specific auction). Additionally, OCC's proposal to eliminate periodic reviews of the pre-qualified bidder pool and the accompanying removal process would simplify the administration of pre-qualified bidders, as it would eliminate a bidder review process that appears duplicative in purpose to the I&P .02(d) pre-auction reviews that OCC has stated it would continue to perform.[16]

Removing administrative obstacles to the bidder on-boarding process would increase the likelihood that OCC would have a large enough bidder pool and the operational capacity to hold effiicient, competitive auctions in a timely manner, and as a result cover losses and meet liquidity demands promptly. The Commission believes, therefore, that the proposal to modify auction participant requirements for Clearing Members and non-Clearing Members is consistent with the requirements of Rule 17Ad–22(e)(13) under the Exchange Act.[17]

## IV. Conclusion

On the basis of the foregoing, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Exchange Act, and in particular, the requirements of Section 17A of the Exchange Act[18] and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Exchange Act,[19] that the Proposed Rule Change (SR–OCC–2021–004) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021–10961 Filed 5–24–21; 8:45 am]

**BILLING CODE 8011–01–P**

## DEPARTMENT OF STATE

**[Public Notice: 11427]**

### Determination and Certification of Countries Not Cooperating Fully With Antiterrorism Efforts

Pursuant to section 40A of the Arms Export Control Act (22 U.S.C. 2781), and Executive Order 13637, as amended, I hereby determine and certify to the Congress that the following countries are not cooperating fully with United States antiterrorism efforts: Iran, Democratic People's Republic of Korea (DPRK, or North Korea), Syria, Venezuela, and Cuba.

This determination and certification shall be transmitted to the Congress and published in the **Federal Register**.

Dated: May 14, 2021.

**Antony J. Blinken,**

*Secretary of State.*

[FR Doc. 2021–10948 Filed 5–24–21; 8:45 am]

**BILLING CODE 4710–AD–P**

## DEPARTMENT OF STATE

**[Public Notice: 11429]**

### Designation of Yusuf al-Madani as a Specially Designated Global Terrorist

Acting under the authority of and in accordance with sections 1(a)(ii)(A) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, Executive Order 13284 of January 23, 2003, and Executive Order 13886 of September 9, 2019, I hereby determine that the person known as Yusuf al-Madani, also known as Yusif al-Madani, also known as Abu Husayn, also known as Youssef Ahssan Ismail al-Madani, also known as Youssef al-Madani, is a foreign person who poses a significant risk of committing an act of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously, I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: May 19, 2021.

**Anthony J. Blinken,**

*Secretary of State.*

[FR Doc. 2021–11052 Filed 5–24–21; 8:45 am]

**BILLING CODE 4710–AD–P**

[14] 15 U.S.C. 78q–1(b)(3)(F).

[15] 17 CFR 240.17Ad–22(e)(13).

[16] The Commission also believes that in the case of non-Clearing Member auction participants, OCC will continue to meet the requirements of Rule 17Ad–22(e)(19) regarding ''indirect participants,'' as OCC intends to continue performing the I&P .02(d) pre-auction reviews for both Clearing Member and non-Clearing Member participants. *See* 17 CFR 240.17Ad–22(e)(19).

[17] 17 CFR 240.17Ad–22(e)(13).

[18] In approving this Proposed Rule Change, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

**[Docket No. PHMSA–2020–0003]**

### Pipeline Safety: Request for Special Permit; Buckeye Partners, LP

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA); DOT.

**ACTION:** Notice.

**SUMMARY:** PHMSA is publishing this notice to solicit public comments on a request for special permit received from Buckeye Partners, LP (Buckeye). The special permit request is seeking relief from compliance with certain requirements in the Federal pipeline safety regulations. At the conclusion of the 30-day comment period, PHMSA will review the comments received from this notice as part of its evaluation to grant or deny the special permit request.

**DATES:** Submit any comments regarding this special permit request by June 24, 2021.

**ADDRESSES:** Comments should reference the docket number for this special permit request and may be submitted in the following ways:

- *E-Gov Website: http://www.Regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System: 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:* Docket Management System: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

*Instructions:* You should identify the docket number for the special permit request you are commenting on at the beginning of your comments. If you submit your comments by mail, please submit two (2) copies. To receive confirmation that PHMSA has received your comments, please include a self-addressed stamped postcard. Internet users may submit comments at *http://www.Regulations.gov.*

*Note:* There is a privacy statement published on *http://www.Regulations.gov.* Comments, including any personal information provided, are posted without changes or edits to *http://www.Regulations.gov.*

*Confidential Business Information:* Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this notice 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 notice, it is important that you clearly designate the submitted comments as CBI. Pursuant to 49 Code of Federal Regulations (CFR) 190.343, you may ask PHMSA to give confidential treatment to information you give to the Agency by taking the following steps: (1) Mark each page of the original document submission containing CBI as ''Confidential''; (2) send PHMSA, along with the original document, a second copy of the original document with the CBI deleted; and (3) explain why the information you are submitting is CBI. Unless you are notified otherwise, PHMSA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this notice. Submissions containing CBI should be sent to Kay McIver, DOT, PHMSA–PHP–80, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Any commentary PHMSA receives that is not specifically designated as CBI will be placed in the public docket for this matter.

**FOR FURTHER INFORMATION CONTACT:**

*General:* Ms. Kay McIver by telephone at 202–366–0113, or by email at *kay.mciver@dot.gov.*

*Technical:* Mr. Steve Nanney by telephone at 713–272–2855, or by email at *steve.nanney@dot.gov.*

**SUPPLEMENTARY INFORMATION:** PHMSA received a special permit request from Buckeye seeking a waiver from portions of the requirements of 49 Code of Federal Regulations (CFR) 195.116: Valves; 195.118: Fittings; 195.228: Welds and welding inspection: Standards of acceptability; 195.230: Welds: Repair or removal of defects; and 195.234: Welds: Nondestructive testing. This special permit is being requested in lieu of replacement of valves, fittings, and girth welds for a pipeline special permit segment consisting of approximately 2,600 feet of 12.750-inch diameter pipeline and approximately 100 feet of 8.625-inch diameter pipeline. This pipeline special permit segment was not designed, pressure tested, and constructed in accordance with 49 CFR part 195. The special permit was requested by Buckeye for the following reasons:

- The special permit valves were not factory pressure tested to meet all the requirements of 49 CFR 195.116.
- The fittings were not manufactured to the standards referenced in 49 CFR 195.118.
- The welding procedures, welding, nondestructive testing, and weld repairs for the pipeline girth welds for the pipe, valves and fittings were not originally performed during construction in accordance with 49 CFR 195.228, 195.230, and 195.234.

Buckeye has proposed special permit conditions to remediate any pipeline safety issues with the original installation of the special permit segment. The location of this proposed special permit segment is in Buckeye's Tampa North Terminal in Hillsborough County, Florida. The Buckeye pipeline special permit segment consists of the following:

- The special permit segment includes approximately 2,600 feet of 12.750-inch diameter, steel pipe strength of 52,000 pounds per square inch gauge (psig) with a wall thickness of 0.375 inches, and approximately 100 feet of 8.625-inch diameter, steel pipe strength of 52,000 psig with a wall thickness of 0.322 inches.
- The special permit segment is above ground and has been coated with a coating to provide atmospheric corrosion protection.
- The special permit segment will have a maximum operating pressure of 220 psig.
- The special permit segment was constructed between 2018 and 2020.
- The special permit segment is situated within the Tampa North Terminal tank dike, with a 500-foot section of 12.750-inch diameter piping located outside of dike containment.

The special permit request, proposed special permit with conditions, and Draft Environmental Assessment (DEA) for the above listed Buckeye pipeline segments are available for review and public comments in Docket No. PHMSA–2020–0003. PHMSA invites interested persons to review and submit comments on the special permit request and DEA in the docket. Please include any comments on potential safety and environmental impacts that may result if the special permit is granted. Comments may include relevant data.

Before issuing a decision on the special permit request, PHMSA will evaluate all comments received on or before the comments closing date. Comments received after the closing

date will be evaluated, if it is possible to do so without incurring additional expense or delay. PHMSA will consider each relevant comment it receives in making its decision to grant or deny this special permit request.

Issued in Washington, DC, on May 19, 2021, under authority delegated in 49 CFR 1.97.

**Alan K. Mayberry,**

*Associate Administrator for Pipeline Safety.*

[FR Doc. 2021–10970 Filed 5–24–21; 8:45 am]

**BILLING CODE 4910–60–P**

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

**[Docket No. PHMSA–2021–0003]**

### Pipeline Safety: Information Collection Activities

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the information collection requests (ICR) summarized below are being forwarded to the Office of Management and Budget (OMB) for review and comments. A **Federal Register** notice soliciting comments on the following information collections with a 60-day comment period was published on February 16, 2021, (86 FR 9568).

**DATES:** Comments must be submitted on or before June 24, 2021.

*Privacy Act Statement:* DOT may solicit comments from the public regarding certain general notices. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

*Confidential Business Information:* Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this notice 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 notice, it is important that you clearly designate the submitted comments as CBI. Pursuant to 49 CFR 190.343, you may ask PHMSA to give confidential treatment to information you give to the Agency by taking the following steps: (1) Mark each page of the original document submission containing CBI as ''Confidential''; (2) send PHMSA, along with the original document, a second copy of the original document with the CBI deleted; and (3) explain why the information you are submitting is CBI. Unless you are notified otherwise, PHMSA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this notice. Submissions containing CBI should be sent to Angela Hill, DOT, PHMSA, 1200 New Jersey Avenue SE, PHP–30, Washington, DC 20590–0001. Any commentary PHMSA receives that is not specifically designated as CBI will be placed in the public docket for this matter.

**FOR FURTHER INFORMATION CONTACT:** Angela Hill by telephone at 202/680–2034 or by email at *Angela.Hill@dot.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. Background

On February 16, 2021, PHMSA published a notice in the **Federal Register** soliciting comments on several information collections that are due to expire in 2021 unless they are renewed by OMB.

During the 60-day comment period, PHMSA received one comment from the National Association of Pipeline Safety Representatives (NAPSR) in support of PHMSA's decision to request a renewal, without change, for each of the information collections summarized below.

#### II. Summary of Impacted Collection

Section 1320.8(d), Title 5, Code of Federal Regulations, requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies the information collection requests that PHMSA will submit to OMB for renewal.

The following information is provided for each information collection: (1) Title of the information collection; (2) OMB control number; (3) Current expiration date; (4) Type of request; (5) Abstract of the information collection activity; (6) Description of affected public; (7) Estimate of total annual reporting and recordkeeping burden; and (8) Frequency of collection.

PHMSA will request a three-year term of approval for each information collection activity. PHMSA requests comments on the following information collections:

1. *Title:* Post-Accident Drug Testing for Pipeline Operators.

*OMB Control Number:* 2137–0632.

*Current Expiration Date:* 6/30/2021.

*Type of Request:* Renewal of a currently approved information collection.

*Abstract:* Pursuant to 49 CFR 199.227, operators are required to maintain records of its alcohol misuse prevention program. The post-accident drug testing for pipeline operators information collection pertains specifically to 49 CFR 199.227(b)(4), which requires operators to maintain records of decisions not to administer post-accident employee alcohol tests for a minimum of three years. Operators must make those records available to the Secretary of Transportation upon request.

*Affected Public:* Operators of PHMSA-regulated pipelines.

*Annual Reporting and Recordkeeping Burden:*

*Total Annual Responses:* 609.

*Total Annual Burden Hours:* 1,218.

*Frequency of Collection:* On occasion.

2. *Title:* Customer-Owned Service Lines.

*OMB Control Number:* 2137–0594.

*Current Expiration Date:* 8/31/2021.

*Type of Request:* Renewal of a currently approved information collection.

*Abstract:* Pursuant to 49 CFR 192.16, operators of gas service lines who do not maintain their customers' buried piping between service lines and building walls or gas utilization equipment are required to send written notices to their customers prescribing the proper maintenance of these gas lines and of the potential hazards of not properly maintaining these gas lines. Operators also must maintain records that include a copy of the notice currently in use and evidence that notices were sent to customers within the previous three years. The purpose of the collection is to provide the Office of Pipeline Safety with adequate information about how customer-owned service lines are being maintained to prevent the potential hazards associated with not maintaining the lines. An example of sufficient notification includes a prepared notification with the customer's bill.

*Affected Public:* State and local governments.

*Annual Reporting and Recordkeeping Burden:*

*Estimated number of responses:* 550,000.

*Estimated annual burden hours:* 9,167.

*Frequency of Collection:* On occasion.

3. *Title:* Public Awareness Program.

*OMB Control Number:* 2137–0622.

*Current Expiration Date:* 9/30/2021.

*Type of Request:* Renewal of a currently approved information collection.

*Abstract:* Pursuant to the Federal Pipeline Safety Regulations in 49 CFR 192.616 and 49 CFR 195.440 each pipeline operator is required to develop and implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute's (API) Recommended Practice (RP) 1162. Upon request, operators must submit their completed programs to PHMSA or, in the case of an intrastate pipeline facility operator, the appropriate state agency. The operator's program documentation and evaluation results must also be available for periodic review by appropriate regulatory agencies. The purpose of the collection is to educate the public, appropriate government organizations, and persons engaged in excavation activities on the use of a one-call notification system, possible hazards associated with unintentional releases, physical indications that a release may have occurred, and steps that should be taken for public safety in the event of a release and procedures for reporting releases.

*Affected Public:* Operators of natural gas and hazardous liquid pipelines.

*Estimated number of responses:* 45,000.

*Estimated annual burden hours:* 517,500 hours.

*Frequency of collection:* Annual.

4. *Title:* Recordkeeping Requirements for Liquefied Natural Gas Facilities.

*OMB Control Number:* 2137–0048.

*Current Expiration Date:* 09/30/2021.

*Type of Request:* Renewal with no change of a currently approved information collection.

*Abstract:* Pursuant to the Federal Pipeline Safety Regulations, liquefied natural gas facility owners and operators are required to maintain various records, make reports, and provide information regarding their liquefied natural gas facilities to the Secretary of Transportation at the Secretary's request.

*Affected Public:* Operators and owners of liquefied natural gas facilities.

*Annual Reporting and Recordkeeping Burden:*

*Estimated number of responses:* 40,400.

*Estimated annual burden hours:* 12,120.

*Frequency of Collection:* On occasion.

5. *Title:* Qualification of Pipeline Safety Training.

*OMB Control Number:* 2137–0600.

*Current Expiration Date:* 10/31/2021.

*Type of Request:* Renewal with no change of a currently approved information collection.

*Abstract:* The Federal Pipeline Safety Regulations require that all individuals responsible for the operation and maintenance of pipeline facilities to be properly qualified to safely perform their tasks. Chapter 49 CFR 192.807 requires each operator to maintain records that demonstrate compliance with the mandated qualification criteria. Operators are required to maintain records demonstrating compliance and provide them to PHMSA upon request.

*Affected Public:* Operators of pipeline facilities.

*Annual Reporting and Recordkeeping Burden:*

*Estimated number of responses:* 29,167.

*Estimated annual burden hours:* 7,292.

*Frequency of collection:* On occasion.

6. *Title:* Periodic Underwater Inspection and Notification of Abandoned Underwater Pipelines.

*OMB Control Number:* 2137–0618.

*Current Expiration Date:* 10/31/2021.

*Type of Request:* Renewal with no change of a currently approved information collection.

*Abstract:* The Federal Pipeline Safety Regulations at 49 CFR 192.612 and 195.413 require operators of pipelines in the Gulf of Mexico and its inlets in waters less than 15 feet (4.6 meters) deep to conduct appropriate periodic underwater inspections to determine whether the pipelines are exposed or pose a hazard to navigation. If an operator discovers that its underwater pipeline is exposed or poses a hazard to navigation, among other remedial actions, the operator must contact the National Response Center by telephone within 24 hours of discovery and report the location of the exposed pipeline or hazardous pipeline.

PHMSA's regulations for reporting the abandonment of underwater pipelines can be found at 49 CFR 192.727 and 49 CFR 195.59. These provisions contain certain requirements for disconnecting and purging abandoned pipelines and require operators to notify PHMSA of each abandoned offshore pipeline facility and each abandoned onshore pipeline facility that crosses over, under, or through a commercially navigable waterway.

*Affected Public:* Operators of pipeline facilities (except master meter operators).

*Annual Reporting and Recordkeeping Burden:*

*Estimated number of responses:* 92.

*Estimated annual burden hours:* 1,372.

*Frequency of collection:* On occasion.

7. *Title:* Recordkeeping for Underground Natural Gas Storage Facilities.

*OMB Control Number:* 2137–0634.

*Current Expiration Date:* 10/31/2021.

*Type of Request:* Renewal of a currently approved information collection.

*Abstract:* The Federal Pipeline Safety Regulations at 49 CFR 192.12 requires operators of underground natural gas storage facilities to maintain documentation and provide information to the Secretary of Transportation at the Secretary's request. Examples of the required records include operations and maintenance procedures, results of required tests, records of inspections and repairs, and notifications to the public.

*Affected Public:* Operators of underground natural gas storage facilities.

*Annual Reporting and Recordkeeping Burden:*

*Estimated number of responses:* 136.

*Estimated annual burden hours:* 220.

*Frequency of Collection:* On occasion.

Comments are invited on:

(a) The need for the renewal and revision of these collections of information for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(b) The accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued in Washington, DC, on May 20, 2021, under authority delegated in 49 CFR 1.97.

**John A. Gale,**

*Director, Standards and Rulemaking Division.*

[FR Doc. 2021–11040 Filed 5–24–21; 8:45 am]

**BILLING CODE 4910–60–P**

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

**[Docket No. PHMSA–2021–0042]**

### Pipeline Safety: Request for Special Permit; National Fuel Gas Supply Corporation

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA); DOT.

**ACTION:** Notice.

**SUMMARY:** PHMSA is publishing this notice to solicit public comments on a request for special permit received from the National Fuel Gas Supply Corporation (NFG). The special permit request is seeking relief from compliance with certain requirements in the Federal pipeline safety regulations. At the conclusion of the 30-day comment period, PHMSA will review the comments received from this notice as part of its evaluation to grant or deny the special permit request.

**DATES:** Submit any comments regarding this special permit request by June 24, 2021.

**ADDRESSES:** Comments should reference the docket number for the specific special permit request and may be submitted in the following ways:

- *E-Gov Website: http://www.Regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System: 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:* Docket Management System: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

*Instructions:* You should identify the docket number for the special permit request you are commenting on at the beginning of your comments. If you submit your comments by mail, please submit two (2) copies. To receive confirmation that PHMSA has received your comments, please include a self-addressed stamped postcard. Internet users may submit comments at *http://www.Regulations.gov.*

**Note:** There is a privacy statement published on *http://www.Regulations.gov.* Comments, including any personal information provided, are posted without changes or edits to *http://www.Regulations.gov.*

*Confidential Business Information:* Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this notice 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 notice, it is important that you clearly designate the submitted comments as CBI. Pursuant to 49 Code of Federal Regulations (CFR) § 190.343, you may ask PHMSA to give confidential treatment to information you give to the Agency by taking the following steps: (1) Mark each page of the original document submission containing CBI as ''Confidential''; (2) send PHMSA, along with the original document, a second copy of the original document with the CBI deleted; and (3) explain why the information you are submitting is CBI. Unless you are notified otherwise, PHMSA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this notice. Submissions containing CBI should be sent to Kay McIver, DOT, PHMSA–PHP–80, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Any commentary PHMSA receives that is not specifically designated as CBI will be placed in the public docket for this matter.

**FOR FURTHER INFORMATION CONTACT:**

*General:* Ms. Kay McIver by telephone at 202–366–0113, or by email at *kay.mciver@dot.gov.*

*Technical:* Mr. Steve Nanney by telephone at 713–272–2855, or by email at *steve.nanney@dot.gov.*

**SUPPLEMENTARY INFORMATION:** PHMSA received a special permit request from NFG, to deviate from the Federal pipeline safety regulations at 49 CFR 192.53, 192.55, 192.105, 192.107, 192.109, 192.111, 192.113, 192.144, 192.149, 192.150, 192.327, 192.463, and 192.619, for the use of FlexSteel pipe and fittings in a regulated interstate gas transmission pipeline located in a Class 1 location. NFG proposes to insert FlexSteel pipe, 5.60-inch inside diameter and 7.05-inch outside diameter, into an existing 12.75-inch outside diameter steel pipeline, known as NFG's FM120 Pipeline. The FlexSteel pipe will have a maximum allowable operating pressure of 720 pounds per square inch gauge (psig).

The existing 12.75-inch outside diameter steel FM120 Pipeline is located in McKean, Elk, and Cameron Counties, Pennsylvania. The FlexSteel pipe is comprised of high-density polyethylene PE4710 inner and outer layers with a steel middle layer. The FlexSteel pipe will have a rating of 1,500 psig, empty weight of 12.9 pounds per foot, maximum pipe operating temperature of 150 degrees Fahrenheit, and maximum installation tension of 30,000 pounds. The existing 12.75-inch diameter FM120 Pipeline is not externally coated.

The special permit request, proposed special permit with conditions, and Draft Environmental Assessment (DEA) for the NFG FM120 Pipeline are available for review and public comment in the Docket No. PHMSA–2021–0042. PHMSA invites interested persons to review and submit comments on the special permit request, proposed special permit with conditions, and DEA in the docket. Please include any comments on potential safety and environmental impacts that may result if the special permit is granted. Comments may include relevant data.

Before issuing a decision on the special permit requests, PHMSA will evaluate all comments received on or before the comment closing date. Comments received after the closing date will be evaluated, if it is possible to do so without incurring additional expense or delay. PHMSA will consider each relevant comment it receives in making its decision to grant or deny this request.

Issued in Washington, DC, on May 19, 2021, under authority delegated in 49 CFR 1.97.

**Alan K. Mayberry,**

*Associate Administrator for Pipeline Safety.*

[FR Doc. 2021–10999 Filed 5–24–21; 8:45 am]

**BILLING CODE 4910–60–P**

## DEPARTMENT OF TRANSPORTATION

### Bureau of Transportation Statistics

**[Docket ID Number DOT–OST–2014–0031]**

### Agency Information Collection; Activity Under OMB Review; Part 249, Preservation of Records

**AGENCY:** Office of the Assistant Secretary for Research and Technology (OST–R), Bureau of Transportation Statistics (BTS), DOT.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, this

notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collections. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 11, 2021 (86 FR page 13964). No comments were received.

**DATES:** Written comments should be submitted by June 24, 2021.

**FOR FURTHER INFORMATION CONTACT:** Jeff Gorham, Office of Airline Information, RTS–42, Room E34–414, OST–R, BTS, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, Telephone Number (202) 366–4406, Fax Number (202) 366–3383 or email *jeff.gorham@dot.gov.*

*Comments:* Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

**SUPPLEMENTARY INFORMATION:**

*OMB Approval No.:* 2138–0006.

*Title:* Preservation of Air carrier Records—14 CFR part 249.

*Form No.:* None.

*Type Of Review:* Extension of a currently approved collection.

*Respondents:* Certificated air carriers and charter operators.

*Number of Respondents:* 90 certificated air carriers and 300 charter operators.

*Estimated Time per Response:* 3 hours per certificated air carrier; 1 hour per charter operator.

*Total Annual Burden:* 570 hours.

*Needs and Uses:* Part 249 requires the retention of records such as: General and subsidiary ledgers, journals and journal vouchers, voucher distribution registers, accounts receivable and payable journals and legers, subsidy records documenting underlying financial and statistical reports to DOT, funds reports, consumer records, sales reports, auditors' and flight coupons, air waybills, etc. Depending on the nature of the document, the carrier may be required to retain the document for a period of 30 days to 3 years. Public charter operators and overseas military personnel charter operators must retain documents which evidence or reflect deposits made by each charter participant and commissions received by, paid to, or deducted by travel agents, and all statements, invoices, bills and receipts from suppliers or furnishers of goods and services in connection with the tour or charter. These records are retained for 6 months after completion of the charter program.

Not only is it imperative that carriers and charter operators retain source documentation, but it is critical that we ensure that DOT has access to these records. Given DOT's established information needs for such reports, the underlying support documentation must be retained for a reasonable period of time. Absent the retention requirements, the support for such reports may or may not exist for audit/validation purposes and the relevance and usefulness of the carrier submissions would be impaired, since the data could not be verified to the source on a test basis.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 note), requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, publication of both Respondent's identity and its data, submission of the information to agencies outside BTS for review, analysis and possible use in regulatory and other administrative matters.

*Comments are invited on:* Whether the proposed record retention requirements are necessary for the proper performance of the functions of the Department. Comments should address whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; 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 respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on May 20, 2021.

**William Chadwick Jr.,**

*Director, Office of Airline Information, Bureau of Transportation Statistics.*

[FR Doc. 2021–11034 Filed 5–24–21; 8:45 am]

**BILLING CODE 4910–9X–P**

## DEPARTMENT OF TRANSPORTATION

### Bureau of Transportation Statistics

**[Docket ID Number DOT–OST–2014–0031]**

### Agency Information Collection; Activity Under OMB Review; Reporting Required for International Civil Aviation Organization (ICAO)

**AGENCY:** Office of the Assistant Secretary for Research and Technology (OST–R), Bureau of Transportation Statistics (BTS), Department of Transportation.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collections. The ICR describes the nature of the information collection and its expected burden. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 11, 2021 (86 FR 13966). No comments were received.

**DATES:** Written comments should be submitted by June 24, 2021.

**FOR FURTHER INFORMATION CONTACT:** Jeff Gorham, Office of Airline Information, RTS–42, Room E34, OST–R, BTS, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, Telephone Number (202) 366–4406, Fax Number (202) 366–3383 or Email *jeff.gorham@dot.gov.*

*Comments:* Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

**SUPPLEMENTARY INFORMATION:**

*OMB Approval No.:* 2138–0039.

*Title:* Reporting Required for International Civil Aviation Organization (ICAO).

*Form No.:* BTS Form EF.

*Type Of Review:* Extension of a currently approved collection.

*Respondents:* Large certificated air carriers.

*Number of Respondents:* 35.

*Number of Responses:* 35.

*Total Burden per Response:* 1.5 hours.

*Total Annual Burden:* 53 hours.

*Needs and Uses:* As a party to the Convention on International Civil

Aviation (Treaty), the United States is obligated to provide ICAO with financial and statistical data on operations of U.S. air carriers. Over 99% of the data filed with ICAO is extracted from the air carriers' Form 41 submissions to BTS. BTS Form EF is the means by which BTS supplies the remaining 1% of the air carrier data to ICAO.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501), requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, publication of both Respondent's identity and its data, and submission of the information to agencies outside BTS for review, analysis and possible use in regulatory and other administrative matters.

*Comments are invited on:* Whether the proposed collection of information is necessary for the proper performance of the functions of the Department concerning consumer protection. Comments should address whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; 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 respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on May 20, 2021.

**William Chadwick, Jr.,**

*Director, Office of Airline Information, Bureau of Transportation Statistics.*

[FR Doc. 2021–11035 Filed 5–24–21; 8:45 am]

**BILLING CODE 4910–9X–P**

## DEPARTMENT OF TRANSPORTATION

**[Docket No. DOT–OST–2021–0056]**

## Request for Information on Transportation Equity Data

**AGENCY:** Office of the Secretary (OST), Department of Transportation (DOT).

**ACTION:** Request for information.

**SUMMARY:** On January 20, 2021, President Biden signed the Executive Order, ''Advancing Racial Equity and Support for Underserved Communities Through the Federal Government'' (Equity E.O.). Through the implementation of this Administration priority, the U.S. Department of Transportation (DOT or Department) will assess whether, and to what extent, its programs and policies perpetuate systemic barriers to opportunities and benefits for people of color and other underserved groups. These assessments will better equip the Department to develop policies and programs that deliver resources and benefits equitably to all. The Department solicits input from the public regarding available or potential data and assessment tools that could assist in the ongoing and continuous evaluation of Federal policies and programs concerning equitable services and safety in the transportation sector.

**DATES:** Comments are requested by June 24, 2021.

**ADDRESSES:** Comments should refer to the docket number above and submitted by one of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal Holidays.

*Instructions:* For detailed instructions on submitting comments, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

*Privacy Act:* Except as provided below, all comments received into the docket will be made public in their entirety. The comments will be searchable by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You should not include information in your comment that you do not want to be made public. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or at *https://www.transportation.gov/privacy.*

*Docket:* For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. Follow the online instructions for accessing the dockets.

**FOR FURTHER INFORMATION CONTACT:** For policy issues, please email *TransportationDataEquity@dot.gov* or contact Maya Sarna at 202–366–5811. Office hours are from 8 a.m. to 5 p.m. EDT, Monday through Friday, except for Federal holidays.

**SUPPLEMENTARY INFORMATION:** Through this Request for Information (RFI), the Department requests information on the data and assessment tools to measure transportation equity. Specifically, the Department seeks responses to the questions outlined below.

On January 20, 2021, President Biden signed Executive Order 13985 on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (Equity E.O.).[1] The Equity E.O. directs the Federal Government to pursue a comprehensive approach to advance equity, civil rights, racial justice, and equal opportunity to strengthen communities that have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality.

The Department is entrusted with maintaining and improving our Nation's transportation system. Equitable and safe access to transportation is a civil right. Transportation touches every part of American lives and makes the American Dream possible, getting people and goods to where they need to be, directly and indirectly creating good-paying jobs and helping improve quality of life, especially after the COVID–19 pandemic. However, misguided policies and missed opportunities can reinforce racial, ethnic, geographic, and disability disparities, dividing or isolating neighborhoods and undermining the government's essential role of empowering Americans to thrive.

The Department is committed to advancing equity, civil rights, racial justice, environmental justice, and equal opportunity and has the responsibility to ensure that all Americans have equitable access to safe, affordable, and sensible transportation options, no matter who they are or where they live. This means that all communities should have meaningful access to the Department's programs and activities.

The Equity E.O. defines the following terms noted under (a) and (b) below and hence are used as definitions for purposes of this RFI:

(a) The term ''equity'' means the consistent and systematic fair, just, and

[1] *https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/.*

impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.

(b) The term ''underserved communities'' refers to populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied the full opportunity to participate in aspects of economic, social, and civic life, as exemplified by the list in the preceding definition of ''equity.''

(c) Through this request, the Department seeks input, information, and recommendations in the field of transportation equity from stakeholders in public agencies, academic researchers involved in the study of equity in transportation decision-making, advocacy, and not-for-profit institutions and individuals working in the transportation sector or the field of equity, and State, local, Tribal, and territorial areas.

**Questions to the Public**

The Department seeks to gather information and identify valid and reliable aggregate data to help measure equity in order to improve Federal transportation programs. The following list of questions and topic areas are intended to guide the public in this effort:

*Methods and Assessment Tools To Measure Equity*

(1) What are feasible methods for the Department to assess equity in transportation, including whether, and to what extent, Departmental programs and policies perpetuate systemic barriers to opportunities and benefits for underserved communities?

(2) How should the Department assess equity in Federal funding distributions? What data sources would be required for such assessment? Do such data sources exist currently? What new data would need to be collected, whether formula, discretionary, or other funding?

(3) What assessment tools currently exist to analyze equity in transportation investments, policies, and programs? Can these tools be scaled to a national level? If so, please describe the nature and level of detail of the data and how the data are collected or retrieved. If possible, please discuss any privacy concerns or barriers for collection of these data.

(4) What assessment tools and best practices currently exist to analyze equity in state and metropolitan transportation planning processes?

(5) If the Department were to create transportation equity indices, that include important transportation and equity variables, what key indicators should they include? What is the suggested methodology and level of aggregation for this index? What is the appropriate geographic level? How could such measures be constructed to weigh the competing interests of different disadvantaged groups?

(6) Housing affordability in the United States is measured in terms of percentage of income (*i.e.,* the current threshold is 30 percent of income). Is there a similar threshold for ''transportation affordability'' currently in use by planning practitioners and planning agencies? What are some methods and strategies that the Department can use for determining and assessing the level of a transportation overburden cost standard?

(7) How should the Department identify and measure the benefits and drawbacks (*e.g.,* safety, wellbeing, and mobility benefits) of Federal transportation investments to underserved communities? How should the Department identify and measure the social cost of inequity in transportation projects or policies in underserved communities?

(8) Transportation plays a critical role in how people access what they need (*e.g.,* jobs, school, healthcare) and facilitates the movement of essential goods. What methodologies exist for measuring access to goods, services, education, recreation, and employment; well-being; and transportation reliability for people of color and other underserved groups? What are the limitations of the current measures or methods? What data is needed to overcome those limitations? How should the Department capture transportation's ability to contribute to opportunities that help improve equity for underserved communities or individuals?

(9) What methodologies can be employed to determine how well the Department's programs comprised of engineering, enforcement, and education are affecting the safety and security of underserved people? What equitable planning methodologies can be employed by organizations with limited human and computing resources, especially in rural areas?

(10) What data or data collection methods can be employed or augmented to better capture impacts of transportation on the safety and security of underserved populations, especially when people from underserved populations are walking or biking?

(11) What assessment tools and practices are currently being used at any level of government that do not address equity or worsen disparities felt by underserved groups? What data are being used in a way that widens disparities in safety and access to transportation by traditionally underserved groups?

(12) What are the experiences of other countries in measuring transportation equity? Please share the types and granularity of data collected, analysis methods, and policy applications.

*Equity Data Considerations*

(13) How should the Department amend the transportation data it collects to meet equity analysis needs at the necessary spatial granularity (the geographic level of detail, *i.e.,* national, state, local)? Since most of the Department's funding is not directed at individuals, what is the appropriate level of spatial granularity to accurately evaluate the impact of transportation investments on underserved communities?

(14) What actions can the Department take with its data to make it more useful for equity research and analysis?

(15) What data exist that track people in historically underserved groups over time (*i.e.,* panel surveys) that may be useful to evaluating transportation equity? What metadata is useful in determining that a data collection effort is equitable (*e.g.,* demographic profile of the researchers, method of questionnaire administration, language of questionnaire)? What methods or data would be useful in addressing non-response bias in equity data collection?

(16) Transportation plays a large role in localized pollution and negative environmental outcomes for those living near certain transportation routes and facilities. These negative environmental outcomes can have disproportionately high and adverse effects on underserved populations. How can the Department better analyze these effects, what are the data gaps, and what data sources can help address this problem? For example, what data are needed to measure the impact of vehicle electrification on the shift from mobile-source emissions to point-source (*e.g.,* power plant) emissions on disadvantaged populations?

(17) What data are required to model equity outcomes at the individual

person level? How can the Department gather this information while protecting personal privacy?

(18) What are approaches that DOT can take to ensure that individuals from underserved populations are represented in our data collection efforts?

(19) How should the Department develop a data collection framework, gather new and existing data, set data standards, and analyze and aggregate it into useful information for policymaking?

(20) How should the Department engage industry on gathering more detailed data on advanced safety features in vehicles for evaluating if technologies and their benefits are disproportionately distributed among different income and demographic groups and whether such technologies have equitable predictive performance to improve safety for all citizens?

(21) How should the Department engage industry to increase the data available to understand electric vehicles and vehicle hybridization with the intent of understanding how these technologies can benefit different income and demographic groups; and to improve the distribution and fairness in the use of these technologies for all citizens?

*Transportation Workforce Data*

The Department is seeking input on data and assessment tools and best practices that may be used to understand and to strengthen the pipeline for more minority, women, people of color, people with disabilities and other underserved populations to access opportunities, develop a robust network, and build a supportive environment that addresses their structural barriers to opportunities and wealth.

(22) What high-quality career pathways programs or educational pipelines have state and local governments utilized or implemented to diversify their transportation workforce? What have the results been? How were the results of the programs measured?

(23) What practices has the transportation industry taken to increase diversity and retain individuals from underserved populations within its workforce? How should the Department measure the overall impacts, especially the diversity impacts, on the workforce through Federal funding, policies, and programs?

(24) What tools and best practices might the Department utilize to augment minority and disadvantaged business programs to create pathways for jobs in the transportation industry, and jobs of the future?

(25) What type of data should we collect to measure the success of workforce programs? How do we assess if we are placing underserved populations in these job programs and into jobs; how do we track retention rates and opportunities for advancement; and how do we assess whether these are good-paying jobs?

**Public Participation**

*How do I prepare and submit comments?*

To ensure that your comments are filed correctly, please include the docket number provided in (DOT–OST–2021–0056) in your comments.

Please submit one copy (two copies if submitting by mail or hand delivery) of your comments, including any attachments, to the docket following the instructions given above under **ADDRESSES**. Please note, if you are submitting comments electronically as a PDF (Adobe) file, we ask that the documents submitted be scanned using an Optical Character Recognition (OCR) process, thus allowing the Agency to search and copy certain portions of your submissions.

*How do I submit confidential business information?*

Any submissions containing Confidential Information must be delivered to DOT in the following manner:

- Submitted in a sealed envelope marked ''confidential treatment requested'';
- Document(s) or information that the submitter would like withheld from the public docket should be marked ''PROPIN'';
- Accompanied by an index listing the document(s) or information that the submitter would like the Departments to withhold. The index should include information such as numbers used to identify the relevant document(s) or information, document title and description, and relevant page numbers and/or section numbers within a document; and
- Submitted with a statement explaining the submitter's grounds for objecting to disclosing the information to the public.

DOT will treat such marked submissions as confidential under the FOIA and not include them in the public docket. DOT also requests that submitters of Confidential Information include a non-confidential version (either redacted or summarized) of those confidential submissions in the public docket. If the submitter cannot provide a non-confidential version of its submission, DOT requests that the submitter post a notice in the docket stating that it has provided DOT with Confidential Information. Should a submitter fail to docket either a non-confidential version of its submission or to post a notice that Confidential Information has been provided, we will note the receipt of the submission on the docket, with the submitter's organization or name (to the degree permitted by law) and the date of submission.

*Will the Agency consider late comments?*

DOT will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent practicable, the Agency will also consider comments received after that date.

*How can I read the comments submitted by other people?*

You may read the comments received at the address given above under WRITTEN COMMENTS. The hours of the docket are indicated above in the same location. You may also see the comments on the internet, identified by the docket number at the heading of this notice, at *http://www.regulations.gov.*

Please note, this RFI is a planning document and will serve as such. The RFI should not be construed as policy, a solicitation for applications, or an obligation on the part of the government.

Issued in Washington, DC, on May 13, 2021.

**Peter Paul Montgomery Buttigieg,**

*Secretary, Department of Transportation.*

[FR Doc. 2021–10436 Filed 5–24–21; 8:45 am]

**BILLING CODE 4910–9X–P**

## DEPARTMENT OF TRANSPORTATION

### Bureau of Transportation Statistics

**[Docket ID Number DOT–OST–2014–0031]**

### Agency Information Collection; Activity Under OMB Review; Submission of Audit Reports—Part 248

**AGENCY:** Office of the Assistant Secretary for Research and Technology (OST–R), Bureau of Transportation Statistics (BTS), Department of Transportation.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice

announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collections. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 15, 2021 (86 FR 14360). No comments were received.

**DATES:** Written comments should be submitted by June 24, 2021.

**FOR FURTHER INFORMATION CONTACT:** Jeff Gorham, Office of Airline Information, RTS–42, Room E34, OST–R, BTS, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, Telephone Number (202) 366–4406, Fax Number (202) 366–3383 or Email *jeff.gorham@dot.gov*.

*Comments:* Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

**SUPPLEMENTARY INFORMATION:**

*OMB Approval No.:* 2138–0004.

*Title:* Submission of Audit Reports—Part 248.

*Form No.:* None.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Large certificated air carriers.

*Number of Respondents:* 60.

*Number of Responses:* 60.

*Total Burden per Response:* 15 minutes.

*Total Annual Burden:* 15 hours.

*Needs and Uses:* BTS collects independent audited financial reports from U.S. certificated air carriers. Carriers not having an annual audit must file a statement that no such audit has been performed. In lieu of the audit report, BTS will accept the annual report submitted to the stockholders. The audited reports are needed by the Department of Transportation as: (1) A means to monitor an air carrier's continuing fitness to operate; (2) reference material used by analysts in examining foreign route cases; (3) reference material used by analysts in examining proposed mergers, acquisitions and consolidations; (4) a means whereby BTS sends a copy of the report to the International Civil Aviation Organization (ICAO) in fulfillment of a United States treaty obligation; and, (5) corroboration of a carrier's Form 41 filings.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501), requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, publication of both Respondent's identity and its data, and submission of the information to agencies outside BTS for review, analysis and possible use in regulatory and other administrative matters.

*Comments are invited on:* Whether the proposed collection of information is necessary for the proper performance of the functions of the Department concerning consumer protection. Comments should address whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; 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 respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on May 20, 2021.

**William Chadwick, Jr.,**

*Director, Office of Airline Information, Bureau of Transportation Statistics.*

[FR Doc. 2021–11036 Filed 5–24–21; 8:45 am]

**BILLING CODE 4910–9X–P**

## DEPARTMENT OF TRANSPORTATION

### Bureau of Transportation Statistics

**[Docket ID Number DOT–OST–2014–0031]**

### Agency Information Collection: Activity Under OMB Review: Report of Financial and Operating Statistics for Large Certificated Air Carriers

**AGENCY:** Office of the Assistant Secretary for Research and Technology (OST–R), Bureau of Transportation Statistics (BTS), Department of Transportation.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for an extension of a currently approved collection. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 11, 2021 (86 FR 13965). One comment was received from the Department of Commerce, Bureau of Economic Analysis strongly supporting the continued collection of this data.

**DATES:** Written comments should be submitted by June 24, 2021.

**FOR FURTHER INFORMATION CONTACT:** Jeff Gorham, Office of Airline Information, RTS–42, Room E34–414, OST–R, BTS, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, Telephone Number (202) 366–4406, Fax Number (202) 366–3383 or Email *jeff.gorham@dot.gov.*

*Comments:* Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

**SUPPLEMENTARY INFORMATION:**

*OMB Approval No.:* 2138–0013.

*Title:* Report of Financial and Operating Statistics for Large Certificated Air Carriers.

*Form No.:* BTS Form 41.

*Type Of Review:* Extension of a currently approved collection.

*Respondents:* Large certificated air carriers.

*Number of Respondents:* 60.

*Estimated Time per Response:* 4 hours per schedule, an average carrier may submit 90 schedules in one year.

*Total Annual Burden:* 14,358 hours.

*Needs and Uses:* Program uses for Form 41 data are as follows:

#### Mail Rates

The Department of Transportation sets and updates mainline Alaska mail rates based on carrier aircraft operating expense, traffic and operational data. Form 41 cost data, especially fuel costs, terminal expenses, and line haul expenses are used in arriving at rate levels. DOT revises the established rates based on the percentage of unit cost changes in the carriers' operations. These updating procedures have resulted in the carriers receiving rates of compensation that more closely parallel their costs of providing mail service and contribute to the carriers' ability to continue providing service.

#### Submission of U.S. Carrier Data to ICAO

As a party to the Convention on International Civil Aviation, the United

States is obligated to provide the International Civil Aviation Organization with financial and statistical data on operations of U.S. air carriers. Over 99 percent of the data filed with ICAO is extracted from the carriers' Form 41 reports.

**Carrier Fitness**

Fitness determinations are made for both new entrants and established U.S. carriers proposing a substantial change in operations. A portion of these applications consists of an operating plan for the first year (14 CFR part 204) and an associated projection of revenues and expenses. The carrier's operating costs, included in these projections, are compared against the cost data in Form 41 for a carrier or carriers with the same aircraft type and similar operating characteristics. Such a review validates the reasonableness of the carrier's operating plan.

Form 41 reports, particularly balance sheet reports and cash flow statements, play a major role in the identification of vulnerable carriers. Data comparisons are made between current and past periods in order to assess the current financial position of the carrier. Financial trend lines are extended into the future to analyze the continued viability of the carrier. DOT reviews three areas of a carrier's operation: (1) The qualifications of its management team, (2) its disposition to comply with laws and regulations, and (3) its financial posture. DOT must determine whether or not a carrier has sufficient financial resources to conduct its operations without imposing undue risk on the traveling public. Moreover, once a carrier is operating, DOT is required to monitor its continuing fitness.

Senior DOT officials must be kept fully informed as to all current and developing economic issues affecting the airline industry. In preparing financial conditions reports or status reports on a particular airline, financial and traffic data are analyzed. Briefing papers may use the same information.

**Administrative Issues**

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 note) requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, publication of both Respondent's identity and its data, submission of the information to agencies outside BTS for review, analysis and possible use in regulatory and other administrative matters.

Issued in Washington, DC, on March 20, 2021.

**William Chadwick, Jr.,**

*Director, Office of Airline Information, Bureau of Transportation Statistics.*

[FR Doc. 2021–11033 Filed 5–24–21; 8:45 am]

**BILLING CODE 4910–9X–P**

## DEPARTMENT OF TRANSPORTATION

### Bureau of Transportation Statistics

**[Docket: DOT–OST–2014–0031 BTS Paperwork Reduction Notice]**

### Agency Information Collection; Activity Under OMB Review; Report of Extension of Credit to Political Candidates

**AGENCY:** Office of the Assistant Secretary for Research and Technology (OST–R), Bureau of Transportation Statistics (BTS), Department of Transportation.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request, abstracted below, is being forwarded to the Office of Management and Budget for extension of currently approved reporting requirement. A **Federal Register** Notice with a 60-day comment period was published on March 11, 2021 (86 FR 13967). No comments were received.

**DATES:** Written comments should be submitted by June 24, 2021.

**FOR FURTHER INFORMATION CONTACT:** Jeff Gorham, Office of Airline Information, RTS–42, Room E34, OST–R, BTS, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, Telephone Number (202) 366–4406, Fax Number (202) 366–3383 or Email *jeff.gorham@dot.gov.*

*Comments:* Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

**SUPPLEMENTARY INFORMATION:**

*OMB Approval No.:* 2138–0016.

*Title:* Report of Extension of Credit to Political Candidates.

*Form No.:* 183.

*Type of Review:* Extension of a currently approved reporting requirement.

*Respondents:* Certificated air carriers.

*Number of Respondents:* 2 (Monthly Average).

*Number of Responses:* 24.

*Estimated Time per Response:* 1 hour.

*Total Annual Burden:* 24 hours.

*Needs and Uses:* The Department uses this form as the means to fulfill its obligation under the Federal Election Campaign Act of 1971 (the Act). The Act's legislative history indicates that one of its statutory goals is to prevent candidates for Federal political office from incurring large amounts of unsecured debt with regulated transportation companies (*e.g.,* airlines). This information collection allows the Department to monitor and disclose the amount of unsecured credit extended by airlines to candidates for Federal office. All certificated air carriers are required to submit this information.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 note), requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, publication of both Respondent's identity and its data, and submission of the information to agencies outside BTS for review, analysis and possible use in regulatory and other administrative matters.

Comments are invited on whether the proposed retention of records is necessary for the proper performance of the functions of the Department of Transportation.

Issued in Washington, DC, on May 20, 2021.

**William Chadwick, Jr.,**

*Director, Office of Airline Information, Bureau of Transportation Statistics.*

[FR Doc. 2021–11037 Filed 5–24–21; 8:45 am]

**BILLING CODE 4910–9X–P**

## DEPARTMENT OF THE TREASURY

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Generic Clearance for Improving Customer Experience (OMB Circular A–11, Section 280 Implementation)

**AGENCY:** Departmental Offices, Department of the Treasury.

**ACTION:** Notice.

**SUMMARY:** The Department of the Treasury will submit the following information collection requests 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. The public is invited to submit comments on these requests.

**DATES:** Comments should be received on or before June 24, 2021 to be assured of consideration.

**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:** Copies of the submissions may be obtained from Spencer W. Clark by emailing *PRA@treasury.gov,* calling (202) 927–5331, or viewing the entire information collection request at *www.reginfo.gov.*

**SUPPLEMENTARY INFORMATION:**

**Bureau of the Fiscal Service (BFS)**

*Title:* Generic Clearance for Improving Customer Experience (OMB Circular A–11, Section 280 Implementation).

*OMB Control Number:* 1530–NEW.

*Type of Review:* Request for a new OMB Control Number.

*Description:* On September 11, 1993, President Clinton issued Executive Order 12862, ''Setting Customer Service Standards'' which clearly define his vision that the Federal agencies will put the people first. Executive Order 12862 directs Federal agencies to provide service to the public that matches or exceeds the best service available in the private sector. Section 1(b) of Executive Order 12862 requires government agencies to ''survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services'' and Section 1(e) requires agencies ''survey front-line employees on barriers to, and ideas for, matching the best in business.''

On March 30, 2016, President Obama established the Core Federal Services Council, which again emphasized the need to deliver world-class customer service to the American people. The Council, composed of the major high-volume, high-impact Federal programs that provide transactional services directly to the public, were encouraged ''to improve the customer experience by using public and private sector management best practices, such as conducting self-assessments and journey mapping, collecting transactional feedback data, and sharing such data with frontline and other staff.''

In March 2018, the Administration of President Trump launched the President's Management Agenda (PMA) and established new Cross-Agency Priority (CAP) Goals. Excellent service was established as a core component of the mission, service, stewardship model that frames the entire PMA, embedding a customer-focused approach in all of the PMA's initiatives. This model was also included in the 2018 update of the Federal Performance Framework in Circular A–11, ensuring 'excellent service' as a focus in future agency strategic planning efforts. The PMA included a CAP Goal on Improving Customer Experience with Federal Services, with a primary strategy to drive improvements within 25 of the nation's highest impact programs. This effort is supported by an interagency team and guidance in Circular A–11 requiring the collection of customer feedback data and increasing the use of industry best practices to conduct customer research.

These Presidential actions and requirements establish an ongoing process of collecting customer insights and using them to improve services. This new request will enable the Bureau of the Fiscal Service (hereafter ''the Agency'') to act in accordance with OMB Circular A–11 Section 280 to ultimately transform the experience of its customers to improve both efficiency and mission delivery, and increase accountability by communicating about these efforts with the public.

*Form:* None.

*Affected Public:* Individuals or households, Private Sector, State, Local and Tribal Governments.

*Estimated Number of Respondents:* 2,001,550.

*Frequency of Response:* Once, On occasion.

*Estimated Total Number of Annual Responses:* 2,001,550.

*Estimated Time per Response:* Varies from 3–90 minutes.

*Estimated Total Annual Burden Hours:* 101,125.

**Authority:** 44 U.S.C. 3501 *et seq.*

Dated: May 19, 2021.

**Spencer W. Clark,**

*Treasury PRA Clearance Officer.*

[FR Doc. 2021–10917 Filed 5–24–21; 8:45 am]

**BILLING CODE 4810–AS–P**

## DEPARTMENT OF THE TREASURY

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Treasury International Capital

**AGENCY:** Departmental Offices, U.S. Department of the Treasury.

**ACTION:** Notice.

**SUMMARY:** The Department of the Treasury will submit the following information collection requests 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. The public is invited to submit comments on this request.

**DATES:** Comments must be received on or before June 24, 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:** Copies of the submissions may be obtained from Molly Stasko by emailing *PRA@treasury.gov,* calling (202) 622–8922, or viewing the entire information collection request at *www.reginfo.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Treasury International Capital Form SLT, ''Aggregate Holdings, Purchases and Sales, and Fair Value Changes of Long-Term Securities by U.S. and Foreign Residents.''

*OMB Control Number:* 1505–0235.

*Type of Review:* Revision of a currently approved collection.

*Description:* Form SLT is part of the Treasury International Capital (TIC) reporting system, which is required by law (22 U.S.C. 286f; 22 U.S.C. 3103; E.O. 10033; 31 CFR 128), and is designed to collect timely information on international portfolio capital movements. Form SLT is a monthly report on cross-border portfolio investment in long-term marketable securities by U.S. and foreign residents. This information is used by the U.S. Government in the formulation of international financial and monetary policies and for the preparation of the U.S. balance of payments accounts and the U.S. international investment position.

*Current Actions:* (1) Justification: One important aim of this revision of the

SLT data collection is to create, for the first time, a data collection of ''changes in fair value'' for the TIC securities data. Users of TIC data often compare the change in the holdings of long-term securities reported on the Form SLT, with the net purchases (purchases less sales) of long-term securities reported on the Form S. There is general agreement that the difference between the change in holding and the net purchases is due largely to the change in fair value of the securities, with less important factors making up the remainder of the difference. In mathematical terms, ''Change in holdings'' equals ''purchases less sales'' plus ''change in fair value'' plus ''other factors''. Different assessments between TIC data users often arise because each one has to create their own estimates of the ''change in fair value'' despite lacking detailed information on the holdings of, and transactions in, the many securities in the TIC system. Another aim of this revision of the SLT data collection is to obtain the three main data types (holdings, purchases and sales, and change in fair value) from the same source. The result should greatly improve the connections between the holdings data and the purchases and sales data and the ''change in fair value'' data. Lastly, while there is an increase in the reporting burden on custodians from the revision of the SLT, after 2022 it is expected that this increase in burden will be significantly offset by the decrease in burden when the Form S is discontinued. (2) No changes are made in the collection of holdings data; *i.e.,* no changes are made in the columns and rows of the Form SLT or in the instructions regarding the holdings of long-term securities. In both the current and revised Form SLT there are eleven such columns covering three types of foreign securities and four types of U.S. securities, where for each type of U.S. security there is a column for foreign-official-held and a separate column for other-foreign-held. (3) To accomplish the aims in (1) above, both the Form SLT and the instructions are expanded to add the collection of data on the total change in the fair (market) value over the month for all securities held at the end of the month for each type of long-term security. In the Form SLT, one column is added for each of the 11 columns of holdings mentioned in (2) above; in the instructions, sections II.F.4 and III.G are added. (4) To accomplish the aims in (1) above, both the Form SLT and the instructions are expanded to add the collection of data on U.S. purchases and U.S. sales of long-term securities by U.S.-residents with foreign-residents; in the Form SLT, two columns are added for each of the 11 columns of holdings mentioned in (2) above; in the instructions, sections II.F.3, II.F.5, III.E and III.F are added. (5) Note that while purchases and sales in the revised SLT data collection appear to be generally the same as in the Form S data collection, there are three important differences: (i) Purchases and sales in the Form SLT are reported by the custodian or issuer or end-investor that is also reporting the holdings, while in the Form S purchases and sales are reported by a trader (*e.g.,* broker-dealer, prime broker, principal trading firm); (ii) the Form SLT data are recorded from the U.S. point of view, while the Form S data are recorded from the foreign point-of-view (*e.g.,* Form SLT ''purchases'' are made by U.S. residents from foreign-residents, whereas Form S ''purchases'' are made by foreign-residents from U.S.-residents); and (iii) purchases and sales of foreign securities in Form SLT are recorded opposite the foreign country that issued the security, whereas the Form S data are recorded opposite the country that purchased or sold the security. The Form SLT data are much more informative about U.S. claims on individual foreign countries. (6) The revised Form SLT no longer has Parts A and B, where previously a custodian reported data in part A and an issuer and/or end-investor reported data in part B. In the revised Form SLT the reporting firm must check one or both of the two boxes in the top-center section of the cover page to specify whether the data is from a custodian or from an issuer and/or end- investor or from both; see II.A in the instructions. So a firm that reports data for both a custodian and an issuer/end-user can combine both types of data into one report, and no longer needs to report them separately in part A and part B. (7) To allow time for respondents to revise their reporting systems, the revised form and instructions are scheduled to become effective for reports as of February 2022. (8) Until the revised form becomes effective in 2022, the currently-approved Form SLT and instructions will continue to be in effect. (9) The name of the revised Form SLT on the cover page and elsewhere is expanded to ''Aggregate Holdings, Purchases and Sales, and Fair Value Changes of Long-Term Securities by U.S. and Foreign Residents.'' Added on the cover page under the name, is the phrase ''Effective for reports beginning as of February 2022''. (10) After the revised Form SLT becomes effective in February 2022, there will be a duplication of the Purchase and Sales data with the Form S for roughly six months. This period of overlap for comparison of the two sources of data will allow the agencies to make any necessary adjustments to the revised Form SLT and/or instructions. After the six month overlap period ends, and if the purchases and sales data from the revised Form SLT are acceptable, then the Form S will be discontinued. (11) Some other clarifications and format changes may be made to improve the instructions.

*Form:* Treasury Form SLT.

*Affected Public:* Businesses or other for-profit organizations.

*Estimated Number of Respondents:* 438.

*Frequency of Response:* Monthly.

*Estimated Total Number of Annual Responses:* 5,256.

*Estimated Time per Response:* Average 11.7 hours per respondent per filing. The estimated average burden per respondent varies, from about 21.6 hours per filing for a U.S.-resident custodian to about 9.3 hours for a U.S.-resident issuer or U.S.-resident end-investor.

*Estimated Total Annual Burden Hours:* 61,722 hours.

**Authority:** 44 U.S.C. 3501 *et seq.*

Dated: May 20, 2021.

**Molly Stasko,**

*Treasury PRA Clearance Officer.*

[FR Doc. 2021–11042 Filed 5–24–21; 8:45 am]

**BILLING CODE 4810–AK–P**

## DEPARTMENT OF VETERANS AFFAIRS

### National Research Advisory Council Notice of Meeting—Cancellation

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2, that the meeting of the National Research Advisory Council previously scheduled to be held on Wednesday, June 2, 2021, as a virtual meeting, *has been cancelled.*

For more information, please contact Dr. Marisue Cody, Designated Federal Officer at (202) 443–5681, or via email at *marisue.cody@va.gov.*

Dated: May 19, 2021.

**LaTonya L. Small,**

*Federal Advisory Committee Management Officer.*

[FR Doc. 2021–10967 Filed 5–24–21; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF VETERANS AFFAIRS

### Cooperative Studies Scientific Evaluation Committee, Notice of Meeting

The Department of Veterans Affairs gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2, that the Cooperative Studies Scientific Evaluation Committee will hold a meeting on July 1, 2021 by Zoom. The meeting will begin at 8:30 a.m. and end at 4:30 p.m. EST.

The Committee provides expert advice on VA cooperative studies, multi-site clinical research activities, and policies related to conducting and managing these efforts. The session will be open to the public for approximately 30 minutes at the start of the meeting for the discussion of administrative matters and the general status of the program. The remaining portion of the meeting will be closed to the public for the Committee's review, discussion and evaluation of research and development applications.

During the closed portion of the meeting, discussions and recommendations will deal with qualifications of personnel conducting the studies, staff and consultant critiques of research proposals and similar documents and the medical records of patients who are study subjects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. As provided by section 10(d) of Public Law 92–463, as amended, closing portions of this meeting is in accordance with 5 U.S.C. 552b(c)(6) and (c)(9)(B).

The Committee will not accept oral comments from the public for the open portion of the meeting. Members of the public who wish to attend the open teleconference should call 872–701–0185, conference ID 997 498 562#. Those who plan to attend or wish additional information should contact Grant Huang, MPH, Ph.D., Director, Cooperative Studies Program (14RD), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, at 202–443–5700 or *Grant.Huang@va.gov*. Those wishing to submit written comments may send them to Dr. Huang at the same address and email.

Date: May 19, 2021.

**LaTonya L. Small,**

*Federal Advisory Committee Management Officer.*

[FR Doc. 2021–10956 Filed 5–24–21; 8:45 am]

**BILLING CODE P**

# FEDERAL REGISTER

Vol. 86 Tuesday,
No. 99 May 25, 2021

Part II

## Department of Homeland Security

8 CFR Parts 214 and 274a

## Department of Labor

Employment and Training Administration

20 CFR Part 655

Exercise of Time-Limited Authority To Increase the Fiscal Year 2021 Numerical Limitation for the H–2B Temporary Nonagricultural Worker Program and Portability Flexibility for H–2B Workers Seeking To Change Employers; Temporary Rule

**DEPARTMENT OF HOMELAND SECURITY**

**8 CFR Parts 214 and 274a**

**[CIS No. 2689–21]**

**RIN 1615–AC72**

**DEPARTMENT OF LABOR**

**Employment and Training Administration**

**20 CFR Part 655**

**[DOL Docket No. ETA–2021–0005]**

**RIN 1205–AC07**

# Exercise of Time-Limited Authority To Increase the Fiscal Year 2021 Numerical Limitation for the H–2B Temporary Nonagricultural Worker Program and Portability Flexibility for H–2B Workers Seeking To Change Employers

**AGENCY:** U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security (DHS) and Employment and Training Administration and Wage and Hour Division, U.S. Department of Labor (DOL).

**ACTION:** Temporary rule.

**SUMMARY:** The Secretary of Homeland Security, in consultation with the Secretary of Labor, is exercising his time-limited Fiscal Year (FY) 2021 authority and increasing the numerical limitation on H–2B nonimmigrant visas to authorize the issuance of no more than 22,000 additional visas through the end of the second half of FY 2021 to those businesses likely to suffer irreparable harm, as attested by the employer on a new attestation form. In addition to making additional visas available under the FY 2021 time-limited authority, DHS is exercising its general H–2B regulatory authority to temporarily provide portability flexibility by allowing H–2B workers who are already in the United States to begin work immediately after an H–2B petition (supported by a valid temporary labor certification) is received by USCIS, and before it is approved.

**DATES:** The amendments to title 8 of the Code of Federal Regulations in this rule are effective from May 25, 2021 through May 28, 2024, although DHS will not approve any H–2B petition under the provisions related to the supplemental numerical allocation after September 30, 2021, and the provisions related to portability are only available to petitioners and H–2B nonimmigrant workers initiating employment through the end of November 22, 2021. The amendments to title 20 of the Code of Federal Regulations in this rule are effective from May 25, 2021 through September 30, 2021, except for 20 CFR 655.68 which is effective from May 25, 2021 through September 30, 2024.

The Office of Foreign Labor Certification within the U.S. Department of Labor will be accepting comments in connection with the new information collection Form ETA–9142B–CAA–4 associated with this rule until July 26, 2021.

**ADDRESSES:** You may submit written comments on the new information collection Form ETA–9142B–CAA–4, identified by Regulatory Information Number (RIN) 1205–AC07 electronically by the following method:

*Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions on the website for submitting comments.

*Instructions:* Include the agency's name and the RIN 1205–AC07 in your submission. All comments received will become a matter of public record and will be posted without change to *http://www.regulations.gov.* Please do not include any personally identifiable information or confidential business information you do not want publicly disclosed.

**FOR FURTHER INFORMATION CONTACT:** Regarding 8 CFR parts 214 and 274a: Charles L. Nimick, Chief, Business and Foreign Workers Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 5900 Capital Gateway Drive, Camp Springs, MD 20746; telephone 240–721–3000 (not a toll-free call).

Regarding 20 CFR part 655 and Form ETA–9142B–CAA–4: Brian D. Pasternak, Administrator, Office of Foreign Labor Certification, Employment and Training Administration, Department of Labor, 200 Constitution Ave NW, Room N–5311, Washington, DC 20210, telephone (202) 693–8200 (this is not a toll-free number).

Individuals with hearing or speech impairments may access the telephone numbers above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD).

**SUPPLEMENTARY INFORMATION:**

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## I. Executive Summary

*FY 2021 H–2B Supplemental Cap*

With this temporary final rule (TFR), the Secretary of Homeland Security, following consultation with the Secretary of Labor, is authorizing the immediate release of an additional 22,000 H–2B visas through the end of FY 2021, subject to certain conditions. The 22,000 visas are divided into two allocations, as follows:

- 16,000 visas limited to returning workers, regardless of country of nationality, in other words, those workers who were issued H–2B visas or held H–2B status in fiscal years 2018, 2019, or 2020; and
- 6,000 visas initially reserved for nationals of the Northern Triangle countries as attested by the petitioner (regardless of whether such nationals are returning workers). However, if all 6,000 visas reserved for nationals of the Northern Triangle countries are not allocated by July 8, 2021, USCIS will announce by July 23, 2021, on its website, that such unused Northern Triangle country visas will be made available to employers regardless of the beneficiary's country of nationality, subject to the returning worker limitation.

To qualify for the FY 2021 supplemental cap, eligible petitioners must:

- Meet all existing H–2B eligibility requirements, including obtaining an approved temporary labor certification

(TLC) from DOL before filing the Form I–129, Petition for Nonimmigrant Worker, with USCIS;

- Submit an attestation affirming, under penalty of perjury, that the employer will likely suffer irreparable harm if it cannot employ the requested H–2B workers, and that it is seeking to employ returning workers only, unless the H–2B worker is a Northern Triangle national and counted towards the 6,000 cap (during such time as when the Northern Triangle cap reservation allocation is applicable); and
- Agree to comply with all applicable labor and employment laws, including health and safety laws pertaining to COVID–19, as well as any rights to time off or paid time off to obtain COVID–19 vaccinations, and notify the workers in a language understood by the worker, as necessary or reasonable, of equal access of nonimmigrants to COVID–19 vaccines and vaccination distribution sites.

Employers filing an H–2B petition 45 or more days after the certified start date on the TLC, must attest to engaging in the following additional steps to recruit U.S. workers:

- No later than 1 business day after filing the petition, place a new job order with the relevant State Workforce Agency (SWA) for at least 15 calendar days;
- Contact the nearest American Job Center serving the geographic area where work will commence and request staff assistance in recruiting qualified U.S. workers;
- Contact the employer's former U.S. workers, including those the employer furloughed or laid off beginning on January 1, 2019, and until the date the H–2B petition is filed, disclose the terms of the job order and solicit their return to the job;
- Provide written notification of the job opportunity to the bargaining representative for the employer's employees in the occupation and area of employment, or post notice of the job opportunity at the anticipated worksite if there is no bargaining representative; and
- Hire any qualified U.S. worker who applies or is referred for the job opportunity until the later of either (1) the date on which the last H–2B worker departs for the place of employment, or (2) 30 days after the last date of the SWA job order posting.

Petitioners filing H–2B petitions under the FY 2021 supplemental cap must retain documentation of compliance with the attestation requirements for 3 years from the date the TLC was approved, and must provide the documents and records upon the request of DHS or DOL, as well as fully cooperate with any compliance reviews such as audits. Both DHS and DOL intend to conduct a significant number of post-adjudication audits to ascertain compliance with the attestation requirements of this TFR.

Falsifying information in attestation(s) can result not only in penalties relating to perjury, but can also result in, among other things, a finding of fraud or willful misrepresentation; denial or revocation of the H–2B petition requesting supplemental workers; debarment by DOL and DHS from the H–2 program; and may subject petitioner/employer to other criminal penalties.

The authority to approve H–2B petitions under the FY 2021 supplemental cap expires on September 30, 2021.

*H–2B Portability*

In addition to exercising time limited authority to make additional H–2B visas available in FY 2021, DHS is providing additional flexibilities to H–2B petitioners under its general programmatic authority by allowing nonimmigrant workers in the United States in valid H–2B status to begin work with a new employer after an H–2B petition (supported by a valid TLC) is filed and before the petition is approved generally for a period of up to 60 days. However, such employment authorization would end 15 days after USCIS denies the H–2B petition or such petition is withdrawn. This H–2B portability ends 180 days after the effective date of this rule, in other words, after the date this rule is published in the **Federal Register**.

## II. Background

*A. Legal Framework*

The Immigration and Nationality Act (INA), as amended, establishes the H–2B nonimmigrant classification for a nonagricultural temporary worker ''having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform . . . temporary [non-agricultural] service or labor if unemployed persons capable of performing such service or labor cannot be found in this country.'' INA section 101(a)(15)(H)(ii)(b), 8 U.S.C. 1101(a)(15)(H)(ii)(b). Employers must petition the Department of Homeland Security (DHS) for classification of prospective temporary workers as H–2B nonimmigrants. INA section 214(c)(1), 8 U.S.C. 1184(c)(1). Generally, DHS must approve this petition before the beneficiary can be considered eligible for an H–2B visa. In addition, the INA requires that ''[t]he question of importing any alien as [an H–2B] nonimmigrant . . . in any specific case or specific cases shall be determined by [DHS],[1] after consultation with appropriate agencies of the Government.'' INA section 214(c)(1), 8 U.S.C. 1184(c)(1). The INA generally charges the Secretary of Homeland Security with the administration and enforcement of the immigration laws, and provides that the Secretary ''shall establish such regulations . . . and perform such other acts as he deems necessary for carrying out his authority'' under the INA. *See* INA section 103(a)(1), (3), 8 U.S.C. 1103(a)(1), (3); *see also* 6 U.S.C. 202(4) (charging the Secretary with ''[e]stablishing and administering rules . . . governing the granting of visas or other forms of permission . . . to enter the United States to individuals who are not a citizen or an alien lawfully admitted for permanent residence in the United States''). With respect to nonimmigrants in particular, the INA provides that ''[t]he admission to the United States of any alien as a nonimmigrant shall be for such time and under such conditions as the [Secretary] may by regulations prescribe.'' INA section 214(a)(1), 8 U.S.C. 1184(a)(1); *see also* INA section 274A(h)(1) and (3), 8 U.S.C. 1324a(h)(1) and (3) (prohibiting employment of noncitizen[2] not authorized for employment). The Secretary may designate officers or employees to take and consider evidence concerning any matter which is material or relevant to the enforcement of the INA. INA sections 287(a)(1), (b), 8 U.S.C. 1357(a)(1), (b) and INA section 235(d)(3), 8 U.S.C. 1225(d)(3).

Finally, under section 101 of HSA, 6 U.S.C. 111(b)(1)(F), a primary mission of DHS is to ''ensure that the overall economic security of the United States is not diminished by efforts, activities, and programs aimed at securing the homeland.''

DHS regulations provide that an H–2B petition for temporary employment in the United States must be accompanied by an approved TLC from the U.S.

[1] As of March 1, 2003, in accordance with section 1517 of Title XV of the Homeland Security Act of 2002 (HSA), Public Law 107–296, 116 Stat. 2135, any reference to the Attorney General in a provision of the Immigration and Nationality Act describing functions which were transferred from the Attorney General or other Department of Justice official to the Department of Homeland Security by the HSA ''shall be deemed to refer to the Secretary'' of Homeland Security. *See* 6 U.S.C. 557 (2003) (codifying HSA, Title XV, sec. 1517); 6 U.S.C. 542 note; 8 U.S.C. 1551 note.

[2] For purposes of this discussion, the Departments use the term ''noncitizen'' colloquially to be synonymous with the term ''alien'' as it is used in the Immigration and Nationality Act.

Department of Labor (DOL), issued pursuant to regulations established at 20 CFR part 655, or from the Guam Department of Labor if the workers will be employed on Guam. 8 CFR 214.2(h)(6)(iii)(A) and (C) through (E), (h)(6)(iv)(A); *see also* INA section 103(a)(6), 8 U.S.C. 1103(a)(6). The TLC serves as DHS's consultation with DOL with respect to whether a qualified U.S. worker is available to fill the petitioning H–2B employer's job opportunity and whether a foreign worker's employment in the job opportunity will adversely affect the wages and working conditions of similarly-employed U.S. workers. *See* INA section 214(c)(1), 8 U.S.C. 1184(c)(1); 8 CFR 214.2(h)(6)(iii)(A) and (D).

In order to determine whether to issue a TLC, the Departments have established regulatory procedures under which DOL certifies whether a qualified U.S. worker is available to fill the job opportunity described in the employer's petition for a temporary nonagricultural worker, and whether a foreign worker's employment in the job opportunity will adversely affect the wages or working conditions of similarly employed U.S. workers. *See* 20 CFR part 655, subpart A. The regulations establish the process by which employers obtain a TLC and the rights and obligations of workers and employers.

Once the petition is approved, under the INA and current DHS regulations, H–2B workers do not have employment authorization outside of the validity period listed on the approved petition unless otherwise authorized, and the workers are limited to employment with the H–2B petitioner. *See* 8 U.S.C. 1184(c)(1), 8 CFR 274a.12(b)(9). An employer or U.S. agent generally may submit a new H–2B petition, with a new, approved TLC, to USCIS to request an extension of H–2B nonimmigrant status for the validity of the TLC or for a period of up to 1 year. 8 CFR 214.2(h)(15)(ii)(C). Except as provided for in this rule, and except for certain professional athletes being traded among organizations,[3] H–2B workers seeking to extend their status with a new employer may not begin employment with the new employer until the new H–2B petition is approved.

The INA also authorizes DHS to impose appropriate remedies against an employer for a substantial failure to meet the terms and conditions of employing an H–2B nonimmigrant worker, or for a willful misrepresentation of a material fact in a petition for an H–2B nonimmigrant worker. INA section 214(c)(14)(A), 8 U.S.C. 1184(c)(14)(A). The INA expressly authorizes DHS to delegate certain enforcement authority to DOL. INA section 214(c)(14)(B), 8 U.S.C. 1184(c)(14)(B); *see also* INA section 103(a)(6), 8 U.S.C. 1103(a)(6). DHS has delegated its authority under INA section 214(c)(14)(A)(i), 8 U.S.C. 1184(c)(14)(A)(i) to DOL. *See* DHS, Delegation of Authority to DOL under Section 214(c)(14)(A) of the INA (Jan. 16, 2009); *see also* 8 CFR 214.2(h)(6)(ix) (stating that DOL may investigate employers to enforce compliance with the conditions of, among other things, an H–2B petition and a DOL-approved TLC). This enforcement authority has been delegated within DOL to the Wage and Hour Division (WHD), and is governed by regulations at 29 CFR part 503.

### *B. H–2B Numerical Limitations Under the INA*

The INA sets the annual number of noncitizens who may be issued H–2B visas or otherwise provided H–2B nonimmigrant status to perform temporary nonagricultural work at 66,000, to be distributed semi-annually beginning in October and April. *See* INA sections 214(g)(1)(B) and (g)(10), 8 U.S.C. 1184(g)(1)(B) and (g)(10). With certain exceptions, described below, up to 33,000 noncitizens may be issued H–2B visas or provided H–2B nonimmigrant status in the first half of a fiscal year, and the remaining annual allocation, including any unused nonimmigrant H–2B visas from the first half of a fiscal year, will be available for employers seeking to hire H–2B workers during the second half of the fiscal year.[4] If insufficient petitions are approved to use all H–2B numbers in a given fiscal year, the unused numbers cannot be carried over for petition approvals for employment start dates beginning on or after the start of the next fiscal year.

In FYs 2005, 2006, 2007, and 2016, Congress exempted H–2B workers identified as returning workers from the annual H–2B cap of 66,000.[5] A returning worker is defined by statute as an H–2B worker who was previously counted against the annual H–2B cap during a designated period of time. For example, Congress designated that returning workers for FY 2016 needed to have been counted against the cap during FY 2013, 2014, or 2015.[6] DHS and the Department of State (DOS) worked together to confirm that all workers requested under the returning worker provision in fact were eligible for exemption from the annual cap (in other words, were issued an H–2B visa or provided H–2B status during one of the prior 3 fiscal years) and were otherwise eligible for H–2B classification.

Because of the strong demand for H–2B visas in recent years, the statutorily-limited semi-annual visa allocation, the DOL regulatory requirement that employers apply for a TLC 75 to 90 days before the start date of work,[7] and the DHS regulatory requirement that all H–2B petitions be accompanied by an approved TLC,[8] employers that wish to obtain visas for their workers under the semi-annual allotment must act early to receive a TLC and file a petition with U.S. Citizenship and Immigration Services (USCIS). As a result, DOL typically sees a significant spike in TLC applications from employers seeking to hire H–2B temporary or seasonal workers prior to the United States' warm weather months. For example, in FY 2021, based on TLC applications filed during the 3-day filing window of January 1 through 3, 2021, DOL's Office of Foreign Labor Certification (OFLC) received requests to certify 96,641 worker positions for start dates of work on April 1, 2021.[9] USCIS, in turn, received sufficient H–2B petitions to reach the second half of the fiscal year

[3] *See* 8 CFR 214.2(h)(6)(vii) and 8 CFR 274a.12(b)(9).

[4] The Federal Government's fiscal year runs from October 1 of the prior year through September 30 of the year being described. For example, fiscal year 2021 is from October 1, 2020, through September 30, 2021.

[5] INA section 214(g)(9)(A), 8 U.S.C. 1184(g)(9)(A), *see also* Consolidated Appropriations Act, 2016, Public Law 114–113, div. F, tit. V, sec 565; John Warner National Defense Authorization Act for Fiscal Year 2007, Public Law 109–364, div. A, tit. X, sec. 1074, (2006); Save Our Small and Seasonal Businesses Act of 2005, Public Law 109–13, div. B, tit. IV, sec. 402.

[6] *See* Consolidated Appropriations Act, 2016, Public Law 114–113, div. F, tit. V, sec 565.

[7] 20 CFR 655.15(b).

[8] *See* 8 CFR 214.2(h)(5)(i)(A).

[9] DOL announcement on January 7, 2021. *See https://www.foreignlaborcert.doleta.gov/* (last accessed on April 9, 2021). For historical context, with the FY 2020 statutory cap, DOL announced on January 6, 2020 that it received requests to certify 99,362 worker positions for start dates of work on April 1, 2020. On February 26, 2020, USCIS announced that it had received a sufficient number of petitions to reach the congressionally mandated H–2B cap for FY 2020. On February 18, 2020, the number of beneficiaries listed on petitions received by USCIS surpassed the total number of remaining H–2B visas available against the H–2B cap for the second half of FY 2020. In accordance with regulations, USCIS determined it was necessary to use a computer generated process, commonly known as a lottery, to ensure the fair and orderly allocation of H–2B visa numbers to meet, but not exceed, the remainder of the FY 2020 cap. 8 CFR 214.2(h)(8)(vii). On February 20, 2020, USCIS conducted a lottery to randomly select petitions from those received on February 18, 2020. As a result, USCIS assigned all petitions selected in the lottery the receipt date of February 20, 2020.

statutory cap by February 12, 2021.[10] This early date continues to reflect an ongoing trend of higher H–2B demand in the second half of the fiscal year compared to the statutorily authorized level. Congress, in recognition of this increased demand: (1) Allowed for additional H–2B workers through the FY 2016 reauthorization of the returning worker cap exemption;[11] and (2) for the last 5 fiscal years authorized supplemental caps under section 543 of Division F of the Consolidated Appropriations Act, 2017, Public Law 115–31 (FY 2017 Omnibus); section 205 of Division M of the Consolidated Appropriations Act, 2018, Public Law 115–141 (FY 2018 Omnibus); section 105 of Division H of the Consolidated Appropriations Act, 2019, Public Law 116–6 (FY 2019 Omnibus); section 105 of Division I of the Further Consolidated Appropriations Act, 2020, Public Law 116–94 (FY 2020 Omnibus);[12] and section 105 of Division O of the Consolidated Appropriations Act, 2021, Public Law 116–260 (FY 2021 Omnibus), which is discussed below.

*C. FY 2021 Omnibus*

On December 27, 2020, then-President Donald Trump signed the FY 2021 Omnibus which contains a provision, section 105 of Division O (section 105), permitting the Secretary of Homeland Security, under certain circumstances and after consultation with the Secretary of Labor, to increase the number of H–2B visas available to U.S. employers, notwithstanding the otherwise-established statutory numerical limitation set forth in the INA. Specifically, section 105 provides that ''the Secretary of Homeland Security, after consultation with the Secretary of Labor, and upon the determination that the needs of American businesses cannot be satisfied in [FY] 2021 with U.S. workers who are willing, qualified, and able to perform temporary nonagricultural labor,'' may increase the total number of noncitizens who may receive an H–2B visa in FY 2021 by not more than the highest number of H–2B nonimmigrants who participated in the H–2B returning worker program in any fiscal year in which returning workers were exempt from the H–2B numerical limitation.[13] The Secretary of Homeland Security has consulted with the Secretary of Labor, and this rule implements the authority contained in section 105.

As noted above, since FY 2017, Congress has enacted a series of public laws providing the Secretary of Homeland Security with the discretionary authority to increase the H–2B cap beyond that set forth in section 214 of the INA. The previous four statutory provisions were materially identical to section 105 of the FY 2021 Omnibus. During each fiscal year from FY 2017 through FY 2019, the Secretary of Homeland Security, after consulting with the Secretary of Labor, determined that the needs of some American businesses could not be satisfied in such year with U.S. workers who were willing, qualified, and able to perform temporary nonagricultural labor. On the basis of these determinations, on July 19, 2017, and May 31, 2018, DHS and DOL jointly published temporary final rules for FY 2017 and FY 2018, respectively, each of which allowed an increase of up to 15,000 additional H–2B visas for those businesses that attested that if they did not receive all of the workers requested on the Petition for a Nonimmigrant Worker (Form I–129), they were likely to suffer irreparable harm, in other words, suffer a permanent and severe financial loss.[14] A total of 12,294 H–2B workers were approved for H–2B classification under petitions filed pursuant to the FY 2017 supplemental cap increase.[15] In FY 2018, USCIS received petitions for more than 15,000 beneficiaries during the first 5 business days of filing for the supplemental cap, and held a lottery on June 7, 2018. The total number of H–2B workers approved toward the FY 2018 supplemental cap increase was 15,788.[16] The vast majority of the H–2B petitions received under the FY 2017 and FY 2018 supplemental caps requested premium processing[17] and were adjudicated within 15 calendar days.

On May 8, 2019, DHS and DOL jointly published a temporary final rule authorizing an increase of up to 30,000 additional H–2B visas for the remainder of FY 2019. The additional visas were limited to returning workers who had been counted against the H–2B cap or were otherwise granted H–2B status in the previous 3 fiscal years, and for those businesses that attested to a level of need such that, if they did not receive all of the workers requested on the Form I–129, they were likely to suffer irreparable harm, in other words, suffer a permanent and severe financial loss.[18] The Secretary determined that limiting returning workers to those who were issued an H–2B visa or granted H–2B status in the past 3 fiscal years was appropriate, as it mirrored the standard that Congress designated in previous returning worker provisions. On June 5, 2019, approximately 30 days after the supplemental visas became available, USCIS announced that it received sufficient petitions filed pursuant to the FY 2019 supplemental cap increase. USCIS did not conduct a lottery for the FY 2019 supplemental cap increase. The total number of H–2B workers approved towards the FY 2019 supplemental cap increase was 32,666.[19] The vast majority

[10] On February 24, 2021, USCIS announced that it had received a sufficient number of petitions to reach the congressionally mandated H–2B cap for the second half of FY 2021. *See https://www.uscis.gov/news/alerts/h-2b-cap-reached-for-second-half-of-fy-2021* (Feb. 24, 2021). On February 12, 2021, the number of beneficiaries listed on petitions received by USCIS surpassed the total number of remaining H–2B visas available against the H–2B statutory cap for the second half of FY 2021. In accordance with regulations, USCIS determined it was necessary to use a computer-generated process, commonly known as a lottery, to ensure the fair and orderly allocation of H–2B visa numbers to meet, but not exceed, the remainder of the FY 2021 cap. 8 CFR 214.2(h)(8)(vii). On February 17, 2021, USCIS conducted a lottery to randomly select petitions from those received on February 12, 2021. As a result, USCIS assigned all petitions selected in the lottery the receipt date of February 17, 2021.

[11] INA section 214(g)(9)(a), 8 U.S.C. 1184(g)(9)(a), as revised by the Consolidated Appropriations Act of 2016 (Pub. L. 114–113). This program expired on September 30, 2016.

[12] DHS, after consulting with DOL, did not publish a temporary final rule supplementing the H–2B cap for FY 2020 pursuant to the Further Consolidated Appropriations Act, 2020, Public Law 116–94.

[13] The highest number of returning workers in any such fiscal year was 64,716, which represents the number of beneficiaries covered by H–2B returning worker petitions that were approved for FY 2007. DHS also considered using an alternative approach, under which DHS measured the number of H–2B returning workers admitted at the ports of entry (66,792 for FY 2007).

[14] Temporary Rule, *Exercise of Time-Limited Authority To Increase the Fiscal Year 2017 Numerical Limitation for the H–2B Temporary Nonagricultural Worker Program,* 82 FR 32987, 32998 (July 19, 2017); Temporary Rule, *Exercise of Time-Limited Authority To Increase the Fiscal Year 2018 Numerical Limitation for the H–2B Temporary Nonagricultural Worker Program,* 83 FR 24905, 24917 (May 31, 2018).

[15] USCIS data pulled from the Computer Linked Application Information Management System (CLAIMS3) database, available at *https://www.dhs.gov/publication/dhsuscispia-016-computer-linked-application-information-management-system-claims-3-and,* on Mar. 15, 2021.

[16] The number of approved workers exceeded the number of additional visas authorized for FY 2018 to allow for the possibility that some approved workers would either not seek a visa or admission, would not be issued a visa, or would not be admitted to the United States. USCIS data pulled from CLAIMS3 on Mar. 15, 2021.

[17] Premium processing allows for expedited processing for an additional fee. *See* INA 286(u), 8 U.S.C. 1356(u).

[18] Temporary Rule, *Exercise of Time-Limited Authority To Increase the Fiscal Year 2019 Numerical Limitation for the H–2B Temporary Nonagricultural Worker Program,* 84 FR 20005, 20021 (May 8, 2019).

[19] The number of approved workers exceeded the number of additional visas authorized for FY 2019 to allow for the possibility that some approved

Continued

of these petitions requested premium processing and were adjudicated within 15 calendar days.

Although Congress provided the Secretary of Homeland Security with the discretionary authority to increase the H–2B cap in FY 2020, the Secretary did not exercise that authority. DHS initially intended to exercise its authority and, on March 4, 2020, announced that it would make available 35,000 supplemental H–2B visas for the second half of fiscal year.[20] On March 13, 2020, then-President Trump declared a National Emergency concerning COVID–19, a communicable disease caused by the coronavirus SARS–CoV–2.[21] On April 2, 2020, DHS announced that the rule to increase the H–2B cap was on hold due to economic circumstances, and no additional H–2B visas would be released until further notice.[22] DHS also noted that the Department of State had suspended routine visa services.[23] As explained in further detail below, although the COVID–19 public health emergency is still in effect, DHS believes that it is appropriate to increase the H–2B cap coupled with additional protections (for example, post-adjudication audits, investigations, and compliance checks), for FY 2021 based on the demand for H–2B workers in the second half of FY 2021, recent and continuing economic growth, the improving job market and increased visa processing by the Department of State.

### *D. Joint Issuance of This Final Rule*

As they did in FY 2017, FY 2018, and FY 2019, the Departments have determined that it is appropriate to jointly issue this temporary rule.[24] The determination to issue the temporary rule jointly follows conflicting court decisions concerning DOL's authority to independently issue legislative rules to carry out its consultative and delegated functions pertaining to the H–2B program under the INA.[25] Although DHS and DOL each have authority to independently issue rules implementing their respective duties under the H–2B program,[26] the Departments are implementing section 105 in this manner to ensure there can be no question about the authority underlying the administration and enforcement of the temporary cap increase. This approach is consistent with rules implementing DOL's general consultative role under INA section 214(c)(1), 8 U.S.C. 1184(c)(1), and delegated functions under INA sections 103(a)(6) and 214(c)(14)(B), 8 U.S.C. 1103(a)(6), 1184(c)(14)(B).[27]

## III. Discussion

### *A. Statutory Determination*

Following consultation with the Secretary of Labor, the Secretary of Homeland Security has determined that the needs of some U.S. employers cannot be satisfied in FY 2021 with U.S. workers who are willing, qualified, and able to perform temporary nonagricultural labor. In accordance with section 105 of the FY 2021 Omnibus, the Secretary of Homeland Security has determined that it is appropriate, for the reasons stated below, to raise the numerical limitation on H–2B nonimmigrant visas up to 22,000 additional visas for those American businesses that attest to a level of need such that, if they do not receive the workers under the cap increase, they are likely to suffer irreparable harm, in other words, suffer a permanent and severe financial loss. These businesses must retain documentation, as described below, supporting this attestation.

DHS and DOL intend to conduct a significant number of random audits during the period of temporary need to verify compliance with H–2B program requirements, including the irreparable harm standard as well as other key worker protection provisions implemented through this rule. If an employer's documentation does not establish the likelihood of irreparable harm, or if the employer fails to provide evidence demonstrating irreparable harm or comply with the audit process, this may be considered a substantial violation resulting in an adverse agency action on the employer, including revocation of the petition and/or TLC or program debarment.

The Secretary of Homeland Security has also determined that for certain employers, additional recruitment steps are necessary to confirm that there are no qualified U.S. workers available for the positions. In addition, the Secretary of Homeland Security has determined that the supplemental visas will be limited to returning workers, with the exception that up to 6,000 of the 22,000 visas will be exempt from the returning worker requirement and will be reserved for H–2B workers who are nationals of Guatemala, Honduras, or El Salvador (the Northern Triangle countries).[28] The 6,000 H–2B visas are reserved for nationals of the Northern Triangle countries to further the objectives of E.O. 14010, which among other initiatives, instructs the Secretary of Homeland Security and the Secretary of State to implement measures to enhance access to visa programs for individuals from the Northern Triangle.[29] This decision supports the President's vision of expanding lawful pathways for protection and opportunity for individuals from the Northern Triangle.[30]

Similar to the temporary final rule for the FY 2019 supplemental cap, the Secretary of Homeland Security has also determined to limit the supplemental visas to H–2B returning workers, in other words, workers who were issued H–2B visas or were otherwise granted H–2B status in FY 2018, 2019, or 2020,[31] unless the employer indicates on the new attestation form that it is requesting workers who are nationals of the Northern Triangle countries and who are therefore counted towards the 6,000 allotment regardless of whether they are new or returning workers. If the 6,000 returning worker exemption cap for Northern Triangle nationals has been

workers would either not seek a visa or admission, would not be issued a visa, or would not be admitted to the United States. USCIS data pulled from CLAIMS3 on Mar. 15, 2021.

[20] DHS to Improve Integrity of Visa Program for Foreign Workers, March 5, 2020, *https://www.dhs.gov/news/2020/03/05/dhs-improve-integrity-visa-program-foreign-workers.*

[21] Proclamation 9994 of Mar. 13, 2020, *Declaring a National Emergency Concerning the Coronavirus Disease (COVID–19) Outbreak,* 85 FR 15337 (Mar. 18, 2020).

[22] *https://twitter.com/DHSgov/status/1245745115458568192?s=20.*

[23] *Id.*

[24] 82 FR 32987 (Jul. 19, 2017); 83 FR 24905 (May 31, 2018); 84 FR 20005 (May 8, 2019).

[25] *See Outdoor Amusement Bus. Ass'n* v. *Dep't of Homeland Sec.,* 983 F.3d 671 (4th Cir. 2020); *see also Temporary Non-Agricultural Employment of H–2B Aliens in the United States,* 80 FR 24042, 24045 (Apr. 29, 2015).

[26] *See Outdoor Amusement Bus. Ass'n,* 983 F.3d at 684–89.

[27] *See* 8 CFR 214.2(h)(6)(iii)(A) and (C), (h)(6)(iv)(A).

[28] These conditions and limitations are not inconsistent with sections 214(g)(3) (''first in, first out'' H–2B processing) and (g)(10) (fiscal year H–2B allocations) because noncitizens covered by the special allocation under section 105 of the FY 2021 Omnibus are not ''subject to the numerical limitations of [section 214(g)(1).]'' *See, e.g.,* INA section 214(g)(3); INA section 214(g)(10); FY 2021 Omnibus div. O, sec. 105 (''Notwithstanding the numerical limitation set forth in section 214(g)(1)(B) of the [INA]. . . .'').

[29] *See* Section 3(c) of E.O. 14010, Creating a Comprehensive Regional Framework To Address the Causes of Migration, To Manage Migration Throughout North and Central America, and To Provide Safe and Orderly Processing of Asylum Seekers at the United States Border, signed February 2, 2021. *https://www.govinfo.gov/content/pkg/FR-2021-02-05/pdf/2021-02561.pdf.*

[30] *Id.*

[31] For purposes of this rule, these returning workers could have been H–2B cap exempt or extended H–2B status in FY 2018, 2019, or 2020. Additionally they may have been previously counted against the annual H–2B cap of 66,000 visas during FY 2018, 2019, or 2020, or the supplemental caps in FY 2018 or FY 2019.

reached and visas remain available under the returning worker cap, the petition would be rejected and any fees submitted returned to the petitioner. In such a case, a petitioner may continue to request workers who are nationals of one of the Northern Triangle countries, but the petitioner must file a new Form I–129 petition, with fee, and attest that these noncitizens will be returning workers, in other words, workers who were issued H–2B visas or were otherwise granted H–2B status in FY 2018, 2019, or 2020. If the 6,000 returning worker exemption cap for nationals of the Northern Triangle countries remains unfilled by July 8, 2021, USCIS will announce on its website that the remaining visas will be made available to the general public, but the petitioner must file a new Form I–129 petition and attest that these noncitizens will be returning workers.

The Secretary of Homeland Security's determination to increase the numerical limitation is based, in part, on the conclusion that some businesses are likely to suffer irreparable harm in the absence of a cap increase. Congress has expressed concern with the unavailability of H–2B visas for employers that need workers to start late in the fiscal year.[32] In addition, members of Congress have sent numerous letters to the Secretaries of Homeland Security and Labor about the needs of some U.S. businesses for H–2B workers (after the statutory cap for the second half of the fiscal year has been reached) and about the potentially negative impact on state and local economies if the cap is not increased.[33] U.S. businesses, chambers of commerce, employer organizations, and state and local elected officials have also written to the DHS and Labor Secretaries to express their concerns with the unavailability of H–2B visas after the statutory cap has been reached.[34] DHS held a stakeholder listening session on April 8, 2021, during and after which numerous small and seasonal business owners described the challenges they face absent the ability to secure H–2B workers because the statutory cap has been reached.[35]

The Secretary of Homeland Security and the Secretary of Labor heard from many trade unions and worker advocates who opposed raising the cap. They argued that the unemployment rate remains high. In particular, they provided evidence that the unemployment rate for summer-related occupations, such as landscaping workers, restaurant workers, construction workers and others, for which businesses were pressing for an increase in visas, exceeds the national average in unemployment.[36] They also pointed to what they consider weaknesses in the labor market test, and stated that some H–2B employers have violated labor laws, including requirements in the H–2B program.

After considering the full range of evidence and diverse points of view, the Secretary of Homeland Security has deemed it appropriate to take action to avoid irreparable harm to businesses that were unable to obtain H–2B workers under the statutory cap, including potential wage and job losses by their U.S. workers, as well as other adverse downstream economic effects.[37] At the same time, the Secretary of Homeland Security believes it is appropriate to condition receipt of supplemental visas on adherence to additional worker protections, particularly because of current national unemployment rates, as discussed below.

The decision to afford the benefits of this temporary cap increase to U.S. businesses that need workers to avoid irreparable harm and that will comply with additional worker protections, rather than applying the cap increase to any and all businesses seeking temporary workers, is consistent with section 105 of the FY 2021 Omnibus, as explained below. The Secretary of Homeland Security, in implementing section 105 and determining the scope of any such increase, has broad discretion, following consultation with the Secretary of Labor, to identify the business needs that are most relevant, while bearing in mind the need to protect U.S. workers. Within that context, for the below reasons, the Secretary of Homeland Security has determined to allow an overall increase of 22,000 additional visas solely for the businesses facing permanent, severe potential losses.

First, DHS interprets section 105's reference to ''the needs of American businesses'' as describing a need different from the need ordinarily required of employers in petitioning for an H–2B worker. Under the generally applicable H–2B program, each individual H–2B employer must demonstrate that it has a temporary need for the services or labor for which it seeks to hire H–2B workers. *See* 8 CFR 214.2(h)(6)(ii), 20 CFR 655.6. The use of the phrase ''needs of American businesses,'' which is not found in INA section 101(a)(15)(H)(ii)(b), 8 U.S.C. 1101(a)(15)(H)(ii)(b), or the regulations governing the standard H–2B cap, authorizes the Secretary of Homeland Security in allocating additional H–2B visas under section 105 to require that employers establish a need above and beyond the normal standard under the H–2B program, that is, an inability to find sufficient qualified U.S. workers willing and available to perform services or labor and that the employment of the H–2B worker will not adversely affect the wages and working conditions of U.S. workers, *see* 8 CFR 214.2(h)(6)(i)(A). DOL concurs with this interpretation.

Second, the approach set forth in this rule limits the increase in a way that is similar to the implementation of the supplemental caps in fiscal years 2017, 2018, and 2019, and provides protections against adverse effects on U.S. workers that may result from a cap increase. Although there is not enough time to conduct a more full and formal quantitative analysis of such adverse effects, the Secretary has determined that in the particular circumstances presented here, it is appropriate, within the limits discussed below, to tailor the availability of this temporary cap increase to those businesses likely to suffer irreparable harm, in other words, those facing permanent and severe financial loss.

As noted above, to address the increased, and, in some cases, imminent need for H–2B workers, for FY 2021, the Secretary of Homeland Security has determined that employers may petition for supplemental visas on behalf of up to 16,000 workers who were issued an

[32] In the Joint Explanatory Statement for the FY 2018 DHS Consolidated Appropriations Act (Public Law 115–141), for example, Congress directed DHS, in consultation with DOL, to report on options to improve the accessibility of H–2B visas for employers that need workers to start late in the season. DHS submitted the report to Congress on June 7, 2019. Congress made a similar request in the Joint Explanatory Statement for the FY 2020 DHS Further Consolidated Appropriations Act (Public Law 116–94).

[33] See the docket for this rulemaking for access to these letters.

[34] *Id.*

[35] USCIS expects to post a recording of the stakeholder listening engagement on its Electronic Reading Room, at *https://www.uscis.gov/records/electronic-reading-room.*

[36] See: Department of Labor, Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey, Table A–30, available at *https://www.bls.gov/web/empsit/cpseea30.htm.* According to the March 2021 Current Population Survey, the unemployment rate for construction and landscaping workers was 9.5 percent and 9.9 percent, respectively, whereas the national unemployment rate was 6.2 percent.

[37] *See, e.g.,* Impacts of the H–2B Visa Program for Seasonal Workers on Maryland's Seafood Industry and Economy, Maryland Department of Agriculture Seafood Marketing Program and Chesapeake Bay Seafood Industry Association (March 2, 2020), available at *https://mda.maryland.gov/documents/2020-H2B-Impact-Study.pdf* (last visited May 7, 2021).

H–2B visa or were otherwise granted H–2B status in FY 2018, 2019, or 2020.[38] The last 3 fiscal years' temporal limitation in the returning worker definition in this temporary rule mirrors the temporal limitation Congress imposed in previous returning worker statutes.[39] Such workers (in other words, those who recently participated in the H–2B program) have previously obtained H–2B visas and therefore have been vetted by DOS, would have departed the United States after their authorized period of stay as generally required by the terms of their nonimmigrant admission, and therefore may obtain their new visas through DOS and begin work more expeditiously.[40] DOS has informed DHS that, in general, H–2B visa applicants who are able to demonstrate clearly that they have previously abided by the terms of their status granted by DHS have a higher success rate when applying to renew their H–2B visas, as compared with the overall visa applicant pool from a given country. For that reason, some consular sections waive the in-person interview requirement for H–2B applicants whose visa expired within a specific timeframe and who otherwise meet the strict limitations set out under INA section 222(h), 8 U.S.C. 1202(h). We note that DOS has, in response to the COVID–19 pandemic, expanded interview waivers to some first-time H–2 applicants [41] potentially allowing some such applicants to be processed with increased efficiency. However, there is no indication that this temporary, short-term measure will necessarily affect the overall success rates of applicants, which DOS has indicated is higher for returning workers who can demonstrate prior compliance with the program.

Limiting the supplemental cap to returning workers is beneficial because these workers have generally followed immigration law in good faith and demonstrated their willingness to return home after they have completed their temporary labor or services or their period of authorized stay, which is a condition of H–2B status. The returning worker condition therefore provides a basis to believe that H–2B workers under this cap increase will again abide by the terms and conditions of their visa. The returning worker condition also benefits employers that seek to re-hire known and trusted workers who have a proven positive employment track record while previously employed as workers in this country. While the Departments recognize that the returning worker requirement may limit to an extent the flexibility of employers that might wish to hire non-returning workers, the requirement provides an important safeguard against H–2B abuse, which DHS considers to be a significant consideration.

In allocating up to 6,000 H–2B visas to nationals of the Northern Triangle countries while making the remaining up to 16,000 H–2B initially available visas available to qualified returning workers, irrespective of their country of nationality, this rule strikes a balance between furthering the U.S. foreign policy interests of creating a comprehensive framework—of which this allocation is one piece—to address and manage migration from the Northern Triangle and addressing the needs of certain H–2B employers at risk of suffering from irreparable harm. The United States has strong foreign policy interests in initially allocating up to 6,000 supplemental visas only to nationals of the Northern Triangle countries and exempting such persons from the returning worker requirement. The Secretary of Homeland Security has determined that both the 6,000 limitation and the exemption from the returning worker requirement for nationals of the Northern Triangle countries is beneficial in light of President Biden's February 2, 2021 E.O. 14010, which instructed the Secretary of Homeland Security and the Secretary of State to implement measures to enhance access for individuals of the Northern Triangle countries to visa programs, as appropriate and consistent with applicable law. In response to this executive order, DHS seeks to promote and improve safety, security, and economic stability throughout the region, and work with these countries to stem the flow of irregular migration in the region and enhance access to visa programs.

The exemption from the returning worker requirement recognizes the relatively small numbers of individuals from the three Northern Triangle countries who were previously granted H–2B visas in recent years.[42] Absent this exemption, there may be insufficient workers from these countries, which means that the rule might thereby fail to achieve its intended policy objective, in other words, to provide additional temporary foreign workers for U.S. employers that may suffer irreparable harm absent these workers, while also enhancing access to the H–2B visa classification for individuals from the Northern Triangle countries.

Finally, this rule provides that employers seeking H–2B visas for nationals of the Northern Triangle countries exempt from the returning worker requirement must file their petitions with USCIS no later than July 8, 2021. If fewer petitions are received than needed to reach the 6,000 allocation by July 8, 2021, the remaining visas will be made available to returning workers, irrespective of their country of origin. USCIS will announce the availability and filing period for such remaining visas on its website, uscis.gov, no later than July 23, 2021. DHS believes that making any remaining visas available to returning workers after July 8, 2021 will provide sufficient opportunity for their use by nationals of Northern Triangle countries and also help ensure that supplemental H–2B visas do not go unused if there is insufficient demand from employers seeking or able to employ nationals of Northern Triangle countries.

For all petitions filed under this rule and the H–2B program, generally, employers must establish, among other requirements, that insufficient qualified U.S. workers are available to fill the petitioning H–2B employer's job opportunity and that the foreign worker's employment in the job opportunity will not adversely affect the wages or working conditions of similarly-employed U.S. workers. INA section 214(c)(1), 8 U.S.C. 1184(c)(1); 8 CFR 214.2(h)(6)(iii)(A) and (D); 20 CFR 655.1. To meet this standard of protection for U.S. workers and, in order to be eligible for additional visas under this rule, employers must have applied for and received a valid TLC in accordance with 8 CFR 214.2(h)(6)(iv)(A) and (D) and 20 CFR

[38] DHS believes that this temporal limitation is appropriate even though H–2B visa issuances and admissions were lower in FY 2020 than in previous years, likely due to the impacts of COVID–19 as DHS believes that there will still be a sufficient number of returning workers available to U.S. employers to use the 16,000 additional visas authorized by this rule.

[39] Consolidated Appropriations Act, 2016, Public Law 114–113, div. F, tit. V, sec 565; John Warner National Defense Authorization Act for Fiscal Year 2007, Public Law 109–364, div. A, tit. X, sec. 1074, (2006); Save Our Small and Seasonal Businesses Act of 2005, Public Law. 109–13, div. B, tit. IV, sec. 402.

[40] Non-returning workers cannot meet the statutory criteria under INA section 222(h)(1)(B) for an interview waiver. The previous review of an applicant's qualifications and current evidence of lawful travel to the United States will generally lead to a shorter processing time of a renewal application.

[41] DOS, *Important Announcement on H2 Visas, https://travel.state.gov/content/travel/en/News/visas-news/important-announcement-on-h2-visas.html* (last updated Mar. 26, 2020).

[42] DOS issued a combined total of approximately 26,600 H–2B visas to nationals of the Northern Triangle countries from FY 2015 through FY 2020, combined, approximately 4,400 per year. DOS Monthly NIV Issuances by Nationality and Visa Class; *https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/nonimmigrant-visa-statistics.html* (last visited April 11, 2021).

part 655, subpart A. Under DOL's H–2B regulations, TLCs are valid only for the period of employment certified by DOL and expire on the last day of authorized employment. 20 CFR 655.55(a).

In order to have a valid TLC, therefore, the employment start date on the employer's H–2B petition must not be different from the employment start date certified by DOL on the TLC. *See* 8 CFR 214.2(h)(6)(iv)(D). Under generally applicable DHS regulations, the only exception to this requirement applies when an employer files an amended visa petition, accompanied by a copy of the previously approved TLC and a copy of the initial visa petition approval notice, at a later date to substitute workers as set forth under 8 CFR 214.2(h)(6)(viii)(B). This rule also requires additional recruitment for certain petitioners, as discussed below.

In sum, this rule increases the FY 2021 numerical limitation by up to 22,000 visas, but also restricts the availability of those additional visas by prioritizing only the most significant business needs, and limiting eligibility to H–2B returning workers, unless the worker is a national of one of the Northern Triangle countries counted towards the 6,000 allocation that are exempt from the returning worker limitation. These provisions are each described in turn below.

*B. Numerical Increase and Allocation of up to 22,000 Visas*

The increase of up to 22,000 visas will help address the urgent needs of eligible employers for additional H–2B workers for the remainder of FY 2021.[43] The determination to allow up to 22,000 additional H–2B visas reflects a balancing of a number of factors including the demand for H–2B visas for the second half of FY 2021; current economic conditions; the increased demand for supplemental visas from FY 2017 to FY 2019; H–2B returning worker data; the amount of time remaining for employers to hire and obtain H–2B workers in the fiscal year; congressional concerns such as the one demonstrated by the FY 2018 and FY 2020 Joint Explanatory Statements where Congress directed DHS, in consultation with DOL, to consider options that would help address the unavailability of H–2B visas for late-season employers; and the objectives of E.O. 14010. DHS believes the numerical increase both addresses the needs of U.S. businesses and, as explained in more detail below, furthers the foreign policy interests of the United States. Additional provisions address the need to protect workers, such as informing them of access to COVID–19 vaccines and requiring additional recruitment efforts.

Section 105 of the FY 2021 Omnibus sets the highest number of H–2B returning workers who were exempt from the cap in certain previous years as the maximum limit for any increase in the H–2B numerical limitation for FY 2021.[44] Consistent with the statute's reference to H–2B returning workers, in determining the appropriate number by which to increase the H–2B numerical limitation, the Secretary of Homeland Security focused on the number of visas allocated to such workers in years in which Congress enacted returning worker exemptions from the H–2B numerical limitation. During each of the years the returning worker provision was in force, U.S. employers' standard business needs for H–2B workers exceeded the statutory 66,000 cap. The highest number of H–2B returning workers approved was 64,716 in FY 2007. In setting the number of additional H–2B visas to be made available during FY 2021, DHS considered this number, overall indications of increased need, the availability of U.S. workers during this period of high unemployment, as discussed below, Congress's prior direction that DHS review options for addressing the problem of unavailability of H–2B visas for businesses that need workers to start work late in a semiannual period of availability, and the time remaining in FY 2021. On the basis of these considerations, DHS determined that it would be appropriate to make additional visas available and to limit the supplemental cap to up to 22,000. The Secretary further considered the objectives of E.O. 14010, which among other initiatives, instructs the Secretary of Homeland Security and the Secretary of State to implement measures to enhance access to visa programs for individuals from the Northern Triangle, and determined that reserving up to 6,000 of the up to 22,000 additional visas and exempting this number from the returning worker requirement would be appropriate.

In past years, the number of beneficiaries covered by H–2B petitions filed exceeded the number of additional visas allocated under the two most recent supplemental caps. In FY 2018, USCIS received petitions for approximately 29,000 beneficiaries during the first 5 business days of filing for the 15,000 supplemental cap. USCIS therefore conducted a lottery on June 7, 2018, to randomly select petitions that would be accepted under the supplemental cap. Of the petitions that were selected, USCIS issued approvals for 15,672 beneficiaries.[45] In FY 2019, USCIS received sufficient petitions for the 30,000 supplemental cap on June 5, 2019, but did not conduct a lottery to randomly select petitions that would be accepted under the supplemental cap. Of the petitions received, USCIS issued approvals for 32,717 beneficiaries.[46]

Available data clearly indicate a need for supplemental H–2B visas in FY 2021. As noted above, in FY 2021, based on TLC applications filed during the 3-day filing window of January 1 through 3, 2021, DOL's Office of Foreign Labor Certification (OFLC) received requests to certify 96,641 worker positions, from 5,377 H–2B applications, for start dates

[43] In contrast with section 214(g)(1) of the INA, 8 U.S.C. 1184(g)(1), which establishes a cap on the number of individuals who may be issued visas *or otherwise provided H–2B status,* and section 214(g)(10) of the INA, 8 U.S.C. 1184(g)(10) (emphasis added), which imposes a first half of the fiscal year cap on H–2B issuance with respect to the number of individuals who may be issued visas *or are accorded [H–2B] status*'' (emphasis added), section 105 only authorizes DHS to increase the number of available H–2B *visas.* Accordingly, DHS will not permit individuals authorized for H–2B status pursuant to an H–2B petition approved under section 105 to change to H–2B status from another nonimmigrant status. *See* INA section 248, 8 U.S.C. 1258; *see also* 8 CFR part 248. If a petitioner files a petition seeking H–2B workers in accordance with this rule and requests a change of status on behalf of someone in the United States, the change of status request will be denied, but the petition will be adjudicated in accordance with applicable DHS regulations. Any noncitizen authorized for H–2B status under the approved petition would need to obtain the necessary H–2B visa at a consular post abroad and then seek admission to the United States in H–2B status at a port of entry.

[44] During fiscal years 2005 to 2007, and 2016, Congress enacted ''returning worker'' exemptions to the H–2B visa cap, allowing workers who were counted against the H–2B cap in one of the three preceding fiscal years not to be counted against the upcoming fiscal year cap. Save Our Small and Seasonal Businesses Act of 2005, Public Law 109–13, Sec. 402 (May 11, 2005); John Warner National Defense Authorization Act, Public Law 109–364, Sec. 1074 (Oct. 17, 2006); Consolidated Appropriations Act of 2016, Public Law 114–113, Sec. 565 (Dec. 18, 2015).

[45] USCIS recognizes it may have received petitions for more than 29,000 supplemental H–2B workers if the cap had not been exceeded within the first 5 days of opening. However, DHS estimates that not all of the 29,000 workers requested under the FY 2018 supplemental cap would have been approved and/or issued visas. For instance, although DHS approved petitions for 15,672 beneficiaries under the FY 2018 cap increase, the Department of State data shows that as of January 15, 2019, it issued only 12,243 visas under that cap increase. Similarly, DHS approved petitions for 12,294 beneficiaries under the FY 2017 cap increase, but the Department of State data shows that it issued only 9,160 visas.

[46] The number of approved workers exceeded the number of additional visas authorized for FY 2018 and FY 2019 to allow for the possibility that some approved workers would either not seek a visa or admission, would not be issued a visa, or would not be admitted to the United States.

of work on April 1, 2021.[47] USCIS, in turn, received sufficient H–2B petitions to reach the second half of the fiscal year statutory cap by February 12, 2021.[48] This is similar to the level of demand in FY 2020, when OFLC received requests to certify 99,362 worker positions for start dates of work on April 1, 2020,[49] and USCIS received sufficient H–2B petitions to reach the second half of the fiscal year statutory cap by February 18, 2020.[50] On March 4, 2020, DHS announced that it would make available 35,000 supplemental H–2B visas for the second half of fiscal year.[51] However, on March 13, 2020, then-President Trump declared a National Emergency concerning the COVID–19 outbreak to control the spread of the virus in the United States.[52] On April 2, 2020, DHS announced that the rule to increase the H–2B cap was on hold due to economic circumstances, and no additional H–2B visas would be released until further notice.[53] DHS also noted that DOS had suspended routine visa services.[54]

Although the public health emergency due to COVID–19 still exists,[55] DHS believes that it is appropriate to issue additional H–2B visas for the remainder of FY 2021. While the economic impacts of COVID–19 continue to be felt, real gross domestic product (GDP) grew significantly in the third and fourth quarters of 2020.[56] Economists project that this economic growth will continue throughout FY 2021 and beyond.[57] Similarly, the unemployment rate, while still not at pre-pandemic levels, improved from 14.7 percent in April 2020 [58] to 6.0 percent in March 2021. (Note, however, that higher unemployment in the top H–2B occupations remains.[59])

In March 2020, the U.S. labor market was severely affected by the onset of the COVID–19 pandemic, pushing the national unemployment rate to near record levels and resulting in millions of U.S. workers being displaced from work. At the beginning of March 2020, the national unemployment rate was 3.5 percent with an estimated 5.8 million people categorized as unemployed.[60] This continued a 6-month trend of the unemployment rate sitting at or below 3.5 percent. However, by the end of April 2020, the unemployment rate increased from 4.4 percent to a peak of 14.7 percent. The 10.3 percent increase in the unemployment rate is the largest recorded month-to-month increase in the rate and coincided with total employment declining 20.5 million in April 2020.[61] As of April 2021, the U.S. unemployment rate sat at 6.0 percent. While this is a considerable decline from the prior year's rate, it remains 2.5 percent above the pre-pandemic unemployment rate, and the number of unemployed persons is currently 9.7 million people which is 4 million people higher than it was at the beginning of March 2020. A February 2021 Congressional Budget Office outlook of the labor market projects that a full recovery to pre-pandemic levels of employment could take in excess of 3 years.[62]

Typically H–2B occupations are cyclical jobs, and U.S. workers in these occupations are more susceptible to job instability and labor market variability. Amongst the occupations most commonly associated with the H–2B program, the unemployment rate has displayed a wide degree of variance. Whereas the pre-pandemic unemployment rate for the U.S. was 3.5 percent, the unemployment rate across the top 25 occupations most commonly associated with the H–2B program sat at 6.82 percent.[63] Currently the average unemployment rate across these occupations is 8.93 percent. The current unemployment rate for Landscaping and Groundskeeping Workers (the single largest occupation that uses the H–2B program) is 7.8 percent, followed by Amusement and Recreation Attendants at 9.3 percent, and 7.1 percent for Meat, Poultry, and Fish Cutters.[64]

From March 2020 through March 2021, approximately 1 million U.S. workers have been displaced across occupations that are predominantly used in the H–2B program.[65] Because of the higher unemployment rate of these occupations for U.S. workers, there is an increased likelihood that more U.S. workers could be available to work in H–2B jobs. The Departments acknowledge that it is challenging to extrapolate, from national unemployment rates in occupations, precise estimates regarding the availability of U.S. workers for any particular job opportunity and in any particular geographic area. The additional procedures contained in this rule, including the attestation requirements and DOL procedures, provide appropriate protections for U.S. workers within the context of that uncertainty.

Finally, while DOS temporarily suspended routine immigrant and nonimmigrant visa services at all U.S. Embassies and Consulates on March 20, 2020, it subsequently announced a phased resumption of visa services [66] and indicated it would continue

[47] DOL announcement on January 7, 2021. *See https://www.foreignlaborcert.doleta.gov/* (last accessed on February 24, 2021).

[48] On February 24, 2021, USCIS announced that it had received a sufficient number of petitions to reach the congressionally mandated H–2B cap for the second half of FY 2021. *See https://www.uscis.gov/news/alerts/h-2b-cap-reached-for-second-half-of-fy-2021* (Feb. 24, 2021). On February 12, 2021, the number of beneficiaries listed on petitions received by USCIS surpassed the total number of remaining H–2B visas available against the H–2B statutory cap for the second half of FY 2021. In accordance with regulations, USCIS determined it was necessary to use a computer-generated process, commonly known as a lottery, to ensure the fair and orderly allocation of H–2B visa numbers to meet, but not exceed, the remainder of the FY 2021 cap. 8 CFR 214.2(h)(8)(vii). On February 17, 2021, USCIS conducted a lottery to randomly select petitions from those received on February 12, 2021. As a result, USCIS assigned all petitions selected in the lottery the receipt date of February 17, 2021.

[49] DOL announcement on January 6, 2020. *OFLC Conducts Randomization Process on H–2B Applications Requesting an April 1, 2020, Work Start Date, https://flag.dol.gov/announcements/01-06-2020.*

[50] *H–2B Cap Reached for Second Half of FY2020,* Feb. 26, 2020, *https://www.uscis.gov/news/alerts/h-2b-cap-reached-for-second-half-of-fy2020.*

[51] DHS to Improve Integrity of Visa Program for Foreign Workers, March 5, 2020, *https://www.dhs.gov/news/2020/03/05/dhs-improve-integrity-visa-program-foreign-workers.*

[52] Proclamation 9994 of Mar. 13, 2020, *Declaring a National Emergency Concerning the Coronavirus Disease (COVID–19) Outbreak,* 85 FR 15337 (Mar. 18, 2020).

[53] *https://twitter.com/DHSgov/status/1245745115458568192?s=20.*

[54] *Id.*

[55] *See* HHS Renewal of Determination That A Public Health Emergency Exists, *https://www.phe.gov/emergency/news/healthactions/phe/Pages/COVID-15April2021.aspx* (Apr. 15, 2021).

[56] *https://www.bea.gov/news/glance.*

[57] *https://www.bloomberg.com/news/articles/2021-02-12/charting-the-global-economy-u-s-growth-forecasts-upgraded.*

[58] *https://www.bls.gov/opub/ted/2020/unemployment-rate-rises-to-record-high-14-point-7-percent-in-april-2020.htm*

[59] Department of Labor, Bureau of Labor Statistics, The Employment Situation, March 2021. Available at *https://www.bls.gov/news.release/archives/empsit_04022021.htm.*

[60] *https://www.bls.gov/news.release/archives/empsit_03062020.pdf.*

[61] *https://www.bls.gov/news.release/archives/empsit_05082020.pdf.*

[62] *https://www.cbo.gov/system/files/2021-02/56965-Economic-Outlook.pdf.*

[63] *See https://www.bls.gov/web/empsit/cpseea30.htm. The unemployment rates for the top 25 H–2B occupations were obtained by identifying the top occupations based on OFLC performance data.*

[64] *See* 2021 Q2 OFLC Performance data: *https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/H-2B_Disclosure_Data_FY2021_Q2.xlsx* and OFLC 2021 Q2 Selected statistics *https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/H-2B_Selected_Statistics_FY2021_Q2.pdf*

[65] *See https://www.bls.gov/web/empsit/cpseea30.htm. The number of displaced workers within the most commonly held H–2B occupations were obtained by identifying the top occupations based on OFLC performance data and comparing those occupations to unemployment data from BLS.*

[66] DOS, *Suspension of Routine Visa Services, https://travel.state.gov/content/travel/en/News/visas-news/suspension-of-routine-visa-services.html* (last updated July 22, 2020).

processing H–2 cases as much as possible, as permitted by post resources and local government restrictions, and expanded the categories of H–2 visa applicants whose applications can be adjudicated without an in-person interview.[67] In addition, Presidential Proclamation 10052, which temporarily suspended the entry of certain nonimmigrants, including certain H–2B nonimmigrants, expired on March 31, 2021.[68] Given the level of demand for H–2B workers, the continued and projected economic recovery, the continued and projected job growth, and the resumption of visa processing services and the expiration of the suspension of entry of H–2B nonimmigrants, DHS believes it is appropriate to release additional visas at this time. Further, DHS believes that 22,000 is an appropriate number of visas for the reasons discussed above.

Finally, recognizing the high demand for H–2B visas, it is plausible that the additional H–2B allocations provided in this rule will be reached prior to the end of the fiscal year. Specifically, the following scenarios may still occur:

- The 16,000 supplemental cap visas limited to returning workers that will be immediately available for employers will be reached before September 15, 2021.
- The 6,000 supplemental cap visas limited to nationals of the Northern Triangle countries will be reached before July 8, 2021.
- The cap for any remaining visas from the Northern Triangle allotment made available to returning workers after July 8, 2021,regardless of the country of nationality, will be reached before September 15, 2021.

DHS regulation, 8 CFR 214.2(h)(6)(x)(E), reaffirms the use of the processes that are in place when H–2B numerical limitations under INA section 214(g)(1)(B) or (g)(10), 8 U.S.C. 1184(g)(1)(B) or (g)(10), are reached, as applicable to each of the scenarios described above that involve numerical limitations of the supplemental cap. Specifically, for each of the scenarios mentioned above, DHS will monitor petitions received, and make projections of the number of petitions necessary to achieve the projected numerical limit of approvals. USCIS will also notify the public of the dates that USCIS has received the necessary number of petitions (the ''final receipt dates'') for each of these scenarios. The day the public is notified will not control the final receipt dates. Moreover, USCIS may randomly select, via computer-generated selection, from among the petitions received on the final receipt date the remaining number of petitions deemed necessary to generate the numerical limit of approvals for each of the scenarios involving numerical limitations to the supplemental cap. USCIS may, but will not necessarily, conduct a lottery if: The 16,000 supplemental cap visas for returning workers is reached before September 15, 2021; the 6,000 visas limited to nationals of the Northern Triangle countries is reached before July 8, 2021; or the cap for any remaining visas from the Northern Triangle allotment made available to returning workers regardless of the country of nationality, is reached before September 15, 2021. Finally, similar to the processes applicable to the H–2B statutory cap, if the final receipt date is any of the first 5 business days on which petitions subject to the applicable numerical limit may be received (in other words, if the numerical limit is reached on any one of the first 5 business days that filings can be made), USCIS will randomly apply all of the numbers among the petitions received on any of those 5 business days.

*C. Returning Workers*

Similar to the temporary increase in FY 2019, the Secretary of Homeland Security has determined that the supplemental visas should be granted to returning workers from the past 3 fiscal years, in order to meet the immediate need for H–2B workers, unless the H–2B worker is a national of one of the Northern Triangle countries and is counted towards the separate 6,000 cap for such workers. The Secretary has determined that, for purposes of this program, H–2B returning workers include those individuals who were issued an H–2B visa or were otherwise granted H–2B status in FY 2018, 2019, or 2020. As discussed above, the Secretary determined that limiting returning workers to those who were issued an H–2B visa or granted H–2B status in the past three fiscal years is appropriate as it mirrors the standard that Congress designated in previous returning worker provisions. DHS acknowledges that H–2B visa issuances and admissions were lower in the second half of FY 2021 than in recent fiscal years, likely as a result of COVID–19. However, DHS believes that there will be sufficient numbers of returning workers to meet the needs of employers and fully utilize the additional 16,000 visas, and thus the temporal limitation remains appropriate. Returning workers have previously obtained H–2B visas and therefore been vetted by DOS, would have departed the United States after their authorized period of stay as generally required by the terms of their nonimmigrant admission, and therefore may have a higher likelihood of success in obtaining their new visas through DOS, possibly without a required interview, and begin work more expeditiously.

To ensure compliance with the requirement that additional visas only be made available to returning workers, petitioners seeking H–2B workers under the supplemental cap will be required to attest that each employee requested or instructed to apply for a visa under the FY 2021 supplemental cap was issued an H–2B visa or otherwise granted H–2B status in FY 2018, 2019, or 2020, unless the H–2B worker is a national of one of the Northern Triangle countries and is counted towards the 6,000 cap. This attestation will serve as prima facie initial evidence to DHS that each worker, unless a national of one of the Northern Triangle countries who is counted against the 6,000 cap, meets the returning worker requirement. DHS and DOS retain the right to review and verify that each beneficiary is in fact a returning worker any time before and after approval of the petition or visa. DHS has authority to review and verify this attestation during the course of an audit or investigation.

*D. Returning Worker Exemption for up to 6,000 Visas for Nationals of Guatemala, El Salvador, and Honduras (Northern Triangle Countries)*

As described above, the Secretary of Homeland Security has determined that up to 6,000 additional H–2B visas will be limited to workers who are nationals of one of the Northern Triangle countries. These 6,000 visas will be exempt from the returning worker requirement. If the 6,000 visa limit has been reached and the 16,000 cap has not, petitioners may continue to request workers who are nationals of one of the Northern Triangle countries, but these noncitizens must be specifically requested as returning workers who were issued H–2B visas or were otherwise granted H–2B status in FY 2018, 2019, or 2020. Alternatively, if the returning worker exemption cap initially reserved for nationals from the Northern Triangle remains unfilled on July 8, 2021, the remaining H–2B visas will be made available to workers

[67] DOS, *Expansion of Interview Waiver Eligibility, https://travel.state.gov/content/travel/en/News/visas-news/expansion-of-interview-waiver-eligibility.html* (last updated Mar. 11, 2021); DOS, *Important Announcement on H2 Visas, https://travel.state.gov/content/travel/en/News/visas-news/important-announcement-on-h2-visas.html* (last updated Mar. 26, 2020).

[68] *https://travel.state.gov/content/travel/en/News/visas-news/update-on-presidential-proclamation-10052.html*

irrespective of their home country, but these noncitizens must be returning workers. USCIS will announce the availability of the remainder of the allocation on the USCIS website at uscis.gov no later than July 23, 2021.

DHS has determined that reserving 6,000 supplemental H–2B visas for nationals of the Northern Triangle countries—a number significantly higher than the average annual number of visas issued to such persons in the past 6 fiscal years—will encourage U.S. employers who face a likelihood of irreparable harm to seek out workers from such countries, while, at the same time, increase interest among nationals of the Northern Triangle countries seeking temporary employment in the United States. DOS issued a combined total of approximately 26,600 H–2B visas to nationals of the Northern Triangle countries from FY 2015 through FY 2020, an average of approximately 4,400 per year.[69] As previously stated, DHS has determined that the additional increase will not only provide U.S. businesses who have been unable to find qualified and available U.S. workers with potential workers, but also promote lawful immigration and lawful employment authorization for Northern Triangle nationals.

While DHS reiterates the importance of limiting the general supplemental cap exclusively to returning workers, for the reasons stated previously, the Secretary has determined that the exemption from the returning worker requirement for nationals of the Northern Triangle countries is beneficial for the following reasons. It strikes a balance between furthering the U.S. foreign policy interests of expanding access to lawful pathways in the United States for Northern Triangle nationals and addressing the needs of certain H–2B employers at risk of suffering from irreparable harm. This policy initiative would also support the strategies for the region described in E.O. 14010, which directs DHS to implement efforts to expand access to lawful immigration to the United States, including visa programs, as appropriate and consistent with the law through both protection-related and non-protection related programs. The availability of workers from the Northern Triangle countries may help provide U.S. employers with additional labor from neighboring countries who are committed to working with the United States and also promote safe and lawful immigration to the United States.

Similar to the discussion above regarding returning workers, DOS will work with the relevant countries to facilitate consular interviews, as required,[70] and channels for reporting incidents of fraud and abuse within the H–2 programs. Further, each country's own consular networks will maintain contact with the workers while in the United States and ensure the workers know their rights and responsibilities under the U.S. immigration laws, which are all valuable protections to the immigration system, U.S. employers, U.S. workers, and workers entering the country on H–2 visas.

Nothing in this rule will limit the authority of DHS or DOS to deny, revoke, or take any other lawful action with respect to an H–2B petition or visa application at any time before or after approval of the H–2B petition or visa application.

*E. Business Need Standard—Irreparable Harm and FY 2021 Attestation*

To file any H–2B petition under this rule during the remainder of FY 2021, petitioners must meet all existing H–2B eligibility requirements, including having an approved, valid, and unexpired TLC. *See* 8 CFR 214.2(h)(6) and 20 CFR part 655, subpart A. In addition, the petitioner must submit an attestation to USCIS in which the petitioner affirms, under penalty of perjury, that it meets the business need standard. Under that standard, the petitioner must be able to establish that, if it does not receive all of the workers requested under the cap increase,[71] it is likely to suffer irreparable harm, that is, permanent and severe financial loss. The TLC process focuses on establishing whether a petitioner has a temporary need for workers and whether there are U.S. workers who are able, willing, qualified, and available to perform the temporary service or labor, and does not address the harm a petitioner may face in the absence of such workers; the attestation addresses this question. The attestation must be submitted directly to USCIS, together with Form I–129, the approved and valid TLC, and any other necessary documentation. As in the rules implementing the FY 2017, FY 2018, and FY 2019 temporary cap increases, employers will be required to complete the new attestation form which can be found at: *https://www.foreignlaborcert.doleta.gov/form.cfm.*[72]

The attestation form will serve as prima facie initial evidence to DHS that the petitioner's business is likely to suffer irreparable harm. Any petition requesting H–2B workers under the FY 2021 supplemental cap that is received lacking the requisite attestation form may be, as applicable, rejected in accordance with 8 CFR 103.2(a)(7)(ii) or denied in accordance with 8 CFR 103.2(b)(8)(ii). Although this regulation does not require submission of evidence at the time of filing of the petition, other than an attestation, the employer must have such evidence on hand and ready to present to DHS or DOL at any time starting with the date of filing the I–129 petition, through the prescribed document retention period discussed below. In fact, the Departments intend to select a significant number of petitions approved for audit examination to verify compliance with program requirements, including the irreparable harm standard and recruitment provisions implemented through this rule. Failure to provide evidence demonstrating irreparable harm or to comply with the audit process may be considered a substantial violation resulting in an adverse agency action on the employer, including revocation of the petition and/or TLC or program debarment. Similarly, failure to cooperate with any compliance review, evaluation, verification, or inspection conducted by DHS or DOL as required by 8 CFR 214.2(h)(6)(x)(B)(*2*)(*vi*) and (*vii*), respectively, may constitute a violation of the terms and conditions of an approved petition and lead to petition revocation under 8 CFR 214.2(h)(11)(iii)(A)(*3*).

In addition to the statement regarding the irreparable harm standard, the

[69] DOS Monthly NIV Issuances by Nationality and Visa Class; *https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/nonimmigrant-visa-statistics.html* (last visited April 11, 2021).

[70] As noted previously, some consular sections waive the in-person interview requirement for H–2B applicants whose prior visa expired within a specific timeframe and who otherwise meet the strict limitations set out under INA section 222(h), 8 U.S.C. 1202(h) and, as an effort to reduce the risk of COVID–19 transmission, DOS recently expanded the ability of consular officers to waive the in-person interview requirement for individuals applying for a nonimmigrant visa in the same classification. DOS, *Expansion of Interview Waiver Eligibility, https://travel.state.gov/content/travel/en/News/visas-news/expansion-of-interview-waiver-eligibility.html* (last updated Mar. 11, 2021).

[71] An employer may request fewer workers on the H–2B petition than the number of workers listed on the TLC. *See* Instructions for Petition for Nonimmigrant Worker, providing that ''the total number of workers you request on the petition must not exceed the number of workers approved by the Department of Labor or Guam Department of Labor, if required, on the temporary labor certification.''

[72] This portion of the temporary rule does not apply to workers who have already been counted under the fiscal year 2021 H–2B statutory cap (66,000). Further, this portion of the rule does not apply to noncitizens who are exempt from the fiscal year 2021 H–2B statutory cap, including those who are extending their stay in H–2B status. Accordingly, petitioners who are filing on behalf of such workers are not subject to the attestation requirement.

attestation submitted to USCIS will also state that the employer meets all other eligibility criteria for the available visas, including the returning worker requirement, unless exempt because the H–2B worker is a national of one of the Northern Triangle countries who is counted against the 6,000 visas reserved for such workers; will comply with all assurances, obligations, and conditions of employment set forth in the *Application for Temporary Employment Certification* (Form ETA 9142B and appendices) certified by DOL for the job opportunity (which serves as the TLC); will conduct additional recruitment of U.S. workers in accordance with the requirements of this rule and discussed further below; and will document and retain evidence of such compliance. Because the attestation will be submitted to USCIS as initial evidence with Form I–129, DHS considers the attestation to be evidence that is incorporated into and a part of the petition consistent with 8 CFR 103.2(b)(1). Accordingly, a petition may be denied or revoked, as applicable, based on or related to statements made in the attestation, including but not limited to the following grounds: (1) Because the employer failed to demonstrate employment of all of the requested workers as required under the irreparable harm standard; and (2) the employer failed to demonstrate that it requested and/or instructed that each worker petitioned for was a returning worker, or a national of one of the Northern Triangle countries, as required by this rule. Any denial or revocation on such basis, however, would be appealable under 8 CFR part 103, consistent with DHS regulations and existing USCIS procedures.

It is the view of the Secretaries of Homeland Security and Labor that requiring a post-TLC attestation to USCIS is the most practical approach, given the time remaining in FY 2021 and the need to assemble the necessary documentation. In addition, the employer is required to retain documentation, which must be provided upon request by DHS or DOL, supporting the new attestations regarding (1) the irreparable harm standard, (2) the returning worker requirement, or, alternatively, documentation supporting that the H–2B worker(s) requested is a national of one of the Northern Triangle countries who is counted against the 6,000 cap (which may be satisfied by the separate Form I–129 that employers are required to file for such workers in accordance with this rule) and (3) a recruitment report for any additional recruitment required under this rule for a period of 3 years. *See* new 20 CFR 655.68. Although the employer must have such documentation on hand at the time it files the petition, the Departments have determined that, if employers were required to submit the attestation form to DOL before filing a petition with DHS, the attendant delays would render any visas unlikely to satisfy the needs of American businesses given processing timeframes and the time remaining in this fiscal year. However, as noted above, the Departments will be conducting audits, investigations and/or post-adjudication compliance reviews on a significant number of H–2B petitions. As part of that process, USCIS may issue a request for additional evidence, a notice of intent to revoke, or a revocation notice, based on the review of such documentation, and DOL's OFLC and WHD will be able to review this documentation and enforce the attestations during the course of an audit examination or investigation. *See* 8 CFR 103.2(b) or 8 CFR 214.2(h)(11).

In accordance with the attestation requirements, under which petitioners attest that they meet the irreparable harm standard, that they are seeking to employ only returning workers (unless exempt as described above), and they meet the document retention requirements at new 20 CFR 655.68, the petitioner must retain documents and records fulfilling their responsibility to demonstrate compliance with this rule for 3 years from the date of the attestation, and must provide the documents and records upon the request of DHS or DOL. Supporting evidence may include, but is not limited to, the following types of documentation:

(1) Evidence that the business has suffered or will suffer permanent and severe financial loss due to the inability to meet financial or existing contractual obligations without all of the H–2B workers, including evidence of contracts, reservations, orders, or other business arrangements that have been or would be cancelled absent the requested H–2B workers, and evidence demonstrating an inability to pay debts/bills;

(2) Evidence that the business has suffered or will suffer permanent and severe financial loss during the period of need, as compared to the period of need in prior years, such as financial statements (including profit/loss statements) comparing the present period of need to prior years; bank statements, tax returns, or other documents showing evidence of current and past financial condition; and relevant tax records, employment records, or other similar documents showing hours worked and payroll comparisons from prior years to current year;

(3) Evidence showing the number of workers needed in the previous three seasons (FY 2018, 2019 and 2020) to meet the employer's need as compared to those currently employed. Such evidence must indicate the dates of their employment, and their hours worked (for example, payroll records) and evidence showing the number of H–2B workers requested under this rule, the number of workers it claims are needed, the workers' actual dates of employment and hours worked;

(4) Evidence that the petitioner is reliant on obtaining a certain number of workers to operate, based on the nature and size of the business, such as documentation showing the number of workers it has needed to maintain its operations in the past, or will need prospectively, including but not limited to; a detailed business plan, copies of purchase orders or other requests for good and services, or other reliable forecast of its need for workers; and/or

(5) With respect to satisfying the returning worker requirement, evidence that the employer requested and/or instructed that each of the workers petitioned by the employer in connection with this temporary rule were issued H–2B visas or otherwise granted H–2B status in FY 2018, 2019, or 2020, unless the H–2B worker is a national of one of the Northern Triangle countries counted towards the 6,000 cap. Such evidence would include, but is not limited to, a date-stamped written communication from the employer to its agent(s) and/or recruiter(s) that instructs the agent(s) and/or recruiter(s) to only recruit and provide instruction regarding an application for an H–2B visa to those foreign workers who were previously issued an H–2B visa or granted H–2B status in FY 2018, 2019, or 2020.

These examples are not exhaustive, nor will they necessarily establish that the business meets the irreparable harm or returning worker standards; petitioners may retain other types of evidence they believe will satisfy these standards. When an approved petition is selected for audit examination or investigation, DHS or DOL will review all evidence available to it to confirm that the petitioner properly attested to DHS that their business would likely suffer irreparable harm and that they petitioned for and employed only returning workers, unless the H–2B worker is a national of one of the Northern Triangle countries counted

towards the 6,000 cap. If DHS subsequently finds that the evidence does not support the employer's attestations, DHS may deny or, if the petition has already been approved, revoke the petition at any time consistent with existing regulatory authorities. DHS may also, or alternatively, notify DOL. In addition, DOL may independently take enforcement action, including by, among other things, debarring the petitioner from the H–2B program for not less than 1 year or more than 5 years from the date of the final agency decision, which also disqualifies the debarred party from filing any labor certification applications or labor condition applications with DOL for the same period set forth in the final debarment decision. *See, e.g.,* 20 CFR 655.73; 29 CFR 503.20, 503.24.[73]

To the extent that evidence reflects a preference for hiring H–2B workers over U.S. workers, an investigation by other agencies enforcing employment and labor laws, such as the Immigrant and Employee Rights Section (IER) of the Department of Justice's Civil Rights Division, may be warranted. *See* INA section 274B, 8 U.S.C. 1324b (prohibiting certain types of employment discrimination based on citizenship status or national origin). Moreover, DHS and DOL may refer potential discrimination to IER pursuant to applicable interagency agreements. *See* IER, Partnerships, *https://www.justice.gov/crt/partnerships* (last visited Apr. 9, 2021). In addition, if members of the public have information that a participating employer may be abusing this program, DHS invites them to notify USCIS by completing the online fraud tip form, *https://www.uscis.gov/report-fraud/uscis-tip-form* (last visited Apr. 9, 2021).[74]

DHS, in exercising its statutory authority under INA section 101(a)(15)(H)(ii)(b), 8 U.S.C. 1101(a)(15)(H)(ii)(b), and section 105 of the FY 2021 Omnibus, is responsible for adjudicating eligibility for H–2B classification. As in all cases, the burden rests with the petitioner to establish eligibility by a preponderance of the evidence. INA section 291, 8 U.S.C. 1361. *Matter of Chawathe,* 25 I&N Dec. 369, 375–76 (AAO 2010). Accordingly, as noted above, where the petition lacks initial evidence, such as a properly completed attestation, DHS may, as applicable, reject the petition in accordance with 8 CFR 103.2(a)(7)(ii) or deny the petition in accordance with 8 CFR 103.2(b)(8)(ii). Further, where the initial evidence submitted with the petition contains inconsistencies or is inconsistent with other evidence in the petition and the underlying TLC, DHS may issue a Request for Evidence, Notice of Intent to Deny, or Denial in accordance with 8 CFR 103.2(b)(8). In addition, where it is determined that an H–2B petition filed pursuant to the FY 2021 Omnibus was granted erroneously, the H–2B petition approval may be revoked. *See* 8 CFR 214.2(h)(11).

Because of the particular circumstances of this regulation, and because the attestation and other requirements of this rule play a vital role in achieving the purposes of this rule, DHS and DOL intend that the attestation requirement, DOL procedures, and other aspects of this rule be non-severable from the remainder of the rule, including the increase in the numerical allocations.[75] Thus, in the event the attestation requirement or any other part of this rule is enjoined or held invalid, the remainder of the rule, with the exception of the retention requirements being codified in 20 CFR 655.68, is also intended to cease operation in the relevant jurisdiction, without prejudice to workers already present in the United States under this regulation, as consistent with law.

*G. Portability*

As an additional option for employers that cannot find U.S. workers this rule allows petitioners to hire immediately certain H–2B workers that are already present in the United States in H–2B status without waiting for approval of a new H–2B petition. Specifically, the rule allows H–2B nonimmigrant workers to begin new employment with a new H–2B employer or agent upon USCIS' receipt of a timely, non-frivolous H–2B petition. The H–2B nonimmigrant worker must have been lawfully admitted to the United States, must not have worked without authorization subsequent to such lawful admission, and must currently hold valid H–2B status. Since every H–2B petition must be accompanied by an approved TLC, all H–2B petitioners must have completed a test of the U.S. labor market, as a result of which DOL determined that there were no qualified U.S. workers available to fill these temporary positions.

This provision mirrors temporary flexibilities that DHS has used previously to improve employer access to noncitizen workers during the COVID–19 pandemic.[76] In the context of this rule, DHS believes this flexibility will help some U.S. employers address the challenges related to the limitations imposed by the cap, as well as due to the ongoing disruptions caused by the COVID–19 pandemic. The pandemic has resulted in a variety of travel restrictions and visa processing limitations to mitigate the spread of COVID–19.

In addition to resulting in a devastating loss of life, the worldwide pandemic of COVID–19 has impacted the United States in myriad ways, disrupting daily life, travel, and the operation of individual businesses and the economy at large. On January 31, 2020, the Secretary of the U.S. Department of Health and Human Services (HHS) declared a public health emergency dating back to January 27, 2020, under section 319 of the Public Health Service Act (42 U.S.C. 247d).[77] This determination that a public health emergency exists due to COVID–19 has subsequently been renewed five times: On April 21, 2020, on July 23, 2020, on October 2, 2020, on January 7, 2021, and most recently on April 15, 2021, effective April 21, 2021.[78] On March 13, 2020, then-President Trump declared a National Emergency concerning the

[73] Pursuant to the statutory provisions governing enforcement of the H–2B program, INA section 214(c)(14), 8 U.S.C. 1184(c)(14), a violation exists under the H–2B program where there has been a willful misrepresentation of a material fact in the petition or a substantial failure to meet any of the terms and conditions of the petition. A substantial failure is a willful failure to comply that constitutes a significant deviation from the terms and conditions. *See, e.g.,* 29 CFR 503.19.

[74] DHS may publicly disclose information regarding the H–2B program consistent with applicable law and regulations. For information about DHS disclosure of information contained in a system of records, *see https://www.dhs.gov/system-records-notices-sorns.* Additional general information about DHS privacy policy generally can be accessed at *https://www.dhs.gov/policy.*

[75] The Departments' intentions with respect to non-severability extend to all features of this rule other than the portability provision, which is described in the section below.

[76] On May 14, 2020, DHS published a temporary final rule in the **Federal Register** to amend certain H–2B requirements to help H–2B petitioners seeking workers to perform temporary nonagricultural services or labor essential to the U.S. food supply chain. 85 FR 28843 (May 14, 2020). In addition, on April 20, 2020, DHS issued a temporary final rule which, among other flexibilities, allowed H–2A workers to change employers and begin work before USCIS approved the new H–2A petition for the new employer. 85 FR 21739. DHS has subsequently extended that portability provision for H–2A workers through two additional temporary final rules, on August 20, 2020, and December 18, 2020, which have been effective for H–2A petitions that were received on or after August 19, 2020 through December 17, 2020, and on or after December 18, 2020 through June 16, 2021, respectively. 85 FR 51304 and 85 FR 82291.

[77] HHS, *Determination of Public Health Emergency,* 85 FR 7316 (Feb. 7, 2020).

[78] *See* HHS Renewal of Determination That A Public Health Emergency Exists, *https://www.phe.gov/emergency/news/healthactions/phe/Pages/COVID-15April2021.aspx* (Apr. 15, 2021).

COVID–19 outbreak to control the spread of the virus in the United States.[79] The proclamation declared that the emergency began on March 1, 2020. DOS temporarily suspended routine immigrant and nonimmigrant visa services at all U.S. Embassies and Consulates on March 20, 2020, and subsequently announced a phased resumption of visa services in which it would continue to provide emergency and mission critical visa services and resume routine visa services as local conditions and resources allowed.[80] Based on the importance of the H–2A temporary agricultural worker and H–2B temporary nonagricultural worker programs, DOS indicated it would continue processing H–2A and H–2B cases to the extent possible, as permitted by post resources and local government restrictions, and expanded the categories of H–2 visa applicants whose applications can be adjudicated without an in-person interview.[81] As recently as April 6, 2021, however, DOS noted the COVID–19 pandemic continues to have a severe adverse impact on routine visa services for embassies and consulates around the world.[82]

Further, due to the possibility that some H–2B workers may be unavailable due to visa processing delays or may become unavailable due to COVID–19 related illness or a legitimate fear of contracting COVID–19 under current conditions, U.S. employers that have approved H–2B petitions or who will be filing H–2B petitions in accordance with this rule might not receive all of the workers requested to fill the temporary positions.

DHS is strongly committed not only to protecting U.S. workers and helping U.S. businesses receive the documented and work-authorized workers to perform temporary nonagricultural services or labor that they need, but also to protecting the rights and interests of H–2B workers (consistent with Executive Order 13563 and in particular its reference to ''equity,'' ''fairness,'' and ''human dignity''). In the FY 2020 DHS Further Consolidated Appropriations Act (Public Law 116–94), Congress directed DHS to provide options to improve the H–2A and H–2B visa programs, to include options that would protect worker rights.[83] DHS has determined that providing H–2B nonimmigrant workers with the flexibility of being able to begin work with a new H–2B petitioner immediately and avoid a potential job loss or loss of income while the new H–2B petition is pending, provides some certainty to H–2B workers who have maintained their status but may have found themselves in situations that warrant a change in employers.[84] Providing that flexibility is also equitable and fair.

Portability for H–2B workers provides these noncitizens with the option of not having to worry about job loss or loss of income between the time they leave a current employer and while they await approved employment with a new U.S. employer or agent. DHS believes this flexibility and job portability not only protects H–2B workers but also provides an alternative to H–2B petitioners who have not been able to find U.S. workers and who have not been able to obtain H–2B workers subject to the statutory or supplemental caps who have the skills to perform the job duties. In that sense as well, it is equitable and fair.

DHS is making this flexibility available for a 180-day period in order to provide stability for H–2B employers amidst uncertainties surrounding the COVID–19 pandemic. This period is justified especially given the possible future impacts of COVID–19 variants, continuing limited vaccine access for certain groups (including in H–2B workers' home countries), and uncertainty regarding the duration of vaccine-gained immunity and how effective currently approved vaccines are in responding to COVID–19 variants.[85] DHS will continue to monitor the evolving health crisis caused by COVID–19 and may address it in future rules.

*H. COVID–19 Worker Protections*

It is the policy of DHS and its Federal partners to support equal access to the COVID–19 vaccines and vaccine distribution sites, irrespective of an individuals' immigration status.[86] This policy promotes fairness and equity (see Executive Order 13563). Accordingly, DHS and DOL encourage all individuals, regardless of their immigration status, to receive the COVID–19 vaccine. U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection do not conduct enforcement operations at or near vaccine distribution sites or clinics. Consistent with ICE's long-standing sensitive locations policy, ICE does not and will not carry out enforcement operations at or near health care facilities, such as hospitals, doctors' offices, accredited health clinics, and emergent or urgent care facilities, except in the most extraordinary of circumstances.

This TFR reflects that policy by providing as follows:

*Supplemental H–2B Visas:* With respect to petitioners who wish to qualify to receive supplemental H–2B visas pursuant to the FY 2021 Omnibus, the Departments are using the DOL Form ETA–9142–B–CAA–4 to support equal access to vaccines in two ways. First, the Departments are requiring such petitioners to attest on the DOL Form ETA–9142–B–CAA–4 that, consistent with such petitioners' obligations under generally applicable H–2B regulations, they will comply with all Federal, State, and local employment-related laws and

[79] Proclamation 9994 of Mar. 13, 2020, *Declaring a National Emergency Concerning the Coronavirus Disease (COVID–19) Outbreak,* 85 FR 15337 (Mar. 18, 2020).

[80] DOS, *Suspension of Routine Visa Services, https://travel.state.gov/content/travel/en/News/visas-news/suspension-of-routine-visa-services.html* (last updated July 22, 2020).

[81] DOS, *Important Announcement on H2 Visas, https://travel.state.gov/content/travel/en/News/visas-news/important-announcement-on-h2-visas.html* (last updated Mar. 26, 2020).

[82] DOS, *Visa Services Operating Status Update, https://travel.state.gov/content/travel/en/News/visas-news/visa-services-operating-status-update.html* (last updated, Apr. 6, 2021).

[83] The Joint Explanatory Statement accompanying the *Fiscal Year* (FY) *2020 Department of Homeland Security* (DHS) *Further Consolidated Appropriations Act* (Public Law 116–94) states, ''H–2A and H–2B Visa Program Processes.—Not later than 120 days after the date of enactment of this Act, DHS, the Department of Labor, the Department of State, and the United States Digital Service are directed to report on options to improve the execution of the H–2A and H–2B visa programs, including: processing efficiencies; combatting human trafficking; protecting worker rights; and reducing employer burden, to include the disadvantages imposed on such employers due to the current semiannual distribution of H–2B visas on October 1 and April 1 of each fiscal year. USCIS is encouraged to leverage prior year materials relating to the issuance of additional H–2B visas, to include previous temporary final rules, to improve processing efficiencies.''

[84] The National Action Plan to Combat Human Trafficking, Priority Action 1.6.3, at p. 20–21 (2020) (Stating that ''[w]orkers sometimes find themselves in abusive work situations, but because their immigration status is dependent on continued employment with the employer in whose name the visa has been issued, workers may be left with few options to leave that situation.'' By providing the option of changing employers without risking job loss or a loss of income through the publication of this rule, DHS believes that H–2B workers may be more likely to leave abusive work situations, and thereby are afforded greater worker protections.)

[85] *See,* About Variants of the Virus that Causes COVID–19, Centers for Disease Control and Prevention, last updated April 2, 2021. *https://www.cdc.gov/coronavirus/2019-ncov/transmission/variant.html,* Key Things to Know About COVID–19 Vaccines, *https://www.cdc.gov/coronavirus/2019-ncov/vaccines/keythingstoknow.html?s_cid=10499:what%20is%20the%20covid%20vaccine:sem.ga:p:RG:GM:gen:PTN:FY21* (Last visited April 14, 2021).

[86] *See* DHS Statement on Equal Access to COVID–19 Vaccines and Vaccine Distribution Sites, *https://www.dhs.gov/news/2021/02/01/dhs-statement-equal-access-covid-19-vaccines-and-vaccine-distribution-sites* (Feb. 1, 2021), (accessed Apr. 28, 2021).

regulations, including health and safety laws and laws related to COVID–19 worker protections and any right to time off or paid time off for COVID–19 vaccination. *See* new 8 CFR 214.2(h)(6)(x)(B)(*2*)(*iii*) and 20 CFR 655.64(a)(4). Second, the Departments are requiring such petitioners to also attest that they will notify any H–2B workers approved under the supplemental cap, in a language understood by the worker, as necessary or reasonable, that all persons in the United States, including nonimmigrants, have equal access to COVID–19 vaccines and vaccine distribution sites. Because the attestation will be submitted to USCIS as initial evidence with Form I–129, DHS considers the attestation to be evidence that is incorporated into and a part of the petition consistent with 8 CFR 103.2(b)(1). Accordingly, a petition may be denied or revoked, as applicable, based on or related to statements made in the attestation, including, but not limited to, because the employer violated an applicable employment-related law or regulation, or failed to notify workers regarding equal access to COVID–19 vaccines and vaccine distribution sites.

*Other H–2B Employers:* While there is no additional attestation with respect to H–2B petitioners that do not avail themselves of the supplemental H–2B visas made available under this rule, the Departments remind all H–2B employers that they must comply with all Federal, State, and local employment-related laws and regulations, including health and safety laws and laws related to COVID–19 worker protections and any right to time off or paid time off for COVID–19 vaccination. Failure to comply with such laws may be a basis for DHS to revoke the petition under 8 CFR 214.2(h)(11). This obligation is also reflected as a condition of H–2B portability under this rule. See new 8 CFR 214.2(h)(26)(iii)(C).

Ensuring that the Departments encourage employers to provide access to COVID–19 vaccines is consistent with the policies of the Biden Administration. President Biden, in his speech to Joint Session of Congress, made the following statement: ''[T]oday, I'm announcing a program to address [the issue of COVID vaccinations] . . . nationwide. I'm calling on every employer, large and small, in every state, to give employees the time off they need, with pay, to get vaccinated and any time they need, with pay, to recover if they are feeling under the weather after the shot.'' [87] Consistent with the President's statement, the Departments strongly urge, but do not require, that all employers seeking H–2B workers under either the Supplemental Cap or portability sections of the TFR, make every effort to ensure that all their workers, including nonimmigrant workers, be afforded an opportunity to take the time off needed to get receive their COVID–19 vaccinations, as well as time off, with pay, to recover from any temporary side effect.

As noted, Executive Order 13563 refers to fairness, equity, and human dignity, and such efforts, on the part of employers, would be consistent with those commitments.

Petitioners otherwise are strongly encouraged to facilitate and provide flexibilities, to the greatest extent possible, to all workers who wish to receive COVID–19 vaccinations.

*I. DHS Petition Procedures*

To petition for H–2B workers under this rule, the petitioner must file a Form I–129 in accordance with applicable regulations and form instructions, an unexpired TLC, and the attestation form described above. All H–2B petitions must state the nationality of all the requested H–2B workers, whether named or unnamed, even if there are beneficiaries from more than one country. *See* 8 CFR 214.2(h)(2)(iii). If filing multiple Forms I–129 based on the same TLC (for instance, one requesting returning workers and another requesting workers who are nationals of one of the Northern Triangle countries), each H–2B petition must include a copy of the TLC and reference all previously-filed or concurrently filed petitions associated with the same TLC. The total number of requested workers may not exceed the total number of workers indicated on the approved TLC. Petitioners seeking H–2B classification for Northern Triangle country nationals under the 6,000 visas that are exempt from the returning worker provision must file a separate Form I–129 for those Northern Triangle country nationals only. *See* new 8 CFR 214.2(h)(6)(x). Requiring the filing of separate petitions to request returning workers and to request workers who are Northern Triangle country nationals is necessary to ensure the operational capability to properly calculate and manage the respective additional cap allocations and to ensure that all corresponding visa issuances are limited to qualifying applicants, particularly when such petitions request unnamed beneficiaries or are relied upon for subsequent requests to substitute beneficiaries in accordance with 8 CFR 214.2(h)(6)(viii). The attestations must be filed on Form ETA–9142–B–CAA–4, Attestation for Employers Seeking to Employ H–2B Nonimmigrants Workers Under Section 105 of Division O of the Further Consolidated Appropriations Act, 2021 Public Law 116–260. *See* 20 CFR 655.64. A petitioner is required to retain a copy of such attestations and all supporting evidence for 3 years from the date the associated TLC was approved, consistent with 20 CFR 655.56 and 29 CFR 503.17. *See* new 20 CFR 655.68. Petitions submitted to DHS pursuant to the FY 2021 Omnibus will be processed in the order in which they were received. Petitioners may also choose to request premium processing of their petitions under 8 CFR 103.7(e), which allows for expedited processing for an additional fee.

To encourage timely filing of any petition seeking a visa under the FY 2021 Omnibus, DHS is notifying the public that the petition may not be approved by USCIS on or after October 1, 2021. *See* new 8 CFR 214.2(h)(6)(x). Petitions pending with USCIS that are not approved before October 1, 2021 will be denied and any fees will not be refunded. *See* new 8 CFR 214.2(h)(6)(x).

USCIS's current processing goal for H–2B petitions filed via premium processing that can be adjudicated without the need for further evidence (in other words, without a Request for Evidence or Notice of Intent to Deny) is 15 days. USCIS intends to adjudicate petitions filed for standard processing within a reasonable period of time.[88] Given USCIS' processing goals for premium processing, DHS believes that 15 days from the end of the fiscal year is the minimum time needed for petitions to be adjudicated, although USCIS cannot guarantee the time period will be sufficient in all cases. Therefore, if the increase in the H–2B numerical limitation to 22,000 visas has not yet been reached, USCIS will stop accepting petitions received after September 15, 2021. *See* new 8 CFR 214.2(h)(6)(x)(C). Such petitions will be rejected and the filing fees will be returned.

As with other Form I–129 filings, DHS encourages petitioners to provide a duplicate copy of Form I–129 and all supporting documentation at the time of filing if the beneficiary is seeking a

[87] *See https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/04/21/remarks-by-president-biden-on-the-covid-19-response-and-the-state-of-vaccinations-2/.*

[88] These processing goals are not binding on USCIS; depending on the evidence presented, actual processing times may vary.

nonimmigrant visa abroad. Failure to submit a duplicate copy may cause a delay in the issuance of a visa to an otherwise eligible applicant.[89]

*J. DOL Procedures*

As noted above, all employers are required to have an approved and valid TLC from DOL in order to file a Form I–129 petition with DHS. *See* 8 CFR 214.2(h)(6)(iv)(A) and (D). The standards and procedures governing the submission and processing of *Applications for Temporary Employment Certification* for employers seeking to hire H–2B workers are set forth in 20 CFR part 655, subpart A. Employers with an approved TLC have conducted recruitment, as set forth in 20 CFR 655.40 through 655.48, to determine whether U.S. workers are qualified and available to perform the work for which H–2B workers are sought.

In addition to the recruitment already conducted in connection with a valid TLC, in order to ensure the recruitment has not become stale, employers that wish to obtain visas for their workers under 8 CFR 214.2(h)(6)(x), and who file an I–129 petition 45 or more days after the certified start date of work on the TLC must conduct additional recruitment for U.S. workers. This is particularly important this year as U.S. workers have begun to, and will continue to, reenter the workforce as they become vaccinated and the COVID–19 emergency subsides.

As noted in the 2015 H–2B Interim Final Rule, U.S. workers seeking employment in temporary or seasonal nonagricultural jobs typically do not search for work months in advance, and cannot make commitments about their availability for employment far in advance of the work start date. *See* 80 FR 24041, 24061, 24071. Given that the temporary labor certification process generally begins 75 to 90 days in advance of the employer's start date of work, employer recruitment efforts typically occur between 40 and 60 days before that date with an obligation to provide employment to any qualified U.S. worker who applies until 21 days before the date of need. Therefore, employers with TLCs containing a start date of work on April 1, 2021, likely conducted their positive recruitment beginning around late-January and ending around mid-February 2021, and continued to consider U.S. worker applicants and referrals only until March 11, 2021.

In order to provide U.S. workers a realistic opportunity to pursue jobs for which employers will be seeking foreign workers under this rule, the Departments have determined that if employers file an I–129 petition 45 or more days after their dates of need, they have not conducted recruitment recently enough for the Departments to reasonably conclude that there are currently an insufficient number of U.S. workers who are qualified, willing, and available to perform the work absent taking additional, positive recruitment steps. The 45-day threshold for additional recruitment identified in this rule reflects a timeframe between the end of the employer's recruitment and filing of the petition similar to that provided under the FY 2018 and FY 2019 H–2B supplemental cap rules.

An employer who files an I–129 petition under 8 CFR 214.2(h)(6)(x) less than 45 after the certified start date of work on the TLC must submit the TLC and a completed Form ETA–9142B–CAA–4, but is not required to conduct recruitment for U.S. workers beyond the recruitment already conducted as a condition of certification. Only those employers with still-valid TLCs with a start date of work that is 45 or more days before the date they file a petition will be required to conduct recruitment in addition to that conducted prior to being granted labor certification and attest that the recruitment will be conducted, as follows.

The employer must place a new job order for the job opportunity with the State Workforce Agency (SWA) serving the area of intended employment no later than the next business day after submitting an I–129 petition for H–2B workers to USCIS. The job order must contain the job assurances and contents set forth in 20 CFR 655.18 for recruitment of U.S. workers at the place of employment, and remain posted for at least 15 calendar days. The employer must also follow all applicable SWA instructions for posting job orders and receive applications in all forms allowed by the SWA, including online applications. The Departments have concluded that keeping the job order posted for a period of 15 calendar days, during the period the employer is conducting the additional recruitment steps explained below, will effectively ensure U.S. workers are apprised of the job opportunity and are referred for employment, if they are willing, qualified, and available to perform the work. The 15 calendar day period also is consistent with the employer-conducted recruitment activity period applicable under 20 CFR 655.40(b).

The employer also must conduct additional recruitment steps during the period of time the SWA is actively circulating the job order for intrastate clearance. First, the employer must contact, by email or other electronic means, the nearest American Job Center(s) (AJC) offering business services and serving the area of intended employment where work will commence to request staff assistance to advertise and recruit U.S. workers for the job opportunity. AJCs bring together a variety of programs providing a wide range of employment and training services for U.S. workers, including job search services and assistance for prospective workers and recruitment services for employers through the Wagner-Peyser Program. Therefore, AJCs can offer assistance to employers with recruitment of U.S. workers, and contact with local AJCs will facilitate contemporaneous and effective recruitment activities that can broaden dissemination of the employer's job opportunity through connections with other partner programs within the One-Stop System to locate qualified U.S. workers to fill the employer's labor need. For example, the local AJC may contact community-based organizations in the geographic area that serve potentially qualified workers or, when a job opportunity is in an occupation or industry that is traditionally or customarily unionized, the local AJC is well-positioned to identify and circulate the job order to appropriate union offices, consistent with 20 CFR 655.33(b)(5). In addition, as a partner program in the One-Stop System, AJCs are connected with the state's unemployment insurance program, thus an employer's connection with the AJC will help facilitate knowledge of the job opportunity to U.S. workers actively seeking employment. When contacting the AJC(s), the employer must provide staff with the job order number or, if the job order number is unavailable, a copy of the job order.

To increase navigability and to make the process as convenient as possible, DOL offers an online service for employers to locate the nearest local AJC at *https://www.careeronestop.org/* and by selecting the ''Find Local Help'' feature on the main homepage. This feature will navigate the employer to a search function called ''Find an American Job Center'' where the city, state or zip code covering the geographic area where work will commence can be entered. Once entered and the search function is executed, the online service will return a listing of the

[89] Petitioners should note that under section 105, the H–2B numerical increase relates to the total number of noncitizens who may receive a visa under INA section 101(a)(15)(H)(ii)(b) in this fiscal year.

name(s) of the AJC(s) serving that geographic area as well as contact option(s) and an indication as to whether the AJC is a ''comprehensive'' or ''affiliate'' center. Employers must contact an AJC that is labeled ''comprehensive center'' as those offer the full range of employment and business services. As explained on the locator website, many AJCs continue to offer virtual or remote services due to the pandemic with physical office locations temporarily closed for in-person and mail processing services. Therefore, this rule requires that employers utilize available electronic methods for the nearest AJC to meet the contact and disclosure requirements in this rule.

Second, during the period of time the SWA is actively circulating the job order described in paragraph (a)(5)(i) for intrastate clearance, the employer must make reasonable efforts to contact (by mail or other effective means) its former U.S. workers that it employed in the occupation at the place of employment (except those who were dismissed for cause or who abandoned the worksite) during the period beginning January 1, 2019, until the date the I–129 petition required under 8 CFR 214.2(h)(6)(x) is submitted. Among the employees the employer must contact are those who have been furloughed or laid off during this period. The employer must disclose to its former employees the terms of the job order, and solicit their return to the job. The contact and disclosures required by this paragraph must be provided in a language understood by the worker, as necessary or reasonable.

Furloughed employees are employees the employer laid off (as the term is defined in 20 CFR 655.5 and 29 CFR 503.4), but the layoff is intended to last for a temporary period of time. This recruitment step will help ensure notice of the job opportunity is disseminated broadly to U.S. workers who were laid off or furloughed during the COVID–19 outbreak and who may be seeking employment as the economy begins to recover in 2021. While this requirement goes beyond the requirement at 20 CFR 655.43, the Departments believes it is appropriate given the evolving conditions of the U.S. labor market, as described above, and the increased likelihood that qualified U.S. workers will make themselves available for these job opportunities.

Third, as the employer was required to do when initially applying for its labor certification, the employer must provide a copy of the job order to the bargaining representative for employees in the occupation and area of intended employment, consistent with 20 CFR 655.45(a), or if there is no bargaining representative, post the job order in the places and manner described in 20 CFR 655.45(b).

The requirements to contact former U.S. workers and provide notice to the bargaining representative or post the job order must be conducted in a language understood by the workers, as necessary or reasonable. This requirement would apply, for example, in situations where an employer has one or more employees who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English. This requirement would allow those workers to make informed decisions regarding the job opportunity, and is a reasonable interpretation of the recruitment requirements in 20 CFR part 655, subpart A, in light of the need to ensure that the test of the U.S. labor market is as comprehensive as possible. Consistent with existing language requirements in the H–2B program under 20 CFR 655.20(l), DOL intends to broadly interpret the necessary or reasonable qualification, and apply an exemption only in those situations where having the job order translated into a particular language would both place an undue burden on an employer and not significantly disadvantage the employee.

The employer must hire any qualified U.S. worker who applies or is referred for the job opportunity until either (1) the date on which the last H–2B worker departs for the place of employment, or (2) 30 days after the last date on which the SWA job order is posted, whichever is later. Additionally, consistent with 20 CFR 655.40(a), applicants may be rejected only for lawful job-related reasons. Given that the employer, SWA, and AJC(s) will be actively engaged in conducting recruitment and broader dissemination of the job opportunity during the period of time the job order is active, this requirement provides an adequate period of time for U.S. workers to contact the employer or SWA for referral to the employer and completion of the additional recruitment steps described above. As explained above, the Departments have determined that if employers file a petition 45 or more days after their dates of need, they have not conducted recruitment recently enough for the Departments to reasonably conclude that there are currently an insufficient number of U.S. workers qualified, willing, and available to perform the work absent additional recruitment.

Because of the abbreviated timeline for the additional recruitment required for employers whose initial recruitment has gone stale, the Departments have determined that a longer hiring period is necessary to approximate the hiring period under normal recruitment procedures and ensure that domestic workers have access to these job opportunities, consistent with the Departments' mandate. Additionally, given the relatively brief period during which additional recruitment will occur, additional time may be necessary for U.S. workers to have a meaningful opportunity to learn about the job opportunities and submit applications.

Although the hiring period may require some employers to hire U.S. workers after the start of the contract period, this is not unprecedented. For example, in the H–2A program, employers have been required to hire U.S. workers through 50 percent of the contract period since at least 2010,[90] which ''enhance[s] protections for U.S. workers, to the maximum extent possible, while balancing the potential costs to employers,'' and is consistent with the Departments' responsibility to ensure that these job opportunities are available to U.S. workers.[91] The Department acknowledges that hiring workers after the start of the contract period imposes an additional cost on employers, but that cost can be lessened, in part, by the ability to discharge the H–2B worker upon hiring a U.S. worker. Additionally, this rule permits employers to immediately hire H–2B workers who are already present in the United States without waiting for approval of an H–2B petition, which will reduce the potential for harm to H–2B workers as a result of displacement by U.S. workers. *See* new 8 CFR 214.2(h)(26). Most importantly, a longer hiring period will ensure that available U.S. workers have a viable opportunity to apply for H–2B job opportunities. Accordingly, the Departments have determined that in affording the benefits of this temporary cap increase to businesses that need workers to avoid irreparable harm, it is necessary to ensure U.S. workers who may be seeking employment as the economy begins to recover in 2021 have sufficient time to apply for these jobs.

Finally, as in the temporary rules implementing the supplemental cap increases in prior years, employers must retain documentation demonstrating compliance with the recruitment requirements described above, including placement of a new job order

[90] Final Rule, *Temporary Agricultural Employment of H–2A Aliens in the United States,* 75 FR 6884, 6921 (Feb. 12, 2010).

[91] NPRM, *Temporary Agricultural Employment of H–2A Aliens in the United States,* 74 FR 45906, 45917 (Sept. 4, 2009); 75 FR at 6922.

with the SWA, contact with AJCs, contact with former U.S. workers, and compliance with § 655.45(a) or (b). Employers must prepare and retain a recruitment report that describes these efforts and meets the requirements set forth in 20 CFR 655.48, including the requirement to update the recruitment report throughout the recruitment and hiring period set forth in paragraph (a)(5)(v) of new 20 CFR 655.64. Employers must maintain copies of the recruitment report, attestation, and supporting documentation, as described above, for a period of 3 years from the date that the TLC was approved, consistent with the document retention requirements under 20 CFR 655.56. These requirements are similar to those that apply to certain seafood employers who stagger the entry of H–2B workers under 20 CFR 655.15(f).

DOL's WHD has the authority to investigate the employer's attestations, as the attestations are a required part of the H–2B petition process under this rule and the attestations rely on the employer's existing, approved TLC. Where a WHD investigation determines that there has been a willful misrepresentation of a material fact or a substantial failure to meet the required terms and conditions of the attestations, WHD may institute administrative proceedings to impose sanctions and remedies, including (but not limited to) assessment of civil money penalties; recovery of wages due; make-whole relief for any U.S. worker who has been improperly rejected for employment, laid off, or displaced; and/or debarment for 1 to 5 years. *See* 29 CFR 503.19, 503.20. This regulatory authority is consistent with WHD's existing enforcement authority and is not limited by the expiration date of this rule. Therefore, in accordance with the documentation retention requirements at new 20 CFR 655.68, the petitioner must retain documents and records evidencing compliance with this rule, and must provide the documents and records upon request by DHS or DOL.

DHS has the authority to verify any information submitted to establish H–2B eligibility at any time before or after the petition has been adjudicated by USCIS. *See, e.g.,* INA sections 103 and 214 (8 U.S.C. 1103, 1184); *see also* 8 CFR part 103 and 8 CFR 214.2(h). DHS' verification methods may include, but are not limited to, review of public records and information, contact via written correspondence or telephone, unannounced physical site inspections, and interviews. USCIS will use information obtained through verification to determine H–2B eligibility and assess compliance with the requirements of the H–2B program. Subject to the exceptions described in 8 CFR 103.2(b)(16), USCIS will provide petitioners with an opportunity to address any adverse information that may result from a USCIS compliance review, verification, or site visit after a formal decision is made on a petition or after the agency has initiated an adverse action that may result in revocation or termination of an approval.

As previously noted, the Departments have agreed to select a significant number of approved petitions for audit examination to verify compliance with the irreparable harm standard and additional employer conducted recruitment implemented through this rule. DOL's OFLC already has the authority under 20 CFR 655.70 to conduct audit examinations on adjudicated *Applications for Temporary Employment Certification,* including all appropriate appendices, and verify any information supporting the employer's attestations. OFLC uses audits of adjudicated *Applications for Temporary Employment Certification,* as authorized by 20 CFR 655.70, to ensure employer compliance with attestations made in its *Application for Temporary Employment Certification* and to ensure the employer has met all statutory and regulatory criteria and satisfied all program requirements. The OFLC certifying officer (CO) has sole discretion to choose which *Applications for Temporary Employment Certification* will be audited. *See* 20 CFR 655.70(a). Post adjudication audits can be used to establish a record of employer compliance or non-compliance with program requirements and the information gathered during the audit assists DOL in determining whether it needs to further investigate or debar an employer or its agent or attorney from future labor certifications.

Under this rule, an employer may submit a petition to USCIS, including a valid TLC and Form ETA–9142B–CAA–4, in which the employer attests to compliance with requirements for access to the supplemental H–2B visas allocated through 8 CFR 214.2(h)(6)(x), including that its business is likely to suffer irreparable harm and that it will conduct additional recruitment, if necessary to refresh the TLC's labor market test. DHS and DOL consider Form ETA–9142B–CAA–4 to be an appendix to the *Application for Temporary Employment Certification* and the attestations contained on the Form ETA–9142B–CAA–4 and documentation supporting the attestations to be evidence that is incorporated into and a part of the approved TLC. Therefore, DOL's audit authority includes the authority to audit the veracity of any attestations made on Form ETA–9142B–CAA–4 and documentation supporting the attestations. However, DOL's audit authority is independently authorized, and is not limited by the expiration date of this rule. In order to make certain that the supplemental visa allocation is not subject to fraud or abuse, DHS will share information regarding Forms ETA–9142B–CAA–4 with DOL, consistent with existing authorities. This information sharing will support DOL's identification of TLCs used to access the supplemental visa allocation for closer examination of TLCs through the audit process.

In accordance with the documentation retention requirements in this rule, the petitioner must retain documents and records proving compliance with this rule, and must provide the documents and records upon request by DHS or DOL. Under this rule, DOL will audit a significant number of TLCs used to access the supplemental visa allocation to ensure employer compliance with attestations, including those regarding the irreparable harm standard and additional employer conducted recruitment, required under this rule. In the event of an audit, the OFLC CO will send a letter to the employer and, if appropriate, a copy of the letter to the employer's attorney or agent, listing the documentation the employer must submit and the date by which the documentation must be sent to the CO. During audits under this rule, the CO will request documentation necessary to demonstrate the employer conducted all e recruitment steps required under this rule and truthfully attested to the irreparable harm the employer would suffer if it does not receive all requested workers under the cap increase, including documentation the employer is required to retain under this rule. If necessary to complete the audit, the CO may request supplemental information and/or documentation from the employer during the course of the audit process. 20 CFR 655.70(c).

Failure to comply in the audit process may result in the revocation of the employer's certification or in debarment, under 20 CFR 655.72 and 655.73, respectively, or require the employer to undergo assisted recruitment in future filings of an *Application for Temporary Employment Certification,* under 20 CFR 655.71. Where an audit examination or review of information from DHS or other appropriate agencies determines that there has been fraud or willful misrepresentation of a material fact or a

substantial failure to meet the required terms and conditions of the attestations or failure to comply with the audit examination process, OFLC may institute appropriate administrative proceedings to impose sanctions on the employer. Those sanctions may result in revocation of an approved TLC, the requirement that the employer undergo assisted recruitment in future filings of an *Application for Temporary Employment Certification* for a period of up to 2 years, and/or debarment from the H–2B program and any other foreign labor certification program administered by DOL for 1 to 5 years. *See* 29 CFR 655.71, 655.72, 655.73. Additionally, OFLC has the authority to provide any finding made or documents received during the course of conducting an audit examination to DHS, WHD, IER, or other enforcement agencies. OFLC's existing audit authority is independently authorized, and is not limited by the expiration date of this rule. Therefore, in accordance with the documentation retention requirements at new 20 CFR 655.68, the petitioner must retain documents and records proving compliance with this rule, and must provide the documents and records upon request by DHS or DOL.

Petitioners must also comply with any other applicable laws, such as avoiding unlawful discrimination against U.S. workers based on their citizenship status or national origin. Specifically, the failure to recruit and hire qualified and available U.S. workers on account of such individuals' national origin or citizenship status may violate INA section 274B, 8 U.S.C. 1324b.

## IV. Statutory and Regulatory Requirements

### *A. Administrative Procedure Act*

This rule is issued without prior notice and opportunity to comment and with an immediate effective date pursuant to the Administrative Procedure Act (APA). 5 U.S.C. 553(b) and (d).

#### 1. Good Cause To Forgo Notice and Comment Rulemaking

The APA, 5 U.S.C. 553(b)(B), authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency, for good cause, finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Among other things, the good cause exception for forgoing notice and comment rulemaking ''excuses notice and comment in emergency situations, or where delay could result in serious harm.'' *Jifry* v. *FAA,* 370 F.3d 1174, 1179 (D.C. Cir. 2004). Although the good-cause exception is ''narrowly construed and only reluctantly countenanced,'' *Tenn. Gas Pipeline Co.* v. *FERC,* 969 F.2d 1141, 1144 (D.C. Cir. 1992), the Departments have appropriately invoked the exception in this case, for the reasons set forth below.

With respect to the supplemental allocations provisions in 8 CFR 214.2 and 20 CFR part 655, subpart A, the Departments are bypassing advance notice and comment because of the exigency created by section 105 of Div. O of the FY 2021 Omnibus, which went into effect on December 27, 2020, and expires on September 30, 2021, as well as rapidly evolving economic conditions and labor demand, as described above. USCIS received more than enough petitions to meet the H–2B visa statutory cap for the second half of FY 2021 on February 12, 2021, which is 6 days earlier than when the statutory cap for the second half of FY 2020 was reached. USCIS conducted a lottery on February 17, 2021, to randomly select a sufficient number of petitions to meet the remainder of the statutory cap. USCIS rejected and returned the petitions and associated filing fees to petitioners that were not selected, as well as all cap-subject petitions received after February 12, 2021. Given high demand by American businesses for H–2B workers, rapidly evolving economic conditions and labor demand, and the short time remaining in the fiscal year for U.S. employers to avoid the economic harm described above, a decision to undertake notice and comment rulemaking would likely delay final action on this matter by weeks or months, and would, therefore, greatly complicate and indeed likely preclude the Departments from successfully exercising the authority created by section 105.

The temporary portability and change of employer provisions in 8 CFR 214.2 and 274a.12 are further supported by conditions created by the COVID–19 pandemic. On January 31, 2020, the Secretary of Health and Human Services declared a public health emergency under section 319 of the Public Health Service Act in response to COVID–19 retroactive to January 27, 2020.[92] This determination that a public health emergency exists due to COVID–19 has subsequently been renewed five times: On April 21, 2020, on July 23, 2020, on October 2, 2020, January 7, 2021, and most recently on April 15, 2021 effective on April 21, 2021.[93] On March 13, 2020, then-President Trump declared a National Emergency concerning the COVID–19 outbreak, retroactive to March 1, 2020, to control the spread of the virus in the United States.[94] In response to the Mexican government's call to increase social distancing in that country, DOS announced the temporary suspension of routine immigrant and nonimmigrant visa services processed at the U.S. Embassy in Mexico City and all U.S. consulates in Mexico beginning on March 18, 2020.[95] DOS expanded the temporary suspension of routine immigrant and nonimmigrant visa services at all U.S. Embassies and Consulates on March 20, 2020.[96] On July 22, 2020, DOS indicated that embassies and consulates should continue to provide emergency and mission critical visa services to the extent possible and could begin a phased resumption of routine visa services as local conditions and resources allow.[97] On March 26, 2020 DOS designated the H–2 programs as essential to the economy and food security of the United States and a national security priority; DOS indicated that U.S. Embassies and Consulates will continue to process H–2 cases to the extent possible and implemented a change in its procedures, to include interview waivers.[98] On January 25, 2021, President Biden issued a *Proclamation on the Suspension of Entry as Immigrants and Non-Immigrants of Certain Additional Persons Who Pose a Risk of Transmitting Coronavirus Disease*.[99] The proclamation restricted entry into the United States from European Schengen treaty countries, the United Kingdom (including territories outside of Europe), Ireland, Brazil, and South

[92] HHS, Determination that a Public Health Emergency Exists, *https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx* (last visited Apr. 20, 2021). See also HHS, Determination of Public Health Emergency, 85 FR 7316 (Feb. 7, 2020).

[93] *See* HHS Renewal of Determination That A Public Health Emergency Exists, *https://www.phe.gov/emergency/news/healthactions/phe/Pages/COVID-15April2021.aspx.* (Apr. 15, 2021).

[94] President of the United States, Proclamation 9994 of March 13, 2020, Declaring a National Emergency Concerning the Coronavirus Disease (COVID–19) Outbreak, 85 FR 15337 (Mar. 18, 2020).

[95] DOS, Suspension of Routine Visa Services, *https://travel.state.gov/content/travel/en/News/visas-news/suspension-of-routine-visa-services.html* (last updated Mar. 20, 2020).

[97] *https://travel.state.gov/content/travel/en/News/visas-news/suspension-of-routine-visa-services.html*

[98] *https://travel.state.gov/content/travel/en/News/visas-news/important-announcement-on-h2-visas.html* (Last visited on Apr. 21, 2021).

[99] Proclamation 10143 of January 25, 2021, 86 FR 7467 (Jan. 28, 2021). *https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/25/proclamation-on-the-suspension-of-entry-as-immigrants-and-non-immigrants-of-certain-additional-persons-who-pose-a-risk-of-transmitting-coronavirus-disease/.*

Africa—countries where COVID–19 variants originated or were identified as present.[100] On January 28, 2021, DOS reaffirmed the importance of the H–2 programs by making a national interest designation for certain H–2 travelers from South Africa.[101] On April 19, 2021, Customs and Border Protection announced an extension of certain land border restrictions between U.S. and Canada, and U.S. and Mexico to May 21, 2021.[102]

In addition to travel restrictions and impacts of the pandemic on visa services, as discussed elsewhere in this rule, current efforts to curb the pandemic in the United States and worldwide have been partially successful, however, with the emergence of COVID–19 variants; different rates of vaccination in some countries and regions; and other uncertainties associated with the evolving pandemic situation, DHS anticipates that H–2B employers may need additional flexibilities, beyond supplemental visa numbers, to meet all of their labor needs, particularly if some U.S. and H–2B workers become unavailable due to illness or other restrictions related to the spread of COVID–19. Therefore, DHS is acting expeditiously to put in place rules that will facilitate the continued employment of H–2B workers already present in the United States. This action will help employers fill these critically necessary nonagricultural job openings and protect U.S. businesses' economic investments in their operations.

Courts have found ''good cause'' under the APA when an agency is moving expeditiously to avoid significant economic harm to a program, program users, or an industry. Courts have held that an agency may use the good cause exception to address ''a serious threat to the financial stability of [a government] benefit program,'' *Nat'l Fed'n of Fed. Emps.* v. *Devine,* 671 F.2d 607, 611 (D.C. Cir. 1982), or to avoid ''economic harm and disruption'' to a given industry, which would likely result in higher consumer prices, *Am. Fed'n of Gov't Emps.* v. *Block,* 655 F.2d 1153, 1156 (D.C. Cir. 1981).

Consistent with the above authorities, the Departments are bypassing notice and comment to prevent ''serious economic harm to the H–2B community,'' including U.S. employers, associated U.S. workers, and related professional associations, that could result from ongoing uncertainty over the status of the numerical limitation, in other words, the effective termination of the program through the remainder of FY 2021. *See Bayou Lawn & Landscape Servs.* v. *Johnson,* 173 F. Supp. 3d 1271, 1285 & n.12 (N.D. Fla. 2016). The Departments note that this action is temporary in nature, *see id.,*[103] and includes appropriate conditions to ensure that it affects only those businesses most in need, and also protects H–2B and U.S. workers.

2. Good Cause To Proceed With an Immediate Effective Date

The APA also authorizes agencies to make a rule effective immediately, upon a showing of good cause, instead of imposing a 30-day delay. 5 U.S.C. 553(d)(3). The good cause exception to the 30-day effective date requirement is easier to meet than the good cause exception for foregoing notice and comment rulemaking. *Riverbend Farms, Inc.* v. *Madigan,* 958 F.2d 1479, 1485 (9th Cir. 1992); *Am. Fed'n of Gov't Emps., AFL–CIO* v. *Block,* 655 F.2d 1153, 1156 (D.C. Cir. 1981); *U.S. Steel Corp.* v. *EPA,* 605 F.2d 283, 289–90 (7th Cir. 1979). An agency can show good cause for eliminating the 30-day delayed effective date when it demonstrates urgent conditions the rule seeks to correct or unavoidable time limitations. *U.S. Steel Corp.,* 605 F.2d at 290; *United States* v. *Gavrilovic,* 511 F.2d 1099, 1104 (8th Cir. 1977). For the same reasons set forth above expressing the need for immediate action, we also conclude that the Departments have good cause to dispense with the 30-day effective date requirement.

*B. Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review)*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to proceed (to the extent permitted by law) only if the benefits justify the costs and to select (again to the extent permitted by law) the regulatory approach that maximizes net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits; reducing costs; simplifying and harmonizing rules; and promoting flexibility through approaches that preserve freedom of choice (including through ''provision of information in a form that is clear and intelligible''). It also allows consideration of equity, fairness, distributive impacts, and human dignity, even if some or all of these are difficult or impossible to quantify.

This rule is a ''significant regulatory action,'' although not an economically significant regulatory action since it does not meet the threshold of $100 million in annual economic effects, under section 3(f)(1) of Executive Order 12866. Accordingly, the Office of Management and Budget has reviewed this regulation.

Summary

With this temporary final rule (TFR), DHS is authorizing the immediate release of an additional 22,000 H–2B visas. By the authority given under the Further Consolidated Appropriations Act, 2021, Public Law 116–260 (FY 2021 Omnibus), DHS is raising the H–2B cap by an additional 22,000 visas for the remainder of FY 2021 to businesses that: (1) Show that there are an insufficient number of U.S. workers to meet their needs in FY 2021; (2) attest that their businesses are likely to suffer irreparable harm without the ability to employ the H–2B workers that are the subject of their petition, among other commitments; and (3) petition for returning workers who were issued an H–2B visa or were otherwise granted H–2B status in FY 2018, 2019, or 2020, unless the H–2B worker is a national of Guatemala, Honduras, and El Salvador (the Northern Triangle countries). Additionally, up to 6,000 of the 22,000 visas may be granted to workers from the Northern Triangle countries who are exempt from the returning worker requirement. This TFR aims to prevent irreparable harm to certain U.S. businesses by allowing them to hire additional H–2B workers within FY 2021.

The estimated total costs to petitioners ranges from $10,192,963 to $26,063,006. The estimated total cost to the Federal Government is $467,820. DHS estimates that the total cost of this rule ranges from $10,660,783 to $26,530,826. The benefits of this rule are diverse, though some of them are difficult to quantify. They include:

(1) Employers benefit from this rule significantly through increased access to H–2B workers;

[100] *Id.*

[101] *https://travel.state.gov/content/travel/en/News/visas-news/national-interest-exception-for-certain-h-2-travelers-from-south-africa.html* (Jan. 28, 2021).

[102] *See Temporary Restriction of Travelers Crossing US-Canada and Mexico Land Borders for Non-Essential Purposes, https://help.cbp.gov/s/article/Article-1596?language=en_US#:~:text=On%20March%2021%2C%202020%2C%20the,EDT%20on%20April%2021%2C%202021* (last visited on April 20, 2021).

[103] Because the Departments have issued this rule as a temporary final rule, this rule—with the sole exception of the document retention requirements—will be of no effect after September 30, 2021, even if Congress includes an authority similar to section 105 in a subsequent act of Congress.

(2) Customers and others benefit directly or indirectly from that increased access;

(3) H–2B workers benefit from this rule significantly through obtaining jobs and earning wages, potential ability to port and earn additional wages, and increased information on COVID–19 and vaccination distribution. DHS recognizes that some of the effects of these provisions may occur beyond the borders of the United States; [104]

(4) Some American workers may benefit to the extent that they do not lose jobs through the reduced or closed business activity that might occur if fewer H–2B workers were available;

(5) The existence of a lawful pathway, for the 6,000 visas set aside for new workers from Guatemala, Honduras, and El Salvador, is likely to provide multiple benefits in terms of U.S. policy with respect to the Northern Triangle; and

(6) The Federal Government benefits from increased evidence regarding attestations. Table 1 provides a summary of the provisions in this rule and some of their impacts.

TABLE 1—SUMMARY OF THE TFR'S PROVISIONS AND ECONOMIC IMPACT

| Current provision | Changes resulting from the provisions of the TFR | Expected costs of the provisions of the TFR | Expected benefits of the provisions of the TFR |
|---|---|---|---|
| —The current statutory cap limits its H–2B visa allocations to 66,000 workers a year. | —The amended provisions will allow for an additional 22,000 H–2B temporary workers. Up to 6,000 of the 22,000 additional visas will be reserved for workers who are nationals of Guatemala, Honduras, and El Salvador and will be exempt from the returning worker requirement. | —The total estimated cost to file Form I–129 by human resource specialists is approximately $1,344,810. The total estimated cost to file Form I–129 and Form G–28 will range from approximately $1,545,882 if filed by in-house lawyers to approximately $2,148,647 if filed by outsourced lawyers. The total estimated cost associated with filing additional petitions ranges from $2,890,692 to $3,493,457 depending on the filer. | —Form I–129 petitioners would be able to hire temporary workers needed to prevent their businesses from suffering irreparable harm.<br>—Businesses that are dependent on the success of other businesses that are dependent on H–2B workers would be protected from the repercussions of local business failures.<br>—Some American workers may benefit to the extent that they do not lose jobs through the reduced or closed business activity that might occur if fewer H–2B workers were available. |
| | | —The total estimated costs associated with filing Form I–907 if it is filed with Form I–129 is $2,863,603 if filed by human resource specialists. The total estimated costs associated with filing Form I–907 would range from approximately $2,259,184 if filed by an in-house lawyer to approximately $2,322,317 if filed by an outsourced lawyer. The total estimated costs associated with requesting premium processing ranges from approximately $5,122,787 to approximately $5,185,920.<br>—DHS may incur additional adjudication costs as more applicants file Form I–129. However, these additional costs to USCIS are expected to be covered by the fees paid for filing the form, which have been accounted for in costs to petitioners. | |
| | —Petitioners will be required to fill out the newly created Form ETA–9142–B–CAA–4, Attestation for Employers Seeking to Employ H–2B Nonimmigrant Workers Under Section 105 of Div. O of the Consolidated Appropriations Act, 2021. | —The total estimated cost to petitioners to complete and file Form ETA–9142–B–CAA–4 is approximately $1,370,719. | —Form ETA–9142–B–CAA–4 will serve as initial evidence to DHS that the petitioner meets the irreparable harm standard and returning worker requirements. |
| | —Petitioners would be required to conduct an additional round of recruitment. | —The total estimated cost to petitioners to conduct an additional round of recruitment is approximately $516,622. | —The additional round of recruitment will ensure that a U.S. worker that is willing and able to fill the position is not replaced by a nonimmigrant worker. |

[104] *See, e.g.,* Arnold Brodbeck et al., Seasonal Migrant Labor in the Forest Industry of the Southeastern United States: The Impact of H–2B Employment on Guatemalan Livelihoods, 31 Society and Natural Resources 1012 (2018).

TABLE 1—SUMMARY OF THE TFR'S PROVISIONS AND ECONOMIC IMPACT—Continued

| Current provision | Changes resulting from the provisions of the TFR | Expected costs of the provisions of the TFR | Expected benefits of the provisions of the TFR |
|---|---|---|---|
| | —Employers of H–2B workers would be required to provide information about equal access to COVID–19 vaccines and vaccination distribution sites. | —The total estimated cost to petitioners to provide COVID–19 vaccines and vaccination distribution site information is approximately $1,743. | —Workers would be given information about equal access to vaccines and vaccination distribution. |
| | —An H–2B nonimmigrant with a valid visa who is physically present in the United States may port to another employer. | —The total estimated cost to file Form I–129 if filed by human resource specialists will range from $0 to approximately $2,081,206. The total estimated costs to file Form I–129 and Form G–28 ranges from $0 to approximately $2,393,077 if filed by in-house lawyers and from $0 to approximately $5,095,792 if filed by outsourced lawyers. | —H–2B workers with a valid visa present in the United States will be able to port to another employer and potentially extend their stay and, therefore, earn additional wages.<br>—An H–2B worker with an employer that is not complying with H–2B program requirements would have additional flexibility in porting to another employer's certified position.<br>—This provision would ensure employers will be able to hire the H–2B workers they need. |
| | | —The total estimated cost associated with filing Form I–907 if filed by human resource specialists ranges from $0 to approximately $4,431,409. The total estimated cost to file Form I–907 ranges from $0 to approximately $3,497,990 if filed by in-house lawyers and from $0 to approximately $3,595,738 if filed by outsourced lawyers. The total estimated costs associated with this provision ranges from $0 to approximately $15,204,145.<br>—DHS may incur some additional adjudication costs as more petitioners file Form I–129. However, these additional costs to USCIS are expected to be covered by the fees paid for filing the form, which have been accounted for in costs to petitioners. | |
| | —DHS and DOL intend to conduct a significant number of random audits during the period of temporary need to verify compliance with H–2B program requirements, including the irreparable harm standard as well as other key worker protection provisions implemented through this rule. | —Employers will have to comply with audits for an estimated total opportunity cost of time of $290,400.<br>—It is expected both DHS and DOL will be able to shift resources to be able to conduct these audits without incurring additional costs. However, the Departments will incur opportunity costs of time. The audits are expected to take a total of approximately 6,000 hours and cost approximately $467,820. | —DOL and DHS audits will yield evidence of the efficacy of attestations in enforcing compliance with H–2B supplemental cap requirements.<br>—Conducting a significant number of audits will discourage uncorroborated attestations. |

Source: USCIS and DOL analysis.

Background and Purpose of the Proposed Rule

The H–2B visa classification program was designed to serve U.S. businesses that are unable to find a sufficient number of U.S. workers to perform nonagricultural work of a temporary or seasonal nature. For a nonimmigrant worker to be admitted into the United States under this visa classification, the hiring employer is required to: (1) Receive a temporary labor certification (TLC) from the Department of Labor (DOL); and (2) file Form I–129 with DHS. The temporary nature of the services or labor described on the approved TLC is subject to DHS review during adjudication of Form I–129.[105] The current INA statute sets the annual number of H–2B visas for workers performing temporary nonagricultural work at 66,000 to be distributed semi-annually beginning in October (33,000) and in April (33,000).[106] Any unused H–2B visas from the first half of the fiscal year will be available for employers seeking to hire H–2B workers during the second half of the fiscal year. However, any unused H–2B visas from one fiscal year do not carry over into the next and will therefore not be made

[105] Revised effective 1/18/2009; 73 FR 78104.

[106] See 8 U.S.C. 1184(g)(1)(B), INA 214(g)(1)(B) and 8 U.S.C. 1184(g)(4), INA 214(g)(4).

available.[107] Once the statutory H–2B visa cap limit has been reached, petitioners must wait until the next half of the fiscal year, or the beginning of the next fiscal year, for additional visas to become available.

On Dec 27, 2020, the President signed the FY 2021 Omnibus that contains a provision (Sec. 105 of Div. O) permitting the Secretary of Homeland Security, under certain circumstances, to increase the number of H–2B visas available to U.S. employers, notwithstanding the established statutory numerical limitation. After consulting with the Secretary of Labor, the Secretary of the Homeland Security has determined it is appropriate to exercise his discretion and raise the H–2B cap by up to an additional 22,000 visas for the remainder of FY 2021 for those businesses who would qualify under certain circumstances.

These businesses must attest that they will likely suffer irreparable harm if the requested H–2B visas are not granted. The Secretary has determined that initially up to 16,000 of the 22,000 these supplemental visas will be limited to specified H–2B returning workers for nationals of any country. Specifically, these individuals must be workers who were issued H–2B visas or were otherwise granted H–2B status in fiscal years 2018, 2019, or 2020. The Secretary has also determined that up to 6,000 of the 22,000 additional visas will be reserved for workers who are nationals of Guatemala, Honduras, and El Salvador, and that these 6,000 workers will be exempt from the returning worker requirement. Once the 6,000-visa limit has been reached, a petitioner may continue to request H–2B visas for workers who are nationals of Guatemala, Honduras, and El Salvador, but these workers must be returning workers. If the 6,000 exemption cap for nationals of the Northern Triangle countries remains unfilled by July 8, 2021, USCIS will announce that the remaining visas will be made available to employers with TLCs that comply with the provisions of this rule but the petitioner must file a new Form I–129 petition and attest that these noncitizens will be returning workers.

Population

This rule would affect those employers that file Form I–129 on behalf of nonimmigrant workers they seek to hire under the H–2B visa program. More specifically, this rule would affect those employers that can establish that their business is likely to suffer irreparable harm because they cannot employ the H–2B returning workers requested on their petition in this fiscal year, without the exercise of authority that is the subject of this rule. Due to the temporary nature of this rule and the limited time left for these additional visas to become available, DHS believes that it is reasonable to assume that eligible petitioners for these additional 22,000 visas will generally be those employers that have already completed the steps to receive an approved TLC prior to the issuance of this rule.

This rule would also have additional impacts on the population of H–2B employers and workers presently in the United States by permitting some H–2B workers to port to another certified employer. These H–2B workers would continue to earn wages and gaining employers would continue to obtain necessary workers.

Population That Will File a Form I–129, Petition for a Nonimmigrant Worker

According to DOL OFLC's certification data for FY 2021, as of April 15, 2021, about 6,172 TLCs for 107,654 H–2B positions were received with expected work start dates between April 1 and September 30, 2021. DOL OFLC has approved 5,507 certifications for 97,627 H–2B positions and is still reviewing the remaining 155 TLC requests for 2,227 H–2B positions. DOL OFLC has denied, withdrawn, rejected, or returned 510 certifications for 7,800 H–2B positions.[108] However, many of these certified worker positions have already been filled under the semi-annual cap of 33,000 and, for approximately 10 percent of the worker positions certified and still under review by DOL, employers indicated on the Form ETA–9142B their intention to employ some or all of the H–2B workers under the application who will be exempt from the statutory visa cap. The number of approved and pending certifications is 5,662 for 99,854 H–2B positions.[109]

Of the 5,507 certified Applications for Temporary Employment Certification DOL issued, USCIS data shows that 2,104 H–2B petitions for 36,792 positions with approved certifications were already filed toward the second semi-annual cap of 33,000 visas.[110] Therefore, we estimate that approximately 3,558 *Applications for Temporary Employment Certification* may be filed towards the FY 2021 supplemental cap. This number is based on 5,507 (total certified) − 2,104 (certified and already submitted under the second semi-annual cap) and 155 (*Applications for Temporary Employment Certification* that are still being processed by DOL), and therefore represents a reasonable estimate of the pool of potential petitions that may request additional H–2B workers under this rule, in other words, under the FY 2021 supplemental cap. USCIS recognizes that some employers would have to submit two Forms I–129 if they choose to request H–2B workers under both the returning worker and Northern Triangle Countries cap. At this time, USCIS cannot predict how many employers will choose to take advantage of this set-aside, and therefore recognize that the number of petitions may be underestimated. Additionally, due to the timing of the availability of these additional 22,000 visas, USCIS assumes there will not be additional TLCs filed with the DOL.

Population That Files Form G–28, Notice of Entry of Appearance as Attorney or Accredited Representative

If an attorney or accredited representative submits Form I–129 on behalf of the petitioner, Form G–28, Notice of Entry of Appearance as Attorney or Accredited Representative, must accompany the Form I–129 submission.[111] Using data from FY 2016 to FY 2020, we estimate that approximately 43.59 percent of Form I–129 petitions will be filed by a lawyer or accredited representative (Table 2). Table 2 shows the percentage of Form I–129 H–2B petitions that were accompanied by a Form G–28. We estimate that 1,551 Form I–129 and Form G–28 will be filed by in-house or outsourced lawyers, and that 2,007 Form I–129 will be filed by human resources (HR) specialists.[112]

[107] A Temporary Labor Certification (TLC) approved by the Department of Labor must accompany an H–2B petition. The employment start date stated on the petition must match the start date listed on the TLC. *See* 8 CFR 214.2(h)(6)(iv)(A) and (D).

[108] As of April 15, 2021, DOL OFLC had denied 163 applications for 2,161 positions and rejected 28 applications for 360 positions. Employers had withdrawn 312 applications for 5,161 positions and returned 7 applications for 118 positions. This totals 510 applications for 7,800 positions either denied, rejected, withdrawn, or returned.

[109] Calculation: 5,507 approved certifications + 155 pending certifications = 5,662 approved and pending certifications.

Calculation: 97,627 positions associated with approved certification + 2,227 positions associated with pending certifications = 99,854 positions associated with approved and pending certifications.

[110] USCIS, Office of Performance and Quality, Data pulled on April 21, 2021.

[111] USCIS, *Filing Your Form G–28, https://www.uscis.gov/forms/filing-your-form-g-28.*

[112] Calculation: 3,558 estimated additional petitions * 43.59 percent of petitions filed by a lawyer = 1551 petitions (rounded) filed by a lawyer.

TABLE 2—FORM I–129 H–2B PETITION RECEIPTS THAT WERE ACCOMPANIED BY A FORM G–28, FY 2016–2020

| Fiscal year | Number of Form I–129 H–2B petitions accompanied by a Form G–28 | Total Number of Form I–129 H–2B petitions received | Percent of Form I–129 H–2B petitions accompanied by a Form G–28 |
|---|---|---|---|
| 2016 | 2,795 | 6,527 | 42.82 |
| 2017 | 2,615 | 6,112 | 42.78 |
| 2018 | 2,626 | 6,148 | 42.71 |
| 2019 | 3,335 | 7,461 | 44.70 |
| 2020 | 2,434 | 5,422 | 44.89 |
| 2016–2020 Total | 13,805 | 31,670 | 43.59 |

Source: USCIS Claims3 database, queried using the SMART utility by the USCIS Office of Policy and Strategy on April 8, 2021.

Population That Files Form I–907, Request for Premium Processing Service

Employers may use Form I–907, Request for Premium Processing Service, to request faster processing of their Form I–129 petitions for H–2B visas. Table 3 shows the percentage of Form I–129 H–2B petitions that were filed with a Form I–907. USCIS estimates that approximately 93.37 percent of Form I–129 H–2B petitioners will also file a Form I–907 requesting premium processing, though this could be higher because of the timing of this rule. Based on this historical data, USCIS estimates that 3,322 Forms I–907 will be filed with the Forms I–129 as a result of this rule.[113] We estimate that 1,448 Forms I–907 will be filed by in-house or outsourced lawyers and 1,874 will be filed by HR specialists.[114]

TABLE 3—FORM I–129 H–2B PETITION RECEIPTS THAT WERE ACCOMPANIED BY A FORM I–907, FY 2016–2020

| Fiscal year | Number of Form I–129 H–2B petitions accompanied by Form I–907 | Total Number of Form I–129 H–2B petitions received | Percent of Form I–129 H–2B petitions accompanied by Form I–907 |
|---|---|---|---|
| 2016 | 6,084 | 6,527 | 93.21 |
| 2017 | 5,932 | 6,112 | 97.05 |
| 2018 | 5,986 | 6,148 | 97.36 |
| 2019 | 7,227 | 7,461 | 96.86 |
| 2020 | 4,341 | 5,422 | 80.06 |
| 2016–2020 Total | 29,570 | 31,670 | 93.37 |

Source: USCIS Claims3 database, queried using the SMART utility by the USCIS Office of Policy and Strategy on April 8, 2021.

Population That Files Form ETA–9142–B–CAA–4, Attestation for Employers Seeking To Employ H–2B Nonimmigrant Workers Under Section 105 of Division O of the Consolidated Appropriations Act, 2021 Public Law 116–260

Petitioners seeking to take advantage of the FY 2021 H–2B supplemental visa cap will need to file a Form ETA–9142–B–CAA–4 attesting their business will suffer irreparable harm without the ability to hire temporary nonimmigrant workers, comply with third party notification, and maintain required records, among other requirements. DOL estimates that each of the 3,558 petitioners will need to file a Form ETA–9142–B–CAA–4 and comply with its provisions.

Population Affected by the Portability Provision

The population affected by this provision are nonimmigrants in H–2B status who are present in the United States and the employers with valid TLCs seeking to hire H–2B workers. We use the population of 66,000 H–2B workers authorized by statute and 22,000 additional H–2B workers authorized by this supplemental cap regulation as a proxy for the H–2B population that could be currently present in the United States.[115] We use the number of approved TLCs (5,507) to estimate the potential number of Form I–129 H–2B petitions that incur impacts associated with this porting provision. USCIS is not able to predict an estimate of what percentage of these approved

Calculation: 3,558 estimated additional petitions − 1,551 petitions filed by a lawyer = 2,007 petitions filed by an HR specialist.

[113] Calculation: 3,558 estimated additional petitions * 93.37 percent premium processing filing rate = 3,322 (rounded) additional Form I–907.

[114] Calculation: 3,322 additional Form I–907 * 43.59 percent of petitioners represented by a lawyer = 1,448 (rounded) additional Form I–907 filed by a lawyer.

Calculation: 3,322 additional Form I–907 − 1448 additional Form I–907 filed by a lawyer = 1,874 additional Form I–907 filed by an HR specialist.

[115] H–2B workers may have varying lengths in time approved on their H–2B visas. This number may overestimate H–2B workers who have already completed employment and departed and may underestimate H–2B workers not reflected in the current cap and long-term H–2B workers. In FY2020, 346 requests for change of status to H–2B were approved by USCIS and 3,505 crossings of visa-exempt H–2B workers were processed by Customs and Border Protection (CBP). *See Characteristics of H–2B Nonagricultural Temporary Workers FY2020 Report to Congress at https://www.uscis.gov/sites/default/files/document/reports/H-2B-FY20-Characteristics-Report.pdf.* USCIS assumes some of these workers, along with current workers with a valid H–2B visa under the cap, could be eligible to port under this new provision. USCIS does not know the exact number of H–2B workers who would be eligible to port at this time but uses the cap and supplemental cap allocations as a possible proxy for this population.

TLCs will file petitions for H–2B workers who would port under this provision. Therefore, USCIS presents a sensitivity analysis in Table 4 based on the percentage of employers with approved TLCs that could file a Form I–129 H–2B petition in order to obtain an H–2B worker under the porting provision.

TABLE 4—SENSITIVITY ANALYSIS OF FORM I–129 H–2B PETITIONS FILED ON BEHALF OF H–2B WORKERS WHO MAY BE ELIGIBLE TO PORT

| Percent of Form I–129 H–2B petitions that may be filed on behalf of workers eligible to port | Estimated number of approved Form I–129 H–2B petitions that may be filed on behalf of workers eligible to port |
|---|---|
| 0 | 0 |
| 5 | 275 |
| 25 | 1,377 |
| 50 | 2,754 |
| 75 | 4,130 |
| 95 | 5,232 |
| 100 | 5,507 |

Source: USCIS Analysis.

Population Affected by the Audits

DHS and DOL each intend to conduct 250 audits of employers hiring H–2B workers under this FY2021 H–2B supplemental cap rule. The determination of which employers are audited will be mostly random, though the agencies will coordinate so that no employer is audited by both DOL and DHS. Therefore, a total of 500 audits on employers who petition for H–2B workers under this TFR will be conducted by the Federal Government.

Cost-Benefit Analysis

The provisions of this rule require the submission of a Form I–129 H–2B petition. The costs for this form include filing costs and the opportunity cost of time to complete and submit the form. The current filing fee for Form I–129 is $460 and the estimated time to complete and file Form I–129 for H–2B classification is 4.34 hours.[116] The application must be filed by a U.S. employer, a U.S. agent, or a foreign employer filing through the U.S. agent. DHS estimates that 43.59 percent of Form I–129 H–2B petitions will be filed by an in-house or outsourced lawyer, and the remainder (56.41 percent) will be filed by an HR specialist or equivalent occupation. DHS presents estimated costs for HR specialists filing Form I–129 petitions and an estimated range of costs for in-house lawyers or outsourced lawyers filing Form I–129 petitions.

To estimate the total opportunity cost of time to HR specialists who complete and file Form I–129, DHS uses the mean hourly wage rate of HR specialists of $33.38 as the base wage rate.[117] If petitioners hire an in-house or outsourced lawyer to file Form I–129 on their behalf, DHS uses the mean hourly wage rate of $71.59 as the base wage rate.[118] Using the most recent Bureau of Labor Statistics (BLS) data, DHS calculated a benefits-to-wage multiplier of 1.45 to estimate the full wages to include benefits such as paid leave, insurance, and retirement.[119] DHS multiplied the average hourly U.S. wage rate for HR specialists and for in-house lawyers by the benefits-to-wage multiplier of 1.45 to estimate the full cost of employee wages. The total compensation for an HR specialist is $48.40 per hour, and the total compensation for an in-house lawyer is $103.81 per hour.[120] In addition, DHS recognizes that an entity may not have in-house lawyers and seek outside counsel to complete and file Form I–129 on behalf of the petitioner. Therefore, DHS presents a second wage rate for lawyers labeled as outsourced lawyers. DHS recognizes that the wages for outsourced attorneys may be much higher than in-house attorneys and therefore uses a higher compensation-to-wage multiplier of 2.5 for outsourced attorneys.[121] DHS estimates the total compensation for an outsourced lawyer is $178.98 per hour.[122] If a lawyer submits Form I–129 on behalf of the petitioner, Form G–28 must accompany the Form I–129 petition.[123] DHS estimates the time burden to complete and submit Form G–28 for a lawyer is 50 minutes (0.83 hour, rounded).[124] For this analysis, DHS adds the time to complete Form G–28 to the opportunity cost of time to lawyers for filing Form I–129 on behalf of a petitioner. This results in a time burden of 5.17 hours for in-house lawyers and outsourced lawyers to complete Form G–28 and Form I–129.[125] Therefore, the total opportunity cost of time per petition for an HR specialist to complete and file Form I–129 is approximately $210.06, for an in-house lawyer to complete and file Forms I–129 and G–28 is about $536.70, and for an outsourced lawyer to complete and file is approximately $925.33.[126] The total cost, including filing fee and opportunity costs of time, per petitioner to file Form I–129 is approximately $670.06 if HR specialists file, $996.70 if an in-house lawyer files, and $1,385.33 if an outsourced lawyer files the form.[127]

Cost to Petitioners

As mentioned in *Section 3,* the estimated population impacted by this rule is 3,558 eligible petitioners who are projected to apply for the additional 22,000 H–2B visas for the remainder of FY 2021, with 6,000 of the additional visas reserved for employers that will petition for workers who are nationals

[116] The public reporting burden for this form is 2.34 hours for Form I–129 and an additional 2.00 hours for H Classification Supplement, totaling 4.34 hours. See Form I–129 instructions at *https://www.uscis.gov/i-129.*

[117] U.S. Department of Labor, Bureau of Labor Statistics, ''May 2020 National Occupational Employment and Wage Statistics'' Human Resources Specialist (13–1071), Mean Hourly Wage, available at *https://www.bls.gov/oes/2020/may/oes_nat.htm#13-0000* (accessed April 9, 2021).

[118] U.S. Department of Labor, Bureau of Labor Statistics. ''May 2020 National Occupational Employment and Wage Estimates'' Lawyers (23–1011), Mean Hourly Wage, available at *https://www.bls.gov/oes/2020/may/oes_nat.htm#23-0000* (accessed April 9, 2021).

[119] Calculation: $38.60 mean Total Employee Compensation per hour for civilian workers/$26.53 mean Wages and Salaries per hour for civilian workers = 1.45 benefits-to-wage multiplier. *See* Economic News Release, Bureau of Labor Statistics, U.S. Department of Labor, Table 1. Employer Costs for Employee Compensation by ownership, Civilian workers, available at *https://www.bls.gov/news.release/pdf/ecec.pdf* (accessed April 9, 2021).

[120] Calculation for the total wage of an HR specialist: $33.38 × 1.45 = $48.40 (rounded).

Calculation for the total wage of an in-house lawyer: $71.59 × 1.45 = $103.81 (rounded).

[121] The DHS ICE ''Safe-Harbor Procedures for Employers Who Receive a No-Match Letter'' used a multiplier of 2.5 to convert in-house attorney wages to the cost of outsourced attorney based on information received in public comment to that rule. We believe the explanation and methodology used in the Final Small Entity Impact Analysis remains sound for using 2.5 as a multiplier for outsourced labor wages in this rule, see page G–4 [September 1, 2015] [*https://www.regulations.gov/document/ICEB-2006-0004-0921*].

[122] *Calculation:* Average hourly wage rate of lawyers × benefits-to-wage multiplier for outsourced lawyer = $71.59 × 2.5 = $178.98.

[123] USCIS, *Filing Your Form G–28, https://www.uscis.gov/forms/filing-your-form-g-28.*

[124] Id.

[125] Calculation: 0.83 hours to file Form G–28 + 4.34 hours to file Form I–129 = 5.17 hours to file both forms.

[126] Calculation if an HR specialist files Form I–129: $48.40 × 4.34 hours = $210.06 (rounded).

Calculation if an in-house lawyer files Forms I–129 and G–28: $103.81 × 5.17 hours = $536.70 (rounded).

Calculation if an outsourced lawyer files Forms I–129 and G–28: $178.98 × 5.17 hours = $925.33 (rounded).

[127] Calculation if an HR specialist files Form I–129 and filing fee: $210.06 opportunity cost of time + $460 filing fee = $670.06.

Calculation if an in-house lawyer files Forms I–129, G–28, and filing fee: $536.70 opportunity cost of time + $460 filing fee = $996.70.

Calculation if outsourced lawyer files Forms I–129, G–28 and filing fee: $925.33 opportunity cost of time + $460 filing fee = $1,385.33.

of the Northern Triangle countries who are exempt from the returning worker requirement.

Costs to Petitioners To File Form I–129 and Form G–28

As discussed above, DHS estimates that an additional 2,007 petitions will be filed by HR specialists using Form I–129 and an additional 1,551 petitions will be filed by lawyers using Form I–129 and Form G–28. DHS estimates the total cost to file Form I–129 petitions if filed by HR specialists is $1,344,810 (rounded).[128] DHS estimates total cost to file Form I–129 petitions and Form G–28 if filed by lawyers will range from $1,545,882 (rounded) if only in-house lawyers file these forms to $2,148,647 (rounded) if only outsourced lawyers file them.[129] Therefore, the estimated total cost to file Form I–129 and Form G–28 range from $2,890,692 and $3,493,457.[130]

Costs To File Form I–907

Employers may use Form I–907 to request premium processing of Form I–129 petitions for H–2B visas. The filing fee for Form I–907 for H–2B petitions is $1,500 and the time burden for completing the form is 35 minutes (0.58 hour).[131] Using the wage rates established previously, the opportunity cost of time to file Form I–907 is approximately $28.07 for an HR specialist, $60.21 for an in-house lawyer, and $103.81 for an outsourced lawyer.[132] Therefore, the total filing cost to complete and submit Form I–907 per petitioner is approximately $1,528.07 for HR specialists, $1,560.21 for in-house lawyers, and $1,603.81 for outsourced lawyers.[133]

As discussed above, DHS estimates that an additional 1,874 Form I–907 will be filed by HR specialists and an additional 1,448 Form I–907 will be filed lawyers. DHS estimates the total cost of Form I–907 filed by HR specialists is about $2,863,603 (rounded).[134] DHS estimates total cost to file Form I–907 filed by lawyers range from about $2,259,184 (rounded) for only in-house lawyers to $2,322,317 (rounded) for only outsourced lawyers.[135] The estimated total cost to file Form I–907 range from $5,122,787 and $5,185,920.[136]

Cost To File Form ETA–9142–B–CAA–4

Form ETA–9142–B–CAA–4 is an attestation form that includes recruiting requirements, the irreparable harm standard, and document retention obligations. DOL estimates the time burden for completing and signing the form is 0.25 hour, 0.25 hours for retaining records, and 0.5 hours to comply with the returning workers' attestation, for a total time burden of 1 hour. Using the total wage per hour for an HR specialist ($48.40), the opportunity cost of time for an HR specialist to complete the attestation form, and notify third parties, and retain records relating to the returning worker requirements, is approximately $48.40.[137]

Additionally, the form requires that petitioners assess and document supporting evidence for meeting the irreparable harm standard, and retain those documents and records, which we assume will require the resources of a financial analyst (or another equivalent occupation). Using the same methodology previously described for wages, the total wage per hour for a financial analyst is $67.37.[138] DOL estimates the time burden for these tasks is at least 4 hours, and 1 hour for gathering and retaining documents and records. Therefore, the total opportunity cost of time for a financial analyst to assess, document, and retain supporting evidence is approximately $336.85.[139]

As discussed previously, DHS believes that the estimated 3,558 remaining certifications for the latter half of FY 2021 would include potential employers that might request to employ H–2B workers under this rule. This number of certifications is a reasonable proxy for the number of employers that may need to review and sign the attestation. Using this estimate for the total number of certifications, we estimate the opportunity cost of time for completing the attestation for HR specialists is approximately $172,207 and for financial analysts is about $1,198,512.[140] The total cost is estimated to be approximately $1,370,719.[141]

Cost to Conduct Recruitment

An employer that files Form ETA–9142B–CAA–4 and the I–129 petition 45 or more days after the certified start date of work must conduct additional

[128] Calculation: $670.06 opportunity costs for HR specialist plus filing fees * 2,007 Form I–129 filed by HR specialists = $1,344,810(rounded) total cost of Form I–129 filed by HR specialists.

[129] Calculation: $996.70 opportunity costs for in-house lawyers plus filing fees * 1,551 Form I–129 and Form G–28 filed by in-house lawyers = $1,545,882(rounded) total cost of Form I–129 and Form G–28 filed by in-house lawyers.

Calculation: $1,385.33 opportunity costs for outsourced lawyers plus filing fees * 1,551 Form I–129 and Form G–28 filed by outsourced lawyers = $2,148,647(rounded) total cost of Form I–129 and Form G–28 filed by outsourced lawyers.

[130] Calculation: $1,344,810 total cost of Form I–129 filed by HR specialists + $1,545,882 total cost of Form I–129 and Form G–28 filed by in-house lawyers = $2,890,692 estimated total costs to file Form I–129 and G–28

Calculation: $1,344,810 total cost of Form I–129 filed by HR specialists + $2,148,647 total cost of Form I–129 and G–28 filed by outsourced lawyers = $3,493,457 estimated total costs to file Form I–129 and G–28

[131] See Form I–907 instructions at *https://www.uscis.gov/i-907.*

[132] Calculation for opportunity cost of time if an HR specialist files Form I–907: $48.40 × 0.58 hours = $28.07(rounded).

Calculation for opportunity cost of time if an in-house lawyer files Form I–907: $103.81 × 0.58 hours= $60.21(rounded).

Calculation for opportunity cost of time if an outsourced lawyer files Form I–907: $178.98 × 0.58 hours = $103.81(rounded).

[133] Calculation if an HR specialist files: $28.07 + $1,500 = $1,528.07.

Calculation if an in-house lawyer files: $60.21 + $1,500 = $1,560.21.

Calculation if outsourced lawyer files: $103.81 + $1,500 = $1,603.81.

[134] Calculation: $1,528.07 opportunity costs for HR specialist plus filing fees * 1,874 Form I–907 filed by HR specialists = $2,863,603 (rounded) total cost of Form I–907 filed by HR specialists.

[135] Calculation: $1,560.21 opportunity costs for in-house lawyers plus filing fees * 1,448 Form I–907 filed by in-house lawyers = $2,259,184 (rounded) total cost of Form I–907 filed by in-house lawyers.

Calculation: $1,603.81 opportunity costs for outsourced lawyers plus filing fees * 1,448 Form I–907 filed by outsourced lawyers = $2,322,317 (rounded) total cost of Form I–907 filed by outsourced lawyers.

[136] Calculation: $2,863,603 total cost of Form I–907 filed by HR specialists + $2,259,184 total cost of Form I–907 filed by in-house lawyers = $5,122,787 estimated total costs to file Form I–907.

Calculation: $2,863,603 total cost of Form I–129 filed by HR specialists + $2,322,317 total cost of Form I–907 filed by outsourced lawyers = $5,185,920 estimated total costs to file Form I–907.

[137] Calculation: $48.40 opportunity cost of time for HR specialist × 1-hour time burden for the new attestation form and notifying third parties and retaining records related to the returning worker requirements = $48.40.

[138] Calculation: $46.46 (average per hour wage for a financial analyst, based on BLS wages) × 1.45 (benefits-to-wage multiplier) = $67.37. U.S. Department of Labor, Bureau of Labor Statistics, ''May 2020 National Occupational Employment and Wage Statistics'' Financial and Investment Analysts, Financial Risk Specialists, and Financial Specialists, All Other (13–2098): *https://www.bls.gov/oes/2020/may/oes_nat.htm#13-0000* (accessed April 9, 2021).

[139] Calculation: $67.37 (fully loaded hourly wage for a financial analyst) × 5 hours (time burden for assessing, documenting and retention of supporting evidence demonstrating the employer is likely to suffer irreparable harm) = $336.85.

[140] Calculations: Cost for HR Specialists: $48.40 opportunity cost of time for an HR specialist to comply with attestation requirements * 3,558 estimated additional petitions = $172,207(rounded) total cost for HR specialists to comply with attestation requirements.

Calculation: $336.85 opportunity cost of time for a financial analyst to comply with attestation requirements * 3,558 estimated additional petitions = $1,198,512(rounded) for financial analysts to comply with attestation requirements.

[141] Calculation: $172,207 total cost for HR specialist to comply with attestation requirement + $1,198,512 total cost for financial analysts to comply with attestation requirements = $1,370,719 total cost to comply with attestation requirements.

recruitment of U.S. workers. This consists of placing a new job order with the State Workforce Agency, contacting the American Job Center, and contacting laid-off workers. Employers must place a new job order for the job opportunity with the State Workforce Agency (SWA). DOL estimates that it would take up to one hour to satisfy this requirement.

Employers are required to make reasonable efforts to contact, by mail or other effective means, their former U.S. workers, including those workers who were furloughed and laid off, beginning January 1, 2019. Employers must also disclose the terms of the job order to these workers as required by the rule. DOL estimates that it would take up to one hour to contact and provide the disclosure to displaced U.S. workers.

During the period of time the SWA is actively circulating the job order, employers must contact, by email or other available electronic means, the nearest local American Job Center (AJC) in order to request staff assistance advertising and recruiting qualified U.S. workers for the job opportunity, and to provide to the AJC the unique identification number associated with the job order placed with the SWA. DOL estimates that it would take up to one hour to satisfy this requirement.

DOL estimates the total time burden for activities related to conducting recruitment is 3 hours. Assuming this work will be done by an HR specialist or an equivalent occupation, the estimated cost to each petitioner is approximately $145.20.[142] Using the 3,558 as the estimated number of petitioners, the estimated total cost of this provision is approximately $516,622.[143] It is possible that if U.S. employees apply for these positions, H–2B employers may incur some costs associated with reviewing applications, interviewing, vetting, and hiring applicants who are referred to H–2B employers by the recruiting activities required by this rule. However, DOL is unable to quantify the impact.

Cost of the COVID Protection Provision

Employers must notify employees, in a language understood by the worker, as necessary or reasonable, that all persons in the United States, including nonimmigrants, have equal access to COVID–19 vaccines and vaccine distribution sites. We assume that employers will provide a printed notification to inform their employees and that printing and posting the notification can be done during the normal course of business. Given that the regulatory text associated with this provision is less than 150 words, we expect that an employer would only need to post a one-page notification, even if the notification is in multiple languages. The printing cost associated with posting the notification (assuming that the notification is written) is $0.49 per posting.[144] The estimated total cost to petitioners to print copies is approximately $1,743 (rounded).[145]

Cost of the Portability Provision

Petitioners seeking to hire H–2B nonimmigrants who are currently present in the United States with a valid H–2B visa would need to file a Form I–129 which includes paying the associated fee as discussed above. Also previously discussed, we assume that all employers with an approved TLC—5,507—would be able to file a petition under this provision. As discussed previously, if a petitioner is represented by a lawyer, the lawyer must file Form G–28; if premium processing is desired, a petitioner must file Form I–907 and pay the associated fee. We expect these actions to be performed by an HR specialist, in-house lawyer, or an outsourced lawyer. Moreover, as previously estimated, we expect that about 43.59 percent of these Form I–129 petitions will be filed by an in-house or outsourced lawyer. We do not have an estimate of the percentage of H–2B workers that may choose to port under this provision and therefore we do not know the numbers of petitions that may be filed with USCIS. Therefore, Table 5 presents a sensitivity analysis of the number of Forms I–129 H–2B petitions that may be filed under this provision by an HR specialist and the number of Forms I–129 H–2B petitions and accompanying Forms G–28 that may be filed by an in-house or outsourced lawyer.

TABLE 5—NUMBERS OF FORM I–129 H–2B PETITIONS THAT MAY BE FILED ON BEHALF OF H–2B WORKERS THAT CHOOSE TO PORT BY HR SPECIALISTS AND LAWYERS

| Percent of approved TLCs | Numbers of Form I–129 H–2B petitions filed by HR specialists | Numbers of Form I–129 H–2B petitions and Form G–28 filed by lawyers |
|---|---|---|
| 0 | 0 | 0 |
| 5 | 155 | 120 |
| 25 | 777 | 600 |
| 50 | 1,554 | 1,200 |
| 75 | 2,330 | 1,800 |
| 95 | 2,951 | 2,281 |
| 100 | 3,106 | 2,401 |

Source: USCIS Analysis.

Previously, we estimated that about 93.37 percent of Form I–129 H–2B petitions are filed with Form I–907 for premium processing. For this provision, we estimate that 5,142 Form I–129 H–2B petitions will be filed with premium processing Forms I–907.[146] Table 6 presents a sensitivity analysis of the numbers of Forms I–907 that may be filed by HR specialists and lawyers under this portability provision.

TABLE 6—NUMBERS OF FORM I–907 FILED WITH FORM I–129 H–2B PETITIONS ON BEHALF OF H–2B WORKERS THAT CHOOSE TO PORT BY HR SPECIALISTS AND LAWYERS

| Percent of approved TLCs | Numbers of Form I–907 filed by HR specialists | Numbers of Form I–907 filed by lawyers |
|---|---|---|
| 0 | 0 | 0 |
| 5 | 145 | 112 |
| 25 | 725 | 560 |
| 50 | 1,451 | 1,120 |
| 75 | 2,176 | 1,681 |
| 95 | 2,755 | 2,130 |
| 100 | 2,900 | 2,242 |

Source: USCIS Analysis.

As previously discussed, the estimated cost for an HR specialist to file a Form I–129 is approximately $670.06 and the estimated cost for an HR specialist to file a Form I–907 is about $1,528.07. Table 7 presents a sensitivity analysis of costs resulting from HR specialists filing Form I–129, Form I–907, and the estimated total cost. The ''Cost for HR Specialist Filing Form I–129'' column multiplies the values in the ''Form I–129 Petitions Filed by HR Specialists'' column from

[142] Calculation: $48.40 hourly opportunity cost of time for an HR specialist * 3-hour time burden = $145.20 per petitioner cost to conduct additional recruitment.

[143] Calculation: 3,558 estimated number of petitioners * $145.20 per petitioner cost to conduct additional recruitment = $516,622 (rounded) total cost to conduct additional recruitment.

[144] Cost to make copies $0.49. *See https://www.fedex.com/en-us/office/copy-and-print-services.html* (accessed April 21, 2021).

[145] Calculation: $0.49 per posting * 3,558 petitioners = $1,743 cost of notifications copies.

[146] Calculation: 5,507 estimated number of approved petitioners * 93.37 percent premium processing filing rate = 5,142 (rounded) additional Forms I–907.

Table 5 by $670.06, the estimated cost for an HR specialist to file a Form I–129. The ''Costs for HR Specialist Filing Form I–907'' column multiplies the values in the ''Form I–907 Filed by HR Specialists'' from Table 6 by $1,528.07, the estimated cost for an HR specialist for an HR specialist to file a Form I–907.

TABLE 7—TOTAL COSTS FOR FILING FORM I–129 H–2B PETITIONS IF FILED BY HR SPECIALISTS ON BEHALF OF WORKERS THAT CHOOSE TO PORT

| Percent of Approved TLCs | Total costs for HR specialists filing Form I–129 | Total costs for HR specialists filing Form I–907 | Total estimated costs for HR specialists |
|---|---|---|---|
| 0 | 0 | 0 | 0 |
| 5 | 103,859 | 221,570 | 325,429 |
| 25 | 520,637 | 1,107,852 | 1,628,489 |
| 50 | 1,041,273 | 2,217,232 | 3,258,505 |
| 75 | 1,561,240 | 3,325,085 | 4,886,325 |
| 95 | 1,977,347 | 4,209,838 | 6,187,185 |
| 100 | 2,081,206 | 4,431,409 | 6,512,615 |

Source: USCIS Analysis.

As previously discussed, the estimated cost for an in-house lawyer to file a Form I–129 petition and the accompanying Form G–28 is approximately 996.70 and the estimated cost for an in-house lawyer to file a Form I–907 is about 1,560.21. Table 8 presents a sensitivity analysis of costs resulting from in-house lawyers filing Form I–129, Form G–28, Form I–907, and the estimated total cost. The ''Cost for In-house Lawyer Filing Form I–129 and Form G–28'' column multiplies the values in the ''Form I–129 Petitions and Form G–28 Filed by Lawyers'' column from Table 5 by 996.70, the estimated cost for an in-house lawyer to file a Form I–129 and Form G–28. The ''Costs for In-house Lawyer Filing Form I–907'' column multiplies the values in the ''Form I–907 by Lawyers'' from Table 6 by 1,560.21, the estimated cost for an HR specialist for an HR specialist to file a Form I–907.

TABLE 8—TOTAL COSTS FOR FILING FORM I–129 H–2B PETITIONS IF FILED BY IN-HOUSE LAWYERS ON BEHALF OF WORKERS THAT CHOOSE TO PORT

| Percent of Approved TLCs | Costs for In-house lawyer filing Form I–129 and Form G–28 | Costs for In-house lawyer filing Form I–907 | Total estimated costs resulting from in-house lawyer |
|---|---|---|---|
| 0 | $0 | $0 | $0 |
| 5 | 119,604 | 174,743 | 294,347 |
| 25 | 598,020 | 873,717 | 1,471,737 |
| 50 | 1,196,040 | 1,747,435 | 2,943,475 |
| 75 | 1,794,060 | 2,622,713 | 4,416,773 |
| 95 | 2,273,473 | 3,323,247 | 5,596,720 |
| 100 | 2,393,077 | 3,497,990 | 5,891,067 |

Source: USCIS Analysis.

As previously discussed, the estimated cost for an outsourced lawyer to file a Form I–129 and the accompanying Form G–28 is approximately 1,385.33 and the estimated cost for an outsourced lawyer to file a Form I–907 is about 1,603.81. Table 9 presents a sensitivity analysis of costs resulting from outsourced lawyers filing Form I–129, Form G–28, Form I–907, and the estimated total cost. The ''Costs for Outsourced Lawyer Filing Form I–129 and Form G–28'' column multiplies the values in the ''Form I–129 Petitions and Form G–28 Filed by Lawyers'' column from Table 5 by 1,385.33, the estimated cost for an outsourced lawyer to file a Form I–129 and Form G–28. The ''Costs for Outsourced Lawyer Filing Form I–907'' column multiplies the values in the ''Form I–907 by Lawyers'' from Table 6 by 1,603.81, the estimated cost for an outsourced lawyer to file a Form I–907.

TABLE 9—TOTAL COSTS FOR FILING FORM I–129 H–2B PETITIONS IF FILED BY OUTSOURCED LAWYERS ON BEHALF OF WORKERS THAT CHOOSE TO PORT

| Percent of Approved TLCs | Costs for outsourced lawyer filing Form I–129 and Form G–28 | Costs for outsourced lawyer filing Form I–907 | Total estimated costs resulting from outsourced lawyer |
|---|---|---|---|
| 0 | 0 | 0 | 0 |
| 5 | 254,466 | 179,627 | 434,093 |
| 25 | 1,274,179 | 898,133 | 2,172,312 |
| 50 | 2,548,359 | 1,796,265 | 4,344,624 |
| 75 | 3,821,613 | 2,696,002 | 6,517,615 |
| 95 | 4,841,327 | 3,416,112 | 8,257,439 |
| 100 | 5,095,792 | 3,595,738 | 8,691,530 |

Source: USCIS Analysis.

The total quantified costs for this provision range from 0 to 15,204,145 and are presented in Table 10 below. Though we present the sensitivity analysis as if no one will choose to port to another employer, DHS expects that at least one worker will take advantage of this porting provision and therefore, does not expect a 0 cost from this provision. DHS recognizes that if an employer that loses workers as a result of this provision chooses to replace those lost workers, that employer may incur some additional search and replacement costs associated with this provision.

TABLE 10—SENSITIVITY ANALYSIS OF TOTAL COSTS OF FORM I–129 H–2B PETITIONS TO HIRE H–2B WORKERS WHO CHOOSE TO PORT

| Percent of Approved TLCs | Range in costs from HR specialists and in-house lawyers to hire H–2B workers who choose to port (addition of totals from Table 7 and Table 8) | Range in costs from HR specialists and outsourced lawyers to hire H–2B workers who choose to port (addition of totals from Table 7 and Table 9) |
|---|---|---|
| 0 | 0 | 0 |
| 5 | 619,776 | 759,522 |
| 25 | 3,100,226 | 3,800,801 |
| 50 | 6,201,980 | 7,603,129 |
| 75 | 9,303,098 | 11,403,940 |
| 95 | 11,783,905 | 14,444,624 |
| 100 | 12,403,682 | 15,204,145 |

Source: USCIS Analysis.

Cost of Audits to Petitioners

DHS and DOL will each conduct audits on 250 separate employers of H–2B workers hired under this supplemental cap, for a total of 500 employers. Employers will need to provide requested information to comply with the audit. The expected time burden to comply with audits is estimated to be 12 hours.[147] We expect that providing these documents will be accomplished by an HR specialist or equivalent occupation. Given an hourly opportunity cost of time of 48.40, the estimated cost of complying with audits is 580.80 per audited employer.[148] Therefore, the total estimated cost to employers to comply with audits is 290,400.[149]

Estimated Total Costs to Petitioners

The monetized costs of this rule come from filing and complying with Form I–129, Form G–28, Form I–907, and Form ETA–9142–B–CAA–4, as well as contacting refreshing recruitment efforts, posting notifications, filings to obtain a porting worker, and complying with audits. The estimated total cost to file Form I–129 and an accompanying Form G–28 ranges from $2,890,692 to $3,493,457, depending on the filer. The estimated total cost of filing Form I–907 ranges from $5,122,787 to $5,185,920, depending on the filer. The estimated total cost of filing and complying with Form ETA–9142–B–CAA–4 is about $1,370,719. The estimated total cost of conducting additional recruitment is about $516,662. The estimated total cost of the COVID–19 protection provision is approximately $1,743. The estimated cost of the portability provision ranges

[147] The number in hours for audits was provided by the USCIS, Service Center Operations.

[148] Calculation: 48.40 hourly opportunity cost of time for an HR specialist * 12 hours to comply with an audit = 580.80 per audited employer.

[149] Calculation: 500 audited employers * 580.80 opportunity cost of time to comply with an audit = 290,400.

from $0 to $15,204,145.[150] The estimated total cost for employers to comply with audits is $290,400. The total estimated cost to petitioners ranges from $10,192,963 to $26,063,006.[151]

Cost to the Federal Government

The INA provides USCIS with the authority for the collection of fees at a level that will ensure recovery of the full costs of providing adjudication and naturalization services, including administrative costs, and services provided without charge to certain applicants and petitioners.[152] DHS notes USCIS establishes its fees by assigning costs to an adjudication based on its relative adjudication burden and use of USCIS resources. Fees are established at an amount that is necessary to recover these assigned costs such as clerical, officers, and managerial salaries and benefits, plus an amount to recover unassigned overhead (for example, facility rent, IT equipment and systems among other expenses) and immigration benefits provided without a fee charge. Consequently, since USCIS immigration fees are based on resource expenditures related to the benefit in question, USCIS uses the fee associated with an information collection as a reasonable measure of the collection's costs to USCIS. DHS anticipates some additional costs in adjudicating the additional petitions submitted because of the increase in cap limitation for H–2B visas. However, DHS expects these costs to be fully recovered by the fees associated with the forms, which have been accounted for under costs to petitioners and serve as proxy of the costs to the agency to adjudicate these forms.

Both DOL and DHS intend to conduct a significant number of random audits during the period of temporary need to verify compliance with H–2B program requirements, including the irreparable harm standard as well as other key worker protection provisions implemented through this rule. While most USCIS activities are funded through fees and DOL is funded through appropriations, it is expected that both agencies will be able to shift resources to be able to conduct these audits without incurring additional costs. As previously mentioned, the agencies will conduct a total of 500 audits and each audit is expected to take 12 hours. This results in a total time burden of 6,000 hours.[153] USCIS anticipates that a Federal employee at a GS–13 Step 5 salary will conduct these audits for each agency. The base pay for a GS–13 Step 5 in the Washington, DC locality area is $117,516.[154] The hourly wage for this salary is approximately $56.50.[155] To estimate the total hourly compensation for these positions, we multiply the hourly wage ($56.50) by the Federal benefits to wage multiplier of 1.38.[156] This results in an hourly opportunity cost of time of $77.97 for GS 13–5 Federal employees in the Washington, DC locality pay area.[157] The total opportunity costs of time for Federal workers to conduct audits is estimated to be $467,820.[158]

Benefits to Petitioners

The inability to access H–2B workers for some entities may cause their businesses to suffer irreparable harm. Temporarily increasing the number of available H–2B visas for this fiscal year may result in a cost savings, because it will allow some businesses to hire the additional labor resources necessary to avoid such harm. Preventing such harm may ultimately preserve the jobs of other employees (including U.S. workers) at that establishment. Additionally, returning workers are likely to be very familiar with the H–2B process and requirements, and may be positioned to begin work more expeditiously with these employers. Moreover, employers may already be familiar with returning workers as they have trained, vetted, and worked with some of these returning workers in past years. As such, limiting the supplemental visas to returning workers would assist employers that are facing irreparable harm.

Benefits to Workers

The existence of this rule will benefit the workers who receive H–2B visas. See Arnold Brodbeck et al., Seasonal Migrant Labor in the Forest Industry of the United States: The Impact of H–2B Employment on Guatemalan Livelihoods, 31 Society & Natural Resources 1012 (2018), and in particular this finding: ''Participation in the H–2B guest worker program has become a vital part of the livelihood strategies of rural Guatemalan families and has had a positive impact on the quality of life in the communities where they live. Migrant workers who were landless, lived in isolated rural areas, had few economic opportunities, and who had limited access to education or adequate health care, now are investing in small trucks, building roads, schools, and homes, and providing employment for others in their home communities. . . . The impact has been transformative and positive.''

Some provisions of this rule will benefit such workers in particular ways. The portability provision of this rule will allow nonimmigrants with valid H–2B visas who are present in the United States to transfer to a new employer more quickly and potentially extend their stay in the United States and, therefore, earn additional wages. Importantly, the rule will also increase information employees have about equal access to COVID–19 vaccinations and vaccine distribution sites. DHS recognizes that some of the effects of these provisions may occur beyond the borders of the United States.

Note as well that U.S. workers will benefit in multiple ways. For example, the additional round of recruitment and U.S. worker referrals required by the provisions of this rule will ensure that a U.S. worker who is willing and able to fill the position is not displaced by a nonimmigrant worker. As noted, the avoidance of irreparable harm that would be suffered by employers unable to secure sufficient workers, made possible by this rule, could ensure that U.S. workers do not lose their jobs, which might otherwise be vulnerable if H–2B workers were not given visas.

[150] The lower bound cost of $0 is only if none of the eligible workers choose to port under this provision, while the upper bound cost of $15,204,145 is if every eligible worker chooses to port and every petitioner uses the more expensive filing option of an outsourced lawyer. As shown in Table 10, the range in costs if 50 percent of eligible workers choose to port with their petitioners using an HR specialist or an outsourced lawyer to file would be from $6,201,980 to $7,603,129.

[151] Calculation of lower range: $2,890,692 + $5,122,787 + $1,370,719 + $516,622 + $1,743 + $0 + $290,400 = $10,192,963.

Calculation of upper range: $3,493,457 + $5,185,920 + $1,370,719 + $516,622 + $1,743 + $15,204,145 + $290,400 = $26,063,006.

[152] See INA section 286(m), 8 U.S.C. 1356(m).

[153] Calculation: 12 hours to conduct an audit * 500 audits = 6,000 total hours to conduct audits.

[154] U.S. Office of Personnel Management, Pay and Leave, Salaries and Wages, For the Locality Pay area of Washington-Baltimore-Arlington, DC–MD–VA–WV–PA, 2021. *https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/21Tables/html/DCB.aspx* (last accessed May 6, 2021).

[155] Calculation: $117,516 GS 13–5 Washington, DC locality annual salary/2080 annual hours = $56.50 (rounded).

[156] Calculation: $1,717,321 Full-time Permanent Salaries + $656,748 Civilian Personnel Benefits = $2,374,069 Compensation.

$2,374,069 Compensation/$1,717,321 Full-time Permanent Salaries = 1.38 (rounded) Federal employee benefits to wage ratio.

*https://www.uscis.gov/sites/default/files/document/reports/USCIS_FY_2021_Budget_Overview.pdf* (last accessed May 6, 2021).

[157] Calculation: $56.50 hourly wage for a GS 13–5 in the Washington, DC locality area * 1.38 Federal employee benefits to wage ratio = $77.97 hourly opportunity cost of time for a GS 13–5 federal employee in the Washington, DC locality area.

[158] Calculation: 6,000 hours to conduct audits * $77.97 hourly opportunity cost of time = $467,820 total opportunity costs of time for Federal employees to conduct audits.

*C. Regulatory Flexibility Act*

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), imposes certain requirements on Federal agency rules that are subject to the notice and comment requirements of the APA. See 5 U.S.C. 603(a), 604(a). This temporary final rule is exempt from notice and comment requirements for the reasons stated above. Therefore, the requirements of the RFA applicable to final rules, 5 U.S.C. 604, do not apply to this temporary final rule. Accordingly, the Departments are not required to either certify that the temporary final rule would not have a significant economic impact on a substantial number of small entities nor conduct a regulatory flexibility analysis.

*D. Unfunded Mandates Reform Act of 1995*

The Unfunded Mandates Reform Act of 1995 (UMRA) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed rule, or final rule for which the agency published a proposed rule that includes any Federal mandate that may result in $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. This rule is exempt from the written statement requirement because DHS did not publish a notice of proposed rulemaking for this rule.

In addition, this rule does not exceed the $100 million expenditure in any 1 year when adjusted for inflation ($169.8 million in 2020 dollars),[159] and this rulemaking does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply, and the Departments have not prepared a statement under the Act.

*E. Executive Order 13132 (Federalism)*

This rule does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, 64 FR 43255 (Aug. 4, 1999), this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

*F. Executive Order 12988 (Civil Justice Reform)*

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, 61 FR 4729 (Feb. 5, 1996).

*G. National Environmental Policy Act*

DHS and its components analyze proposed actions to determine whether the National Environmental Policy Act (NEPA) applies to them and, if so, what degree of analysis is required. DHS Directive (Dir) 023–01 Rev. 01 and Instruction Manual 023–01–001–01 Rev. 01 (Instruction Manual) establish the procedures that DHS and its components use to comply with NEPA and the Council on Environmental Quality (CEQ) regulations for implementing NEPA, 40 CFR parts 1500 through 1508.

The CEQ regulations allow Federal agencies to establish, with CEQ review and concurrence, categories of actions (''categorical exclusions'') which experience has shown do not individually or cumulatively have a significant effect on the human environment and, therefore, do not require an Environmental Assessment (EA) or Environmental Impact Statement (EIS). 40 CFR 1507.3(b)(1)(iii), 1508.4. The Instruction Manual, Appendix A, Table 1 lists Categorical Exclusions that DHS has found to have no such effect. Under DHS NEPA implementing procedures, for an action to be categorically excluded, it must satisfy each of the following three conditions: (1) The entire action clearly fits within one or more of the categorical exclusions; (2) the action is not a piece of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental effect. Instruction Manual, section V.B.2(a–c).

This rule temporarily amends the regulations implementing the H–2B nonimmigrant visa program to increase the numerical limitation on H–2B nonimmigrant visas for the remainder of FY 2021 based on the Secretary of Homeland Security's determination, in consultation with the Secretary of Labor, consistent with the FY 2021 Omnibus. It also allows H–2B beneficiaries who are in the United States to change employers upon the filing of a new H–2B petition and begin to work for the new employer for a period generally not to exceed 60 days before the H–2B petition is approved by USCIS.

DHS has determined that this rule clearly fits within categorical exclusion A3(d) because it interprets or amends a regulation without changing its environmental effect. The amendments to 8 CFR part 214 would authorize up to an additional 22,000 visas for aliens who may receive H–2B nonimmigrant visas, of which 16,000 are for returning workers (persons issued H–2B visas or were otherwise granted H–2B status in Fiscal Years 2018, 2019, or 2020). The proposed amendments would also facilitate H–2B nonimmigrants to move to new employment faster than they could if they had to wait for a petition to be approved. The amendment's operative provisions approving H–2B petitions under the supplemental allocation would effectively terminate after September 30, 2021 for the cap increase, and 180 days from the rule's effective date for the portability provision. DHS believes amending applicable regulations to authorize up to an additional 22,000 H–2B nonimmigrant visas will not result in any meaningful, calculable change in environmental effect with respect to the current H–2B limit or in the context of a current U.S. population exceeding 331,000,000 (maximum temporary increase of 0.0066%).

The amendment to applicable regulations is a stand-alone temporary authorization and not a part of any larger action, and presents no extraordinary circumstances creating the potential for significant environmental effects. Therefore, this action is categorically excluded and no further NEPA analysis is required.

*H. Congressional Review Act*

This temporary final rule is not a ''major rule'' as defined by the Congressional Review Act, 5 U.S.C. 804(2), and thus is not subject to a 60-day delay in the rule becoming effective. DHS will send this temporary final rule to Congress and to the Comptroller General under the Congressional Review Act, 5 U.S.C. 801 *et seq.*

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[159] *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-202103.pdf* (last visited May 5, 2021).

Calculation of inflation: (1) Calculate the average monthly CPI–U for the reference year (1995) and the most recent current year available (2020); (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 2020 − Average monthly CPI–U for 1995)/(Average monthly CPI–U for 1995)] * 100 = [(258.811 − 152.383)/152.383] * 100 = (106.428/152.383) *100 = 0.6984 * 100 = 69.84 percent = 69.8 percent (rounded).

Calculation of inflation-adjusted value: $100 million in 1995 dollars * 1.698 = $169.8 million in 2020 dollars.

*I. Paperwork Reduction Act*

Attestation for Employers Seeking To Employ H–2B Nonimmigrants Workers Under Section 105 of Division O of the Consolidated Appropriations Act, 2021 Public Law 116–260, Form ETA–9142–B–CAA–4

The Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* provides that a Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. DOL has submitted the Information Collection Request (ICR) contained in this rule to OMB and obtained approval of a new form, Form ETA–9142B–CAA–4, using emergency clearance procedures outlined at 5 CFR 1320.13. The Departments note that while DOL submitted the ICR, both DHS and DOL will use the information.

Petitioners will use the new Form ETA–9142B–CAA–4 to make attestations regarding, for example, irreparable harm and returning worker (unless exempt because the H–2B worker is a national of one of the Northern Triangle countries who is counted against the 6,000 returning worker exemption cap) described above. Petitioners will need to file the attestation with DHS until it announces that the supplemental H–2B cap has been reached. In addition, the petitioner will need to retain all documentation demonstrating compliance with this implementing rule, and must provide it to DHS or DOL in the event of an audit or investigation.

In addition to obtaining immediate emergency approval, DOL is seeking comments on this information collection pursuant to 5 CFR 1320.13. Comments on the information collection must be received by July 26, 2021. This process of engaging the public and other Federal agencies helps ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The PRA provides that a Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. *See* 44 U.S.C. 3501 *et seq.* In addition, notwithstanding any other provisions of law, no person must generally be subject to a penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

In accordance with the PRA, DOL is affording the public with notice and an opportunity to comment on the new information collection, which is necessary to implement the requirements of this rule. The information collection activities covered under a newly granted OMB Control Number 1205–NEW are required under Section 105 of Division O of the FY 2021 Omnibus, which provides that ''the Secretary of Homeland Security, after consultation with the Secretary of Labor, and upon the determination that the needs of American businesses cannot be satisfied in [FY] 2021 with U.S. workers who are willing, qualified, and able to perform temporary nonagricultural labor,'' may increase the total number of noncitizens who may receive an H–2B visa in FY 2021 by not more than the highest number of H–2B nonimmigrants who participated in the H–2B returning worker program in any fiscal year in which returning workers were exempt from the H–2B numerical limitation. As previously discussed in the preamble of this rule, the Secretary of Homeland Security, in consultation with the Secretary of Labor, has decided to increase the numerical limitation on H–2B nonimmigrant visas to authorize the issuance of up to, but not more than, an additional 22,000 visas through the end of FY 2021 for certain H–2B workers for U.S. businesses who attest that they will likely suffer irreparable harm. As with the previous supplemental rules, the Secretary has determined that the additional visas will only be available for returning workers, that is workers who were issued H–2B visas or otherwise granted H–2B status in FY 2018, 2019, or 2020, unless the worker is one of the 6,000 nationals of one of the Northern Triangle countries who are exempt from the returning worker requirement.

Commenters are encouraged to discuss the following:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- the quality, utility, and clarity of the information to be collected; and
- the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, permitting electronic submission of responses.

The aforementioned information collection requirements are summarized as follows:

*Agency:* DOL–ETA.

*Type of Information Collection:* Extension of an existing information collection.

*Title of the Collection:* Attestation for Employers Seeking to Employ H–2B Nonimmigrants Workers Under Section 105 of Division O of the Consolidated Appropriations Act, 2021 Public Law 116–260.

*Agency Form Number:* Form ETA–9142–B–CAA–4.

*Affected Public:* Private Sector—businesses or other for-profits.

*Total Estimated Number of Respondents:* 3,558.

*Average Responses per Year per Respondent:* 1.

*Total Estimated Number of Responses:* 3,558.

*Average Time per Response:* 9 hours per application.

*Total Estimated Annual Time Burden:* 32,023 hours.

*Total Estimated Other Costs Burden:* $0.

Application for Premium Processing Service, Form I–907

The Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* provides that a Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. Form I–907, Application for Premium Processing Service, has been approved by OMB and assigned OMB control number 1615–0048. DHS is making no changes to the Form I–907 in connection with this temporary rule implementing the time-limited authority pursuant to section

105 of Division O, FY 2021 Omnibus (which expires on September 30, 2021). However, USCIS estimates that this temporary rule may result in approximately 3,332 additional filings of Form I–907 in fiscal year 2021. The current OMB-approved estimate of the number of annual respondents filing a Form I–907 is 319,301. USCIS has determined that the OMB-approved estimate is sufficient to fully encompass the additional respondents who will be filing Form I–907 in connection with this temporary rule, which represents a small fraction of the overall Form I–907 population. Therefore, DHS is not changing the collection instrument or increasing its burden estimates in connection with this temporary rule, and is not publishing a notice under the PRA or making revisions to the currently approved burden for OMB control number 1615–0048.

**List of Subjects**

*8 CFR Part 214*

Administrative practice and procedure, Aliens, Cultural exchange programs, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

*8 CFR Part 274a*

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

*20 CFR Part 655*

Administrative practice and procedure, Employment, Employment and training, Enforcement, Foreign workers, Forest and forest products, Fraud, Health professions, Immigration, Labor, Longshore and harbor work, Migrant workers, Nonimmigrant workers, Passports and visas, Penalties, Reporting and recordkeeping requirements, Unemployment, Wages, Working conditions.

**Department of Homeland Security**

**8 CFR Chapter I**

For the reasons discussed in the joint preamble, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

## PART 214—NONIMMIGRANT CLASSES

■ 1. Effective May 25, 2021 through May 28, 2024, the authority citation for part 214 is revised to read as follows:

**Authority:** 6 U.S.C. 202, 236; 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301–1305, 1357, and 1372; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; Pub. L. 106–386, 114 Stat. 1477–1480; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note and 1931 note, respectively; 48 U.S.C. 1806; 8 CFR part 2; Pub. L. 115–218, 132 Stat. 1547 (48 U.S.C. 1806).

■ 2. Effective May 25, 2021 through May 28, 2024, amend § 214.2 by:
■ a. Adding paragraph (h)(6)(x);
■ b. Adding reserved paragraph (h)(25); and
■ c. Adding paragraph (h)(26).

The additions read as follows:

**§ 214.2 Special requirements for admission, extension, and maintenance of status.**

* * * * *

(h) * * *

(6) * * *

(x) *Special requirements for additional cap allocations under the Consolidated Appropriations Act, 2021, Public Law 116–260—(A) Public Law 116–260—(1) Supplemental allocation for returning workers.* Notwithstanding the numerical limitations set forth in paragraph (h)(8)(i)(C) of this section, for fiscal year 2021 only, the Secretary has authorized up to an additional 16,000 visas for aliens who may receive H–2B nonimmigrant visas pursuant to section 105 of Division O of the Consolidated Appropriations Act, 2021, Public Law 116–260. An alien may be eligible to receive an H–2B nonimmigrant visa under this paragraph (h)(6)(x)(A)(*1*) if she or he is a returning worker. The term ''returning worker'' under this paragraph (h)(6)(x)(A)(*1*) means a person who was issued an H–2B visa or was otherwise granted H–2B status in fiscal year 2018, 2019, or 2020. Notwithstanding § 248.2 of this chapter, an alien may not change status to H–2B nonimmigrant under this paragraph (h)(6)(x)(A)(*1*).

(*2*) *Supplemental allocation for nationals of Guatemala, El Salvador, and Honduras (Northern Triangle countries).* Notwithstanding the numerical limitations set forth in paragraph (h)(8)(i)(C) of this section, for fiscal year 2021 only, and in addition to the allocation described in paragraph (h)(6)(x)(A)(*1*) of this section, the Secretary has authorized up to an additional 6,000 aliens who are nationals of Guatemala, El Salvador, or Honduras (Northern Triangle countries) who may receive H–2B nonimmigrant visas pursuant to section 105 of Division O of the Consolidated Appropriations Act, 2021, Public Law 116–260. Such workers are not subject to the returning worker requirement in paragraph (h)(6)(x)(A)(*1*). Petitioners must request such workers in an H–2B petition that is separate from H–2B petitions that request returning workers under paragraph (h)(6)(x)(A)(*1*) and must declare that they are requesting these workers in the attestation required under 20 CFR 655.68(a)(1). Notwithstanding § 248.2 of this chapter, an alien may not change status to H–2B nonimmigrant under this paragraph (h)(6)(x)(A)(*2*).

(*i*) Petitions submitted under this paragraph (h)(6)(x)(A)(*2*) must be received by July 8, 2021. H–2B petitions under the supplemental allocation for nationals of Northern Triangle countries received after that date will be rejected.

(*ii*) If USCIS determines that it has received fewer petitions by July 8, 2021 than needed to reach the USCIS projections for the Northern Triangle countries supplemental allocation in this paragraph (h)(6)(x)(A)(*2*), it will make the remainder of the allocation available as a separate allocation described in paragraph (h)(6)(x)(A)(*3*) of this section.

(*3*) *Availability of remainder of supplemental allocation.* If USCIS determines that fewer petitions have been received by July 8, 2021 than needed to meet the additional allocation described in paragraph (h)(6)(x)(A)(*2*) of this section, USCIS will make the remainder of the allocation available as a separate allocation to returning workers as described in paragraph (h)(6)(x)(A)(*1*) of this section and will announce the availability of the remainder of the allocation on the USCIS website at *uscis.gov* no later than July 23, 2021. Such announcement, if made, will specify the date on which petitioners may begin to file H–2B petitions under this paragraph (h)(6)(x)(A)(*3*).

(B) *Eligibility.* In order to file a petition with USCIS under this paragraph (h)(6)(x), the petitioner must:

(*1*) Comply with all other statutory and regulatory requirements for H–2B classification, including, but not limited to, requirements in this section, under part 103 of this chapter, and under 20 CFR part 655 and 29 CFR part 503; and

(*2*) Submit to USCIS, at the time the employer files its petition, a U.S. Department of Labor attestation, in compliance with this section and 20 CFR 655.64, evidencing that:

(*i*) Without the ability to employ all of the H–2B workers requested on the petition filed pursuant to this paragraph (h)(6)(x), its business is likely to suffer irreparable harm (that is, permanent and severe financial loss);

(*ii*) All workers requested and/or instructed to apply for a visa have been issued an H–2B visa or otherwise

granted H–2B status in fiscal year 2018, 2019, or 2020, unless the H–2B worker is a national of Guatemala, El Salvador, or Honduras and is counted towards the 6,000 cap described in paragraph (h)(6)(x)(A)(*2*) of this section;

(*iii*) The employer will comply with all Federal, State, and local employment-related laws and regulations, including health and safety laws and laws related to COVID–19 worker protections, any right to time off or paid time off for COVID–19 vaccination, and that the employer will notify any H–2B workers approved under the supplemental cap in paragraph (h)(6)(x)(A)(*2*) of this section, in a language understood by the worker, as necessary or reasonable, that all persons in the United States, including nonimmigrants, have equal access to COVID–19 vaccines and vaccine distribution sites;

(*iv*) The employer will comply with obligations and additional recruitment requirements outlined in 20 CFR 655.64(a)(3) through (5);

(*v*) The employer will provide documentary evidence of the facts in paragraphs (h)(6)(x)(B)(*2*)(*i*) through (*iv*) of this section to DHS or DOL upon request; and

(*vi*) The employer will agree to fully cooperate with any compliance review, evaluation, verification, or inspection conducted by DHS, including an on-site inspection of the employer's facilities, interview of the employer's employees and any other individuals possessing pertinent information, and review of the employer's records related to the compliance with immigration laws and regulations, including but not limited to evidence pertaining to or supporting the eligibility criteria for the FY 2021 supplemental allocations outlined in paragraph (h)(6)(x)(B) of this section, as a condition for the approval of the petition.

(*vii*) The employer must attest on Form ETA–9142–B–CAA–4 that it will fully cooperate with any audit, investigation, compliance review, evaluation, verification or inspection conducted by DOL, including an on-site inspection of the employer's facilities, interview of the employer's employees and any other individuals possessing pertinent information, and review of the employer's records related to the compliance with applicable laws and regulations, including but not limited to evidence pertaining to or supporting the eligibility criteria for the FY 2021 supplemental allocations outlined in 20 CFR 655.64(a) and 655.68(a), as a condition for the approval of the H–2B petition. The employer must further attest on Form ETA–9142–B–CAA–4 that it will not impede, interfere, or refuse to cooperate with an employee of the Secretary of the U.S. Department of Labor who is exercising or attempting to exercise DOL's audit or investigative authority pursuant to 20 CFR part 655, subpart A, and 29 CFR 503.25.

(C) *Processing.* USCIS will reject petitions filed pursuant to paragraph (h)(6)(x)(A)(*1*) or (*3*) of this section that are received after the applicable numerical limitation has been reached or after September 15, 2021, whichever is sooner. USCIS will reject petitions filed pursuant to paragraph (h)(6)(x)(A)(*2*) of this section that are received after the applicable numerical limitation has been reached or after July 8, 2021, whichever is sooner. USCIS will not approve a petition filed pursuant to this paragraph (h)(6)(x) on or after October 1, 2021.

(D) *Numerical limitations under paragraphs (h)(6)(x)(A)(1), (2), and (3) of this section.* When calculating the numerical limitations under paragraphs (h)(6)(x)(A)(*1*), (*2*), and (*3*) of this section as authorized under Public Law 116–260, USCIS will make numbers for each allocation available to petitions in the order in which the petitions subject to the respective limitation are received. USCIS will make projections of the number of petitions necessary to achieve the numerical limit of approvals, taking into account historical data related to approvals, denials, revocations, and other relevant factors. USCIS will monitor the number of petitions (including the number of workers requested when necessary) received and will notify the public of the dates that USCIS has received the necessary number of petitions (the ''final receipt dates'') under paragraph (h)(6)(x)(A)(*1*) or paragraphs (h)(6)(x)(A)(*2*) and (*3*). The day the public is notified will not control the final receipt dates. When necessary to ensure the fair and orderly allocation of numbers subject to the numerical limitations in paragraphs (h)(6)(x)(A)(*1*), (*2*), and (*3*), USCIS may randomly select from among the petitions received on the final receipt dates the remaining number of petitions deemed necessary to generate the numerical limit of approvals. This random selection will be made via computer-generated selection. Petitions subject to a numerical limitation not randomly selected or that were received after the final receipt dates that may be applicable under paragraph (h)(6)(x)(A)(*1*), (*2*), or (*3*) will be rejected. If the final receipt date is any of the first 5 business days on which petitions subject to the applicable numerical limits described in paragraph (h)(6)(x)(A)(*1*), (*2*), or (*3*) may be received (in other words, if any of the numerical limits described in paragraph (h)(6)(x)(A)(*1*), (*2*), or (*3*) is reached on any one of the first 5 business days that filings can be made), USCIS will randomly apply all of the numbers among the petitions received on any of those 5 business days.

(E) *Sunset.* This paragraph (h)(6)(x) expires on October 1, 2021.

(F) *Non-severability.* The requirement to file an attestation under paragraph (h)(6)(x)(B)(*2*) of this section is intended to be non-severable from the remainder of this paragraph (h)(6)(x), including, but not limited to, the numerical allocation provisions at paragraphs (h)(6)(x)(A)(*1*), (*2*), and (*3*) of this section in their entirety. In the event that any part of this paragraph (h)(6)(x) is enjoined or held to be invalid by any court of competent jurisdiction, the remainder of this paragraph (h)(6)(x) is also intended to be enjoined or held to be invalid in such jurisdiction, without prejudice to workers already present in the United States under this paragraph (h)(6)(x), as consistent with law.

* * * * *

(26) *Change of employers and portability for H–2B workers.* (i) This paragraph (h)(26) relates to H–2B workers seeking to change employers during the time period specified in paragraph (h)(26)(iv) of this section. Notwithstanding paragraph (h)(2)(i)(D) of this section, an alien in valid H–2B nonimmigrant status:

(A) Whose new petitioner files a non-frivolous H–2B petition requesting an extension of the alien's stay on or after May 25, 2021, is authorized to begin employment with the new petitioner after the petition described in this paragraph (h)(26) is received by USCIS and before the new H–2B petition is approved, but no earlier than the start date indicated in the new H–2B petition; or

(B) Whose new petitioner filed a non-frivolous H–2B petition requesting an extension of the alien's stay before May 25, 2021 that remains pending on May 25, 2021, is authorized to begin employment with the new petitioner before the new H–2B petition is approved, but no earlier than the start date of employment indicated on the new H–2B petition.

(ii)(A) With respect to a new petition described in paragraph (h)(26)(i)(A) of this section, and subject to the requirements of 8 CFR 274a.12(b)(30), the new period of employment described in paragraph (h)(26)(i) of this section may last for up to 60 days beginning on the Received Date on Form

I–797 (Notice of Action) or, if the start date of employment occurs after the I–797 Received Date, for a period of up to 60 days beginning on the start date of employment indicated in the H–2B petition.

(B) With respect to a new petition described in paragraph (h)(26)(i)(B) of this section, the new period of employment described in paragraph (h)(26)(i) of this section may last for up to 60 days beginning on the later of either May 25, 2021 or the start date of employment indicated in the H–2B petition.

(C) With respect to either type of new petition, if USCIS adjudicates the new petition before the expiration of this 60-day period and denies the petition, or if the new petition is withdrawn by the petitioner before the expiration of the 60-day period, the employment authorization associated with the filing of that petition under 8 CFR 274a.12(b)(30) will automatically terminate 15 days after the date of the denial decision or 15 days after the date on which the new petition is withdrawn. Nothing in this paragraph (h)(26) is intended to alter the availability of employment authorization related to professional H–2B athletes who are traded between organizations pursuant to paragraph (h)(6)(vii) of this section and 8 CFR 274a.12(b)(9).

(iii) In addition to meeting all other requirements in paragraph (h)(6) of this section for the H–2B classification, to commence employment and be approved under this paragraph (h)(26):

(A) The alien must have been in valid H–2B nonimmigrant status on or after May 25, 2021;

(B) The new H–2B petition must have been—

(*1*) Pending as of May 25, 2021; or

(*2*) Received on or after May 25, 2021, but no later than November 22, 2021;

(C) The petitioner must comply with all Federal, State, and local employment-related laws and regulations, including health and safety laws, laws related to COVID–19 worker protections, and any right to time off or paid time off for COVID–19 vaccination; and

(D) The petitioner may not impede, interfere, or refuse to cooperate with an employee of the Secretary of the U.S. Department of Labor who is exercising or attempting to exercise DOL's audit or investigative authority under 20 CFR part 655, subpart A, and 29 CFR 503.25.

(iv) Authorization to initiate employment changes pursuant to this paragraph (h)(26) begins at 12 a.m. on May 25, 2021, and ends at the end of November 22, 2021.

* * * * *

## PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

■ 3. The authority citation for part 274a continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1105a, 1324a; 48 U.S.C. 1806; 8 CFR part 2; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 114–74, 129 Stat. 599.

■ 4. Effective May 25, 2021 through May 28, 2024, amend § 274a.12 by adding paragraph (b)(30) to read as follows:

### § 274a.12 Classes of aliens authorized to accept employment.

* * * * *

(b) * * *

(30)(i) Pursuant to 8 CFR 214.2(h)(26) and notwithstanding 8 CFR 214.2(h)(2)(i)(D), an alien is authorized to be employed no earlier than the start date of employment indicated in the H–2B petition and no earlier than May 25, 2021, by a new employer that has filed an H–2B petition naming the alien as a beneficiary and requesting an extension of stay for the alien, for a period not to exceed 60 days beginning on:

(A) The later of the ''Received Date'' on Form I–797 (Notice of Action) acknowledging receipt of the petition, or the start date of employment indicated on the new H–2B petition, for petitions filed on or after May 25, 2021; or

(B) The later of May 25, 2021 or the start date of employment indicated on the new H–2B petition, for petitions that are pending as of May 25, 2021.

(ii) If USCIS adjudicates the new petition prior to the expiration of the 60-day period in paragraph (b)(30)(i) of this section and denies the new petition for extension of stay, or if the petitioner withdraws the new petition before the expiration of the 60-day period, the employment authorization under this paragraph (b)(30) will automatically terminate upon 15 days after the date of the denial decision or the date on which the new petition is withdrawn. Nothing in this section is intended to alter the availability of employment authorization related to professional H–2B athletes who are traded between organizations pursuant to paragraph (b)(9) of this section and 8 CFR 214.2(h)(6)(vii).

(iii) Authorization to initiate employment changes pursuant to 8 CFR 214.2(h)(26) and paragraph (b)(30)(i) of this section begins at 12 a.m. on May 25, 2021, and ends at the end of November 22, 2021.

* * * * *

**Department of Labor**

**Employment and Training Administration**

**20 CFR Chapter V**

Accordingly, for the reasons stated in the joint preamble, 20 CFR part 655 is amended as follows:

## PART 655—TEMPORARY EMPLOYMENT OF FOREIGN WORKERS IN THE UNITED STATES

■ 5. The authority citation for part 655 continues to read as follows:

**Authority:** Section 655.0 issued under 8 U.S.C. 1101(a)(15)(E)(iii), 1101(a)(15)(H)(i) and (ii), 8 U.S.C. 1103(a)(6), 1182(m), (n), (p), and (t), 1184(c), (g), and (j), 1188, and 1288(c) and (d); sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2102 (8 U.S.C. 1182 note); sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); sec. 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 323(c), Pub. L. 103–206, 107 Stat. 2428; sec. 412(e), Pub. L. 105–277, 112 Stat. 2681 (8 U.S.C. 1182 note); sec. 2(d), Pub. L. 106–95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); 29 U.S.C. 49k; Pub. L. 107–296, 116 Stat. 2135, as amended; Pub. L. 109–423, 120 Stat. 2900; 8 CFR 214.2(h)(4)(i); 8 CFR 214.2(h)(6)(iii); and sec. 6, Pub. L. 115–218, 132 Stat. 1547 (48 U.S.C. 1806).

Subpart A issued under 8 CFR 214.2(h).

Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188; and 8 CFR 214.2(h).

Subpart E issued under 48 U.S.C. 1806.

Subparts F and G issued under 8 U.S.C. 1288(c) and (d); sec. 323(c), Pub. L. 103–206, 107 Stat. 2428; and 28 U.S.C. 2461 note, Pub. L. 114–74 at section 701.

Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b) and (b)(1), 1182(n), (p), and (t), and 1184(g) and (j); sec. 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 412(e), Pub. L. 105–277, 112 Stat. 2681; 8 CFR 214.2(h); and 28 U.S.C. 2461 note, Pub. L. 114–74 at section 701.

Subparts L and M issued under 8 U.S.C. 1101(a)(15)(H)(i)(c) and 1182(m); sec. 2(d), Pub. L. 106–95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); Pub. L. 109–423, 120 Stat. 2900; and 8 CFR 214.2(h).

■ 6. Effective May 25, 2021 through September 30, 2021, add § 655.64 to read as follows:

### § 655.64 Special application filing and eligibility provisions for Fiscal Year 2021 under the Consolidated Appropriations Act, 2021.

(a) An employer filing a petition with USCIS under 8 CFR 214.2(h)(6)(x) to request H–2B workers who will begin employment on or after May 25, 2021, through September 30, 2021, must meet the following requirements:

(1) The employer must attest on Form ETA–9142–B–CAA–4 that without the ability to employ all of the H–2B

workers requested on the petition filed pursuant to 8 CFR 214.2(h)(6)(x), its business is likely to suffer irreparable harm (that is, permanent and severe financial loss), and that the employer will provide documentary evidence of this fact to DHS or DOL upon request.

(2) The employer must attest on Form ETA–9142–B–CAA–4 that each of the workers requested and/or instructed to apply for a visa, whether named or unnamed, on a petition filed pursuant to 8 CFR 214.2(h)(6)(x), have been issued an H–2B visa or otherwise granted H–2B status during one of the last three (3) fiscal years (fiscal year 2018, 2019, or 2020), unless the H–2B worker is a national of Guatemala, El Salvador, or Honduras and is counted towards the 6,000 cap described in 8 CFR 214.2(h)(6)(x)(A)(*2*).

(3) The employer must attest on Form ETA–9142–B–CAA–4 that the employer will comply with all the assurances, obligations, and conditions of employment set forth on its approved *Application for Temporary Employment Certification.*

(4) The employer must attest on Form ETA–9142–B–CAA–4 that it will comply with all Federal, State, and local employment-related laws and regulations, including health and safety laws and laws related to COVID–19 worker protections, any right to time off or paid time off for COVID–19 vaccination, and that the employer will notify any H–2B workers approved under the supplemental cap in 8 CFR 214.2(h)(6)(x)(A)(*1*) and (*2*), in a language understood by the worker, as necessary or reasonable, that all persons in the United States, including nonimmigrants, have equal access to COVID–19 vaccines and vaccine distribution sites.

(5) An employer that submits Form ETA–9142B–CAA–4 and the I–129 petition 45 or more days after the certified start date of work, as shown on its approved *Application for Temporary Employment,* must conduct additional recruitment of U.S. workers as follows:

(i) Not later than the next business day after submitting the I–129 petition for H–2B worker(s), the employer must place a new job order for the job opportunity with the State Workforce Agency (SWA), serving the area of intended employment. The employer must follow all applicable SWA instructions for posting job orders and receive applications in all forms allowed by the SWA, including online applications (sometimes known as ''self-referrals''). The job order must contain the job assurances and contents set forth in § 655.18 for recruitment of U.S. workers at the place of employment, and remain posted for at least 15 calendar days;

(ii) During the period of time the SWA is actively circulating the job order described in paragraph (a)(5)(i) of this section for intrastate clearance, the employer must contact, by email or other available electronic means, the nearest comprehensive American Job Center offering business services and serving the area of intended employment where work will commence, request staff assistance advertising and recruiting qualified U.S. workers for the job opportunity, and provide the unique identification number associated with the job order placed with the SWA or, if unavailable, a copy of the job order;

(iii) During the period of time the SWA is actively circulating the job order described in paragraph (a)(5)(i) of this section for intrastate clearance, the employer must contact (by mail or other effective means) its former U.S. workers, including those who have been furloughed or laid off, during the period beginning January 1, 2019, until the date the I–129 petition required under 8 CFR 214.2(h)(6)(x) is submitted, who were employed by the employer in the occupation at the place of employment (except those who were dismissed for cause or who abandoned the worksite), disclose the terms of the job order, and solicit their return to the job. The contact and disclosures required by this paragraph (a)(5)(iii) must be provided in a language understood by the worker, as necessary or reasonable;

(iv) During the period of time the SWA is actively circulating the job order described in paragraph (a)(5)(i) of this section for intrastate clearance, the employer must engage in the recruitment of U.S. workers as provided in § 655.45(a) and (b). The contact and disclosures required by this paragraph (a)(5)(iv) must be provided in a language understood by the worker, as necessary or reasonable; and

(v) The employer must hire any qualified U.S. worker who applies or is referred for the job opportunity until the date on which the last H–2B worker departs for the place of employment, or 30 days after the last date on which the SWA job order is posted, whichever is later. Consistent with § 655.40(a), applicants can be rejected only for lawful job-related reasons.

(6) The employer must attest on Form ETA–9142–B–CAA–4 that it will fully cooperate with any audit, investigation, compliance review, evaluation, verification, or inspection conducted by DOL, including an on-site inspection of the employer's facilities, interview of the employer's employees and any other individuals possessing pertinent information, and review of the employer's records related to the compliance with applicable laws and regulations, including but not limited to evidence pertaining to or supporting the eligibility criteria for the FY 2021 supplemental allocations outlined in this paragraph (a) and § 655.68(a), as a condition for the approval of the H–2B petition. Pursuant to this subpart and 29 CFR 503.25, the employer will not impede, interfere, or refuse to cooperate with an employee of the Secretary who is exercising or attempting to exercise DOL's audit or investigative authority.

(b) This section expires on October 1, 2021.

(c) The requirements under paragraph (a) of this section are intended to be non-severable from the remainder of this section; in the event that paragraph (a)(1), (2), (3), (4), or (5) of this section is enjoined or held to be invalid by any court of competent jurisdiction, the remainder of this section is also intended to be enjoined or held to be invalid in such jurisdiction, without prejudice to workers already present in the United States under this part, as consistent with law.

■ 7. Effective May 25, 2021 through September 30, 2024, add § 655.68 to read as follows:

**§ 655.68 Special document retention provisions for Fiscal Years 2021 through 2024 under the Consolidated Appropriations Act, 2021.**

(a) An employer who files a petition with USCIS to employ H–2B workers in fiscal year 2021 under authority of the temporary increase in the numerical limitation under section 105 of Division O, Public Law 116–260 must maintain for a period of three (3) years from the date of certification, consistent with 20 CFR 655.56 and 29 CFR 503.17, the following:

(1) A copy of the attestation filed pursuant to the regulations in 8 CFR 214.2 governing that temporary increase;

(2) Evidence establishing, at the time of filing the I–129 petition, that employer's business is likely to suffer irreparable harm (that is, permanent and severe financial loss), if it cannot employ H–2B nonimmigrant workers in fiscal year 2021;

(3) Documentary evidence establishing that each of the workers the employer requested and/or instructed to apply for a visa, whether named or unnamed on a petition filed pursuant to 8 CFR 214.2(h)(6)(x), have been issued an H–2B visa or otherwise granted H–2B status during one of the last three (3) fiscal years (fiscal year 2018, 2019,

or 2020), unless the H–2B worker(s) is a national of El Salvador, Guatemala, or Honduras and is counted towards the 6,000 cap described in 8 CFR 214.2(h)(6)(x)(A)(*2*). Alternatively, if applicable, employers must maintain documentary evidence that the workers the employer requested and/or instructed to apply for visas are eligible nationals of El Salvador, Guatemala, or Honduras, as defined in 8 CFR 214.2(h)(6)(x)(A)(*2*); and

(4) If applicable, proof of recruitment efforts set forth in § 655.64(a)(5)(i) through (iv) and a recruitment report that meets the requirements set forth in § 655.48(a)(1) through (4) and (7), and maintained throughout the recruitment period set forth in § 655.64(a)(5)(v).

(b) DOL or DHS may inspect the documents in paragraphs (a)(1) through (4) of this section upon request.

(c) This section expires on October 1, 2024.

**Alejandro N. Mayorkas,**

*Secretary, U.S. Department of Homeland Security.*

**Martin J. Walsh,**

*Secretary, U.S. Department of Labor.*

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