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U.S. GOVERNMENT
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FEDERAL REGISTER

Vol. 86 Thursday

No. 138 July 22, 2021

Pages 38537–38904

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Publishing Office, is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

[Docket ID FCIC–21–0002]

RIN 0563–AC73

Common Crop Insurance Regulations; Small Grains Crop Insurance Provisions; Corrections

AGENCY: Federal Crop Insurance Corporation, U.S. Department of Agriculture (USDA).

ACTION: Correcting Amendment.

SUMMARY: On June 25, 2021, the Federal Crop Insurance Corporation revised the Common Crop Insurance Regulations; Small Grains Crop Insurance Provisions. That final rule included a typographical error in an amendatory instruction resulting in change that could not be made in the Code of Federal Regulations (CFR). This document makes those corrections.

DATES: *Effective date:* July 22, 2021.

FOR FURTHER INFORMATION CONTACT: Francie Tolle; telephone (816) 926–7730; email *francie.tolle@usda.gov.* Persons with disabilities who require alternative means of communication should contact the USDA Target Center at (202) 720–2600 or 844–433–2774.

SUPPLEMENTARY INFORMATION:

Background

The Small Grains Crop Insurance Provisions in 7 CFR 457.101 were revised by a final rule published in the **Federal Register** on June 25, 2021 (86 FR 33485–33491). This document makes the changes that were not incorporated, when the other changes in the final rule were made in the CFR, due to a typographical error. There was an incorrect reference in the amendatory language that referenced paragraphs (c)(2)(v) introductory text and (c)(2)(v)(A), (B), (D), and (E) in section 7 of the small grains crop insurance provisions. Section 7 does not have a paragraph (c). The correct references are paragraphs (a)(2)(v) introductory text and (a)(2)(v)(A), (B), (D), and (E). This document makes the corrections to revise those paragraphs in paragraph (a)(2)(v) as intended by the final rule.

List of Subjects in 7 CFR Part 457

Acreage allotments, Crop insurance, Reporting and recordkeeping requirements.

Accordingly, 7 CFR part 457 is corrected by making the following amendments:

PART 457—COMMON CROP INSURANCE REGULATIONS

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

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

■ 2. In § 457.101, in section 7, revise paragraphs (a)(2)(v) introductory text and (a)(2)(v)(A), (B), (D), and (E) to read as follows:

§ 457.101 Small grains crop insurance provisions.

* * * * *

7. Insurance Period.

* * * * *

(a) * * *

(2) * * *

(v) Whenever the Special Provisions designate only a spring type, any winter barley, oat, or wheat acreage will not be insured unless you request such coverage on or before the spring sales closing date, and we inspect and give written confirmation that the acreage has an adequate stand in the spring to produce the yield used to determine your production guarantee. However, if we fail to inspect the acreage by the spring final planting date, insurance will attach as specified in section 7(a)(2)(v)(C).

(A) Your request for coverage must include the location and number of acres of winter barley, oats, or wheat.

(B) The winter barley, oats, or wheat will be insured as a spring type for the purpose of the production guarantee, premium, projected price, and harvest price, if applicable.

* * * * *

(D) Any such winter barley, oats, or wheat acreage that is damaged after it is accepted for insurance but before the spring final planting date, to the extent that producers in the area would normally not further care for the crop, must be replanted to a spring type of the insured crop unless we agree it is not practical to replant.

(E) If winter-planted acreage is not to be insured it must be recorded on the acreage report as uninsured winter-planted acreage.

* * * * *

Richard Flournoy,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 2021–15587 Filed 7–21–21; 8:45 am]

BILLING CODE 3410–08–P

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121 and 124

RIN 3245–AG94

Consolidation of Mentor-Protégé Programs and Other Government Contracting Amendments; Correction

AGENCY: U.S. Small Business Administration.

ACTION: Correcting amendment.

SUMMARY: The U.S. Small Business Administration (SBA) is correcting a final rule that was published in the **Federal Register** on October 16, 2020. The rule merged the 8(a) Business Development (BD) Mentor-Protégé Program and the All Small Mentor-Protégé Program to eliminate confusion and remove unnecessary duplication of functions within SBA. This document is making technical corrections to the final regulations.

DATES: Effective July 22, 2021.

FOR FURTHER INFORMATION CONTACT: Mark Hagedorn, U.S. Small Business Administration, Office of General Counsel, 409 Third Street SW, Washington, DC 20416; (202) 205–7625; *mark.hagedorn@sba.gov.*

SUPPLEMENTARY INFORMATION: On October 16, 2020, SBA published a final rule revising the regulations pertaining to the 8(a) BD and size programs in order to further reduce unnecessary or excessive burdens on small businesses and to more clearly delineate SBA's intent in certain regulations (85 FR 66146). This is the fourth set of corrections. The first set of corrections was published in the **Federal Register** on November 16, 2020 (85 FR 72916).

The second set of corrections was published in the **Federal Register** on January 14, 2021 (86 FR 2957). The third set of corrections was published in the **Federal Register** on February 23, 2021 (86 FR 10732). This document augments those corrections.

In the final rule, SBA amended § 121.404(a)(1) to revise and clarify when the size status of a business concern is determined for a multiple-award contract. In doing so, SBA inadvertently removed § 121.404(a)(1)(iv), which concerned when the size of a concern is determined for multiple-award contracts for which offerors are not required to submit price as part of the offer. SBA did not intend to delete that provision. This document adds back in § 121.404(a)(1)(iv) as it appeared in SBA's regulations prior to the final rule.

This rule also corrects a typographical error contained in the introductory text of § 121.404(g) by removing the word ''until'' from the second sentence.

The final rule also revised § 121.404(g)(2) to add language relating to the effect a merger, sale or acquisition that occurs between a concern's offer for a particular procurement and the date of award for that procurement would have on the concern's continued eligibility to receive the award and a procuring agency's ability to continue to receive small business credit. The final rule inadvertently left out a corresponding change to § 121.404(g)(4). This rule corrects that omission by adding the words ''or pending'' to § 121.404(g)(4) to make clear that the revisions to § 121.404(g)(2) were intended to apply to orders issued under multiple award contracts (MACs) as well.

Finally, the final rule also made several revisions to § 124.509 regarding business activity targets applying to Participants in SBA's 8(a) Business Development program. One of the changes made by the final rule was to clarify that SBA will compare 8(a) and non-8(a) revenues in a Participant's program year, as opposed to its fiscal year. The final rule intended to change all references from fiscal year to program year. However, one reference to fiscal year was mistakenly left in § 124.509(b)(3). This correction changes fiscal year to program year in § 124.509(b)(3).

List of Subjects

13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Small businesses.

13 CFR Part 124

Administrative practice and procedure, Government procurement, Government property, Small businesses.

Accordingly, 13 CFR parts 121 and 124 are corrected by making the following correcting amendments:

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. Amend § 121.404 by

■ a. Adding paragraph (a)(1)(iv);

■ b. Revising the second sentence of paragraph (g) introductory text; and

■ c. Revising the second sentence of paragraph (g)(4).

The addition and revisions read as follows:

§ 121.404 When is the size status of a business concern determined?

* * * * *

(a) * * *

(1) * * *

(iv) For an indefinite delivery, indefinite quantity (IDIQ), Multiple Award Contract, where concerns are not required to submit price as part of the offer for the IDIQ contract, size will be determined as of the date of initial offer, which may not include price.

* * * * *

(g) * * * Similarly, a concern that represents itself as a small business and qualifies as small after a required recertification under paragraph (g)(1), (2), or (3) of this section is generally considered to be a small business throughout the life of that contract. * * *

* * * * *

(4) * * * However, if the Multiple Award Contract was set-aside for small businesses, partially set-aside for small businesses, or reserved for small business, then in the case of a contract novation, or merger or acquisition where no novation is required, where the resulting contractor is now other than small, the agency cannot count any new or pending orders issued pursuant to the contract, from that point forward, towards its small business goals. * * *

* * * * *

PART 124—8(a) BUSINESS DEVELOPMENT/SMALL DISADVANTAGED BUSINESS STATUS DETERMINATIONS

■ 3. The authority citation for part 124 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(j), 637(a), 637(d), 644 and Pub. L. 99–661, Pub. L. 100–656, sec. 1207, Pub. L. 101–37, Pub. L. 101–574, section 8021, Pub. L. 108–87, Pub. L. 116–260, sec. 330, and 42 U.S.C. 9815.

■ 4. Amend § 124.509 by revising the first sentence of paragraph (b)(3) to read as follows:

§ 124.509 What are non-8(a) business activity targets?

* * * * *

(b) * * *

(3) * * * SBA will measure the Participant's compliance with the applicable non-8(a) business activity target at the end of each program year in the transitional stage by comparing the Participant's non-8(a) revenue to its total revenue during the program year just completed. * * *

* * * * *

Antonio Doss,

Acting Associate Administrator, Office of Government Contracting and Business Development.

[FR Doc. 2021–15357 Filed 7–21–21; 8:45 am]

BILLING CODE 8026–03–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0156; Project Identifier AD–2020–01594–T; Amendment 39–21650; AD 2021–15–03]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace Corporation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Gulfstream Aerospace Corporation (Gulfstream) Model GVII–G500 airplanes. This AD results from flap yoke fittings with design features that cause decreased fatigue life. This AD requires replacing the flap inboard and outboard yoke fitting assemblies and establishing a 20,000 flight cycle life limit for the fittings. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 26, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 26, 2021.

ADDRESSES: For service information identified in this final rule, contact Gulfstream Aerospace Corporation, Technical Publications Dept., P.O. Box 2206, Savannah, GA 31402; phone: (800) 810–4853; email: *pubs@gulfstream.com;* website: *https://www.gulfstream.com/en/customer-support/.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0156.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0156; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Jeffrey Johnson, Aviation Safety Engineer, Atlanta ACO Branch, FAA, 1701 Columbia Ave., College Park, GA 30337; phone: (404) 474–5554; fax: (404) 474–5606; email: *jeffrey.d.johnson@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Gulfstream Aerospace Corporation (Gulfstream) Model GVII–G500 airplanes. The NPRM published in the **Federal Register** on May 7, 2021 (86 FR 24546). The NPRM was prompted by a failure that occurred during flight testing of a Gulfstream Model GVII–G500 airplane, when the aircraft was configuring for a steep approach test point, the crew received a flap failure message. After landing, inspection revealed that the left-hand flap track 'B' yoke had become disconnected due to structural failure. Gulfstream's investigation to determine the root cause of the failure revealed that the flap yoke fittings for certain serial-numbered Gulfstream Model GVII–G500 airplanes have design features that cause decreased fatigue life. In the NPRM, the FAA proposed to require replacing the flap inboard and outboard yoke fitting assemblies and revising the Airworthiness Limitations Instructions of your existing aircraft maintenance manual (AMM) to incorporate a 20,000 flight cycle life limit. The FAA is issuing this AD to address the unsafe condition on these products.

Discussion of Final Airworthiness Directive

Comments

The FAA received no comments on the NPRM or on the determination of the costs.

Conclusion

The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. This AD is adopted as proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Gulfstream GVII–G500 Aircraft Service Change No. 032, Initial Issue, dated November 20, 2020 (Gulfstream ASC No. 032). This service information specifies procedures for replacing the flap inboard and outboard yoke fitting assemblies and upper bushings. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Other Related Service Information

The FAA reviewed Gulfstream GVII–500 Customer Bulletin No. 045, Initial Issue, dated November 20, 2020. This service information specifies the compliance time and additional information for Gulfstream ASC No. 032. The FAA also reviewed Gulfstream Aerospace GVII–G500 Aircraft Maintenance Manual Document Number GAC–AC–GVII–G500–AMM–0001, Revision 7, dated December 15, 2020. This document contains revised airworthiness limitations, maintenance checks, and inspections.

Differences Between This AD and the Service Information

Gulfstream ASC No. 032 contains actions labeled ''Required for Compliance'' (RC), and the language in Gulfstream ASC No. 032 and in paragraph (h)(3) of this AD indicates that operators must comply with all actions labeled RC for compliance with this AD. However, this AD does not require all of the steps in Gulfstream ASC No. 032 that are labeled as RC. Operators only need to comply with the RC steps specified in paragraph (g) of this AD.

Costs of Compliance

The FAA estimates that this AD affects 85 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replace the flap inboard and outboard yoke fitting assemblies and update the existing AMM.	83.5 work-hours × $85.00 per hour = $7,097.50.	$8,015.00	$15,112.50	$1,284,562.50

Authority for This Rulemaking

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

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and

procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2021–15–03 Gulfstream Aerospace Corporation: Amendment 39–21650; Docket No. FAA–2021–0156; Project Identifier AD–2020–01594–T.

(a) Effective Date

This airworthiness directive (AD) is effective August 26, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Gulfstream Aerospace Corporation Model GVII–G500 airplanes, serial numbers 72001 through 72085, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 5753, Trailing Edge Flaps.

(e) Unsafe Condition

This AD results from flap yoke fittings with design features that cause decreased fatigue life. The FAA is issuing this AD to prevent failure of the flap yoke fitting. The unsafe condition, if not addressed, could result in failure of the flap yoke fitting during flap transition, which could cause the flaps to stop moving. This, combined with additional failures in the flap actuator force limiter or flap yoke actuator disconnect, could result in asymmetric flap positions leading to a loss of airplane control.

(f) Compliance

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

(g) Required Actions

(1) Within 24 months after the effective date of this AD or within 500 flight cycles after the effective date of this AD, whichever occurs first, replace each flap yoke fitting assembly by following Sections III.A.2 through III.D of the Modification Instructions in Gulfstream GVII–G500 Aircraft Service Change No. 032, Initial Issue, dated November 20, 2020.

(2) Within 24 months after the effective date of this AD, revise the existing Airworthiness Limitations section of the Instructions for Continued Airworthiness or aircraft inspection program for your airplane by establishing a life limit of 20,000 flight cycles for each flap yoke fitting part number 72P5755095A001, 72P5755096A001, 72P5755097A001, and 72P5755098A001.

Note 1 to paragraph (g)(2): Section 05–10–10 of Gulfstream Aerospace GVII–G500 Aircraft Maintenance Manual Document Number GAC–AC–GVII–G500–AMM–0001, Revision 7, dated December 15, 2020, contains the life limit in paragraph (g)(2) of this AD.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Atlanta ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in Related Information.

(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.

(3) For service information that contains steps that are labeled as Required for Compliance (RC), the following provisions apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(i) Related Information

For more information about this AD, contact Jeffrey Johnson, Aviation Safety Engineer, Atlanta ACO Branch, FAA, 1701 Columbia Ave., College Park, GA 30337; phone: (404) 474–5554; fax: (404) 474–5606; email: *jeffrey.d.johnson@faa.gov*.

(j) Material Incorporated by Reference

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

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

(i) Gulfstream GVII–G500 Aircraft Service Change No. 032, Initial Issue, dated November 20, 2020.

(ii) [Reserved]

(3) For Gulfstream Aerospace Corporation service information identified in this AD, contact Gulfstream Aerospace Corporation, Technical Publications Dept., P.O. Box 2206, Savannah, GA 31402; phone: (800) 810–4853; email: *pubs@gulfstream.com;* website: *https://www.gulfstream.com/en/customer-support/*.

(4) You may view this service information at FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

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

Issued on July 15, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–15473 Filed 7–21–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0029; Project Identifier MCAI–2020–01216–T; Amendment 39–21631; AD 2021–14–04]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Dassault Aviation Model FALCON 7X airplanes and Model FALCON 2000EX airplanes. This AD was prompted by a report that non-certified ANCRA seat tracks were installed on some airplanes and that those seat tracks might not sustain required loads during an emergency landing. This AD requires replacement of certain ANCRA seat tracks with certified (Brownline) seat tracks, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 26, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 26, 2021.

ADDRESSES: For material incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0029.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0029; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

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

SUPPLEMENTARY INFORMATION:

Background

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2020–0188, dated August 24, 2020 (EASA AD 2020–0188) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for certain Dassault Aviation Model FALCON 7X airplanes and Model FALCON 2000EX airplanes.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Dassault Aviation Model FALCON 7X airplanes and Model FALCON 2000EX airplanes. The NPRM published in the **Federal Register** on February 24, 2021 (86 FR 11189). The NPRM was prompted by a report that non-certified ANCRA seat tracks were installed on some airplanes and that those seat tracks might not sustain required loads during an emergency landing. The NPRM proposed to require replacement of certain ANCRA seat tracks with certified (Brownline) seat tracks, as specified in EASA AD 2020–0188.

The FAA is issuing this AD to address seat tracks that could fail and lead to seat detachment during an emergency landing, which could result in injury to airplane occupants and prevent evacuation of the airplane. See the MCAI for additional background information.

Comments

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

Conclusion

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

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

Related Service Information Under 1 CFR Part 51

EASA AD 2020–0188 specifies procedures for replacement of certain ANCRA seat tracks with certified (Brownline) seat tracks. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 5 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
10 work-hours × $85 per hour = $850	Up to $1,900	Up to $2,750	Up to $13,750.

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

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of

the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2021–14–04 Dassault Aviation: Amendment 39–21631; Docket No. FAA–2021–0029; Project Identifier MCAI–2020–01216–T.

(a) Effective Date

This airworthiness directive (AD) is effective August 26, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Dassault Aviation Model FALCON 7X airplanes and Model FALCON 2000EX airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2020–0188, dated August 24, 2020 (EASA AD 2020–0188).

(d) Subject

Air Transport Association (ATA) of America Code 25, Equipment/Furnishings.

(e) Reason

This AD was prompted by a report that non-certified ANCRA seat tracks were installed on some airplanes and that those seat tracks might not sustain required loads during an emergency landing. The FAA is issuing this AD to address seat tracks that could fail and lead to seat detachment during an emergency landing, which could result in injury to airplane occupants and prevent evacuation of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2020–0188.

(h) Exceptions to EASA AD 2020–0188

(1) Where EASA AD 2020–0188 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2020–0188 does not apply to this AD.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2020–0188 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(k) Related Information

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

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2020–0188, dated August 24, 2020.

(ii) [Reserved]

(3) For EASA AD 2020–0188, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0029.

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

Issued on June 22, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–15465 Filed 7–21–21; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Parts 0 and 1

Revisions to Rules of Practice

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its rules of practice. The revised rules modernize procedures for rulemakings to define unfair or deceptive acts or practices under the FTC Act to provide for more efficient conduct of rulemaking proceedings. The Commission is also revising these rules to better reflect the agency's organizational structure and authority.

DATES: This rule is effective July 22, 2021.

FOR FURTHER INFORMATION CONTACT: Josephine Liu, Assistant General Counsel for Legal Counsel, (202) 326–2170, or Kenny Wright, Attorney, (202) 326–2907, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The Federal Trade Commission is revising the rules in part 0 and subpart B of part 1 its rules of practice, 16 CFR parts 0 and 1.

The Commission is amending part 0 to more accurately reflect the agency's current enforcement authority and organizational structure.

The amendments to part 1, subpart B will govern rulemaking proceedings under Section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57(a)(1)(B)) to define unfair or deceptive acts or practices. These amendments modernize the procedures for rulemaking proceedings under Section 18 and ensure conformance with the statutory structure for such proceedings.

The Commission is also making conforming edits to make the rule language more gender-neutral; use active voice instead of passive voice; replace ambiguous uses of ''shall'' with ''may'', ''will'', or ''must'' as appropriate; make nonsubstantive grammatical changes; and add and standardize citations to the U.S. Code where appropriate.

I. Revisions to Part 0—Organization

The Commission is revising certain provisions in part 0 of its rules to better reflect the agency's current enforcement authority and organizational structure.

§ 0.3: Hours

In § 0.3, the Commission is correcting outdated nomenclature: The agency's offices outside of Washington, DC are regional offices, not field offices. The Commission is also clarifying that FTC offices are generally open from 8:30 a.m. to 5 p.m., except on Saturdays, Sundays, and legal holidays.

§ 0.4: Laws Administered

In § 0.4, the Commission is revising the listing of the various laws under which the Commission exercises enforcement and administrative authority. The Commission now enforces or administers more than 80 laws, which are listed at *https://www.ftc.gov/enforcement/statutes.* The web page, which is updated regularly, contains summaries of the laws and links to the relevant statutory texts. Given that the web page is more comprehensive and more useful than a static list of laws, the Commission is amending § 0.4 by deleting most items on the list and adding a cross reference to the web page.

§ 0.8: The Chair

The Commission is amending § 0.8 to designate the Chair to serve as the Chief Presiding Officer or to designate an alternative Chief Presiding Officer for rulemaking proceedings under Section 18(a)(1)(B) of the FTC Act. As Chief Presiding Officer, the Chair will also retain authority to designate another Commissioner or another person who is not responsible to any other official or employee of the Commission as Chief Presiding Officer. In addition, Section 0.8 is also being revised to include information about three units that report to the Office of the Chair: The Office of the Chief Privacy Officer, the Office of Equal Employment Opportunity and Workplace Inclusion, and the Office of Policy Planning.

§ 0.9: Organization Structure

The Commission is deleting the regional offices from the list of principal units included in § 0.9. The regional offices operate under the supervision of the Bureaus of Consumer Protection and Competition, so listing the regional offices as principal units is not an accurate description of the agency's organizational structure.

§ 0.11: Office of the General Counsel

Section 0.11 is being revised to provide a more detailed description of the situations when the Office of the General Counsel (OGC) represents the Commission in court or before administrative agencies, and also to add that OGC represents the agency in employment and labor disputes.

§ 0.12: Office of the Secretary

The Commission is revising § 0.12 to specify that an Acting Secretary can sign Commission orders and official correspondence in the Secretary's absence.

§ 0.14: Office of Administrative Law Judges

In § 0.14, to match the changes to § 0.8, the Commission is deleting the reference to the Chief Administrative Law Judge serving as the Chief Presiding Officer. The Commission is also deleting a sentence about ALJs being appointed under the authority of the Office of Personnel Management. This sentence is no longer legally accurate after *Lucia* v. *SEC,* 585 U.S. ____, 138 S. Ct. 2044 (2018) and Executive Order 13843, 83 FR 32755 (2018).

§§ 0.16 and 0.17: Bureaus of Competition and Consumer Protection

The Commission is revising §§ 0.16 and 0.17 to harmonize the description of the work performed by the Bureaus of Competition and Consumer Protection. Both Bureaus have similar investigative and enforcement responsibilities. The Commission is also clarifying in § 0.17 that the Bureau of Consumer Protection (BCP) may initiate civil penalty proceedings for rule violations and deleting an outdated discussion about BCP maintaining the agency's public reference facilities.

§ 0.19: The Regional Offices

The Commission is updating § 0.19 to reflect the regional offices' current responsibilities and organizational structure. The new language makes clearer that the regional offices are responsible for enforcement as well as investigations. In addition, the regional offices are no longer under the general supervision of the Office of the Executive Director. Instead, they are under the general supervision of the Bureaus of Competition and Consumer Protection and clear their activities through the appropriate Bureau. Section 0.19(b) is being revised to reflect the various offices' current geographic areas of responsibility; to delete the regional offices' address information, which can quickly become outdated; and to reflect the fact that the Western Region has split into two separate regions: Western Region Los Angeles and Western Region San Francisco.

§ 0.20: Office of International Affairs

The Commission is revising § 0.20 to clarify the role of the Office of International Affairs (OIA). OIA's responsibilities include handling the FTC's international antitrust and consumer protection missions in coordination and consultation with the appropriate Bureaus; cooperating with foreign authorities on investigations and enforcement; participating in the United States government interagency process to promote agency views on

international issues within the FTC's mandate; coordinating staff exchanges and internships at the FTC for staff of non-U.S. competition, consumer protection, and privacy agencies; and building capacity at other agencies around the world.

II. Revisions to Part 1, Subpart B—Rules and Rulemaking Under Section 18(a)(1)(B) of the FTC Act

The Commission is revising part 1, subpart B of its rules to modernize the procedures governing rulemaking under Section 18(a)(1)(B) of the FTC Act, provide for efficient conduct of rulemaking proceedings, and to better reflect the requirements of the FTC Act.

§ 1.11: Commencement of a Rulemaking Proceeding

The Commission is revising procedures under § 1.11 for the initiation of rulemaking proceedings under Section 18(a)(1)(B) of the FTC Act. Pursuant to these amendments, rulemaking proceedings will commence with the issuance of a notice of proposed rulemaking that will include the text of the proposed rule, a preliminary regulatory analysis and explanation of the Commission's proposal, and an invitation for interested persons to comment. Pursuant to the requirements of the FTC Act, the Commission will afford interested persons an opportunity to request an informal hearing in response to this notice and will identify disputed issues of material fact, if any, necessary to be resolved in the rulemaking proceeding.

Interested persons who request to present their position orally in an informal hearing must file a request with the Commission after issuance of a notice of proposed rulemaking. This request must include a statement identifying the person's interests in the proceeding and may propose additional disputed issues for resolution at the informal hearing.

§ 1.12: Notices of Informal Hearings and Designations

Section 18(c)(2) of the FTC Act also provides an opportunity for interested persons to submit their views on a proposed rule orally at an informal hearing. 15 U.S.C. 57a(c)(2). In § 1.12, the Commission is amending the provisions governing the conduct of such proceedings. When an informal hearing is requested or the Commission determines in its discretion to hold one, the informal hearing will be initiated by a notice of informal hearing.

Pursuant to the amendments, the Commission will issue an initial notice of informal hearing to announce necessary details for an informal hearing, including the designation of a presiding officer, the time and place of the informal hearing, a final list of disputed issues of material fact to be resolved, and a list of persons who will make oral presentations. The initial notice of informal hearing will also invite interested persons to submit requests for cross-examination or to present rebuttal submissions.

Based upon submissions in response to the initial notice of informal hearing, the Commission will issue a final notice of informal hearing providing a list of interested persons who will conduct cross-examination regarding disputed issues of material fact, any groups with the same or similar interests who will be required to select a representative to conduct cross-examination on behalf of the group, and any interested persons who will be permitted to make rebuttal submissions.

To provide for the efficient conduct of informal hearings, the amendments retain provisions authorizing the Commission to group persons with similar interests and require the selection of a group representative to conduct cross-examination. The amended rules preserve the authority of the presiding officer to designate group representatives if a group of interested persons is unable to agree upon a representative and to entertain requests for an individual to conduct cross-examination on select issues that affect that person's particular interest if a designated group representative would not adequately represent their interests.

§ 1.13: Conduct of Informal Hearing by the Presiding Officer

The Commission is amending § 1.13 to focus on the presiding officer's powers and responsibilities for the orderly conduct of an informal hearing. The amendments provide the presiding officer with the powers necessary to conduct effective and orderly informal hearings in rulemaking proceedings.

The amendments provide that the Commission will establish the time and location of informal hearings, select participants who shall provide oral presentations, and designate disputed issues of material fact, if any, that are to be resolved in the rulemaking proceedings. The presiding officer designated by the Commission will have the necessary powers to conduct hearings in an efficient manner, including the power to impose time limits on oral presentations and to select or modify representatives designated to conduct cross-examination. The amendments also provide that informal hearings will be limited to a total of 5 days over the course of a thirty-day period, unless Commission extends the time for conduct of a hearing upon a showing of good cause.

The amendments remove references to direct examination in informal hearings. Providing interested persons with the opportunity to present their positions orally does not require the formality of direct examination. Consistent with Section 18 of the FTC Act, the amended rules continue to allow an interested person to cross-examine those making oral presentations if appropriate and required to address disputed issues of material fact.

The amendments also remove procedures to allow the presiding officer to compel the attendance of persons, require the production of documents, or require responses to written questions. The Commission believes that these procedures are unnecessary for the conduct of effective informal hearings in rulemaking proceedings and are inconsistent with the informal nature of such proceedings.

The revisions also eliminate the requirement that Commission staff publish a staff report containing an analysis of the rulemaking record and recommendations as to the form of the final rule for public comment. Such reports are not statutorily required in rulemaking proceedings under Section 18(a)(1)(B), and the Commission believes that eliminating this requirement will provide for more efficient proceedings without undermining the Commission's ability to formulate effective rules. The amendments also eliminate provisions providing for an additional comment period on the presiding officer's report on the rulemaking proceeding.

The proposed amendments eliminate procedures allowing interested persons to petition the Commission or to appeal rulings of the presiding officer during an informal hearing. These provisions add procedural complexity to informal hearings that are inconsistent with the informal nature of the rulemaking process. In addition, they are unnecessary given the enhanced role the Commission will play in establishing the agenda of the informal hearing and designating disputed issues, if any, for resolution at the informal hearing. Instead, the amended rules provide a separate post-hearing process for petitions seeking Commission review of any rulings by the presiding officer denying or limiting the petitioner's ability to conduct cross-examination or make rebuttal submissions.

§ 1.18: Rulemaking Record

Consistent with Section 18 of the FTC Act, the amended rules continue to provide that communications about the merits of a rulemaking to a Commissioner or Commissioner's advisor will be placed on the rulemaking record. The Commission is revising § 1.18 to remove unnecessary language distinguishing between oral communications received during the comment period and those received following the close of the comment period on a proposed rule. The amendments require that a Commissioner's advisor will ensure that any oral communications to a Commissioner or Commissioner's advisor during a rulemaking proceeding will be placed on the rulemaking record through either a transcript of the communication or a memorandum that summarizes the meeting, including a list of all persons attending and a summary of all data and arguments presented. In addition, the amendments clarify the treatment of written communications to a Commissioner or their staff during the rulemaking proceeding. The amended rules provide that written communications received during a time period designated for acceptance of written comments or submissions will be placed on the rulemaking record, while written communications received outside these designated periods will be placed on the public record unless the Commission votes to place them on the rulemaking record. The amendments also provide that communications from Members of Congress will be placed on the rulemaking record if received during the time period for comments and on the public record if received following the time period for public comment.

III. Global Revisions

The Commission is also making various changes throughout parts 0 and 1 to:

- Reflect that Commission rulemaking notices in proceedings under Section 18(a)(1)(B) of the FTC Act must be submitted to the Committee on Energy and Commerce of the House of Representatives;
- Make the rule language more gender-neutral; [1]
- Use active voice instead of passive voice;
- Replace ambiguous uses of ''shall'' with ''may'', ''will'', or ''must'' as appropriate;
- Make nonsubstantive grammatical changes; and
- Add and standardize citations to the U.S. Code where appropriate.

IV. Procedural Requirements

The Commission has determined that this rule is exempt from the notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. 553(b), as a rule of agency organization, practice, and procedure. In addition, only substantive rules require publication 30 days prior to their effective date. 5 U.S.C. 553(d). Therefore, this final rule is effective upon publication in the **Federal Register**. The requirements of the Regulatory Flexibility Act also do not apply.[2] Further, this rule does not contain any information collection requirements as defined by the Paperwork Reduction Act of 1995 as amended. 44 U.S.C. 3501 *et seq.*

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a ''major rule,'' as defined by 5 U.S.C. 804(2).

List of Subjects in 16 CFR Part 1

Administrative practice and procedure.

For the reasons set forth in the preamble, the Federal Trade Commission amends title 16, chapter I, subchapter A of the Code of Federal Regulations as follows:

PART 0—ORGANIZATION

■ 1. The authority for Part 0 continues to read as follows:

Authority: 5 U.S.C. 552(a)(1); 15 U.S.C. 46(g).

§ 0.1 [Amended]

■ 2. In § 0.1, remove the word ''which'' wherever it appears and add, in its place, the word ''that''.

■ 3. Amend § 0.2 by revising the first sentence to read as follows:

§ 0.2 Official address.

The principal office of the Commission is in Washington, DC.

* * *

■ 4. Revise § 0.3 to read as follows:

§ 0.3 Hours.

Principal and regional offices are open from 8:30 a.m. to 5 p.m., except on Saturdays, Sundays, and legal holidays.

■ 5. Revise § 0.4 to read as follows:

§ 0.4 Laws administered.

The Commission exercises enforcement and administrative authority under the Federal Trade Commission Act (15 U.S.C. 41–58), Clayton Act (15 U.S.C. 12–27), and more than 70 other Federal statutes, which are listed at *https://www.ftc.gov/enforcement/statutes.*

■ 6. Revise § 0.5 to read as follows:

§ 0.5 Laws authorizing monetary claims.

(a) The Commission is authorized to entertain monetary claims against it under three statutes.

(1) The Federal Tort Claims Act (28 U.S.C. 2671–2680) provides that the United States will be liable for injury or loss of property or personal injury or death caused by the negligent or wrongful acts or omissions of its employees acting within the scope of their employment or office.

(2) The Military Personnel and Civilian Employees Claims Act of 1964 (31 U.S.C. 3701, 3721) authorizes the Commission to compensate employees' claims for damage to or loss of personal property incident to their service.

(3) The Equal Access to Justice Act (5 U.S.C. 504 and 28 U.S.C. 2412) provides that an eligible prevailing party other than the United States will be awarded fees and expenses incurred in connection with any adversary adjudicative and court proceeding, unless the adjudicative officer finds that the agency was substantially justified or that special circumstances make an award unjust.

(b) In addition, eligible parties, including certain small businesses, will be awarded fees and expenses incurred in defending against an agency demand that is substantially in excess of the final decision of the adjudicative officer and is unreasonable when compared with such decision under the facts and circumstances of the case, unless the

[1] In particular, the Commission is revising the rules to eliminate the use of *he, him,* or *his* as default pronouns. This change conforms with the recommendations of numerous style manuals. *See, e.g.,* Lauren Easton, *Making a Case for a Singular ''They,''* The Definitive Source (Mar. 24, 2017), *https://blog.ap.org/products-and-services/making-a-case-for-a-singular-they* (discussing the following addition to the AP Stylebook: ''*They/them/their* is acceptable in limited cases as a singular and-or gender-neutral pronoun, when alternative wording is overly awkward or clumsy.''); Chicago Style for the Singular *They* (Apr. 3, 2017), *http://cmosshoptalk.com/2017/04/03/chicago-style-for-the-singular-they/* (noting that the seventeenth edition of the Chicago Manual of Style does not prohibit the use of singular *they* as a substitute for the generic *he* in formal writing, but recommends avoiding it and offers various other ways to achieve bias-free language); Bill Walsh, *The Post Drops the ''Mike''—and the Hyphen in ''Email''*, Wash. Post (Dec. 4, 2015), *https://www.washingtonpost.com/opinions/the-post-drops-the-mike-and-the-hyphen-in-email/2015/12/04/ccd6e33a-98fa-11e5-8917-653b65c809eb_story.html* (noting that the Washington Post stylebook advises trying to write around the problem, perhaps by changing singulars to plurals, before using the singular *they* as a last resort).

[2] A regulatory flexibility analysis under the RFA is required only when an agency must publish a notice of proposed rulemaking for comment. *See* 5 U.S.C. 603.

adjudicative officer finds that the party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust. Questions may be addressed to the Office of the General Counsel.

§ 0.7 [Amended]

■ 7. Amend § 0.7 by:

■ a. In paragraph (a), adding the words ''(15 U.S.C. 41 note)'' after the term ''1961''; and

■ b. In paragraph (b), removing the word ''shall'' and adding, in its place, the word ''will''.

■ 8. Revise § 0.8 to read as follows:

§ 0.8 The Chair.

The Chair of the Commission is designated by the President, and, subject to the general policies of the Commission, is the executive and administrative head of the agency. The Chair presides at meetings of and hearings before the Commission and participates with other Commissioners in all Commission decisions. In rulemaking proceedings under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)), the Chair serves as or may designate another Commissioner to serve as the Chief Presiding Officer or may appoint another person to serve as Chief Presiding Officer who is not responsible to any other official or employee of the Commission. Attached to the Office of the Chair, and reporting directly to the Chair, and through the Chair to the Commission, are the following staff units:

(a) The Office of the Chief Privacy Officer, which ensures that the agency's practices and policies comply with applicable federal information privacy and security requirements and standards;

(b) The Office of Congressional Relations, which coordinates all liaison activities with Congress;

(c) The Office of Equal Employment Opportunity and Workplace Inclusion, which advises and assists the Chair and the organizational units in EEO policy and diversity management issues;

(d) The Office of Policy Planning, which assists the Commission to develop and implement long-range competition and consumer protection policy initiatives; and

(e) The Office of Public Affairs, which furnishes information concerning Commission activities to news media and the public.

■ 9. Revise § 0.9 to read as follows:

§ 0.9 Organization structure.

The Federal Trade Commission includes the following principal units: Office of the Executive Director; Office of the General Counsel; Office of the Secretary; Office of the Inspector General; Office of Administrative Law Judges; Bureau of Competition; Bureau of Consumer Protection; Bureau of Economics; and Office of International Affairs.

§ 0.10 [Amended]

■ 10. In § 0.10, in the first sentence, add a comma after the word ''programs''.

■ 11. Revise § 0.11 to read as follows:

§ 0.11 Office of the General Counsel.

The General Counsel is the Commission's chief law officer and adviser, who renders necessary legal services to the Commission; represents the Commission in the Federal and State courts, and before administrative agencies in coordination with the Bureaus, in appellate litigation, investigative compulsory process enforcement, and defensive litigation; advises the Commission and other agency officials and staff with respect to questions of law and policy, including advice with respect to legislative matters and ethics; represents the agency in employment and labor disputes; and responds to requests and appeals filed under the Freedom of Information and Privacy Acts and to intra- and intergovernmental information access requests.

■ 12. Revise § 0.12 to read as follows:

§ 0.12 Office of the Secretary.

The Secretary is the legal custodian of the Commission's seal, property, papers, and records, including legal and public records, and is responsible for the minutes of Commission meetings. The Secretary, or in the Secretary's absence an Acting Secretary, signs Commission orders and official correspondence. In addition, the Secretary is responsible for the publication of all Commission actions that appear in the **Federal Register** and for the publication of Federal Trade Commission decisions.

§ 0.13 [Amended]

■ 13. In § 0.13, in the second sentence, add a comma after the word ''efficiency''.

■ 14. Revise § 0.14 to read as follows:

§ 0.14 Office of Administrative Law Judges.

Administrative law judges are officials to whom the Commission, in accordance with law, delegates the initial performance of statutory fact-finding functions and initial rulings on conclusions of law, to be exercised in conformity with Commission decisions and policy directives and with its Rules of Practice.

■ 15. Revise § 0.16 to read as follows:

§ 0.16 Bureau of Competition.

The Bureau is responsible for enforcing Federal antitrust and trade regulation laws under section 5 of the Federal Trade Commission Act (15 U.S.C. 45), the Clayton Act (15 U.S.C. 12–27), and a number of other special statutes that the Commission is charged with enforcing. The Bureau carries out its responsibilities by investigating alleged law violations, recommending to the Commission such further steps as may be appropriate, and prosecuting enforcement actions authorized by the Commission. Such further steps may include seeking injunctive and other relief as permitted by statute in Federal district court; litigating before the agency's administrative law judges; negotiating settlement of complaints; and initiating rules or reports. The Bureau also conducts compliance investigations and, in compliance with Section 16(a)(1) of the FTC Act (15 U.S.C. 56(a)(1)), initiates proceedings for civil penalties to assure compliance with final Commission orders dealing with competition and trade restraint matters. The Bureau's activities also include business and consumer education and staff advice on competition laws and compliance, and liaison functions with respect to foreign antitrust and competition law enforcement agencies and organizations, including requests for international enforcement assistance.

■ 16. Revise § 0.17 to read as follows:

§ 0.17 Bureau of Consumer Protection.

The Bureau is responsible for enforcing the prohibition against unfair or deceptive acts or practices in section 5 of the Federal Trade Commission Act (15 U.S.C. 45), as well as numerous special statutes that the Commission is charged with enforcing. The Bureau carries out its responsibilities by investigating alleged law violations, recommending to the Commission such further steps as may be appropriate, and prosecuting enforcement actions authorized by the Commission. Such further steps may include seeking injunctive and other relief as permitted by statute in Federal district court; litigating before the agency's administrative law judges; negotiating settlement of complaints; initiating rules or reports; and initiating civil penalty proceedings for rule violations. The Bureau also conducts compliance investigations and, in compliance with Section 16(a)(1) of the FTC Act (15 U.S.C. 56(a)(1)), initiates proceedings for

civil penalties to assure compliance with final Commission orders dealing with unfair or deceptive practices. The Bureau participates in trade regulation rulemaking proceedings under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)) and other rulemaking proceedings under statutory authority. In addition, the Bureau seeks to educate both consumers and the business community about the laws it enforces, and to assist and cooperate with other state, local, and international agencies and organizations in consumer protection enforcement and regulatory matters.

§ 0.18 [Amended]

■ 17. Amend § 0.18 by,

■ a. Removing the word ''bureau'' wherever it appears and adding, in its place, the word ''Bureau''.

■ b. Removing the word ''bureaus'' and adding, in its place, the word ''Bureaus''.

■ 18. Revise § 0.19 to read as follows:

§ 0.19 The Regional Offices.

(a) These offices are investigatory and enforcement arms of the Commission, and have responsibility for investigational, trial, compliance, and consumer educational activities as delegated by the Commission. They are under the general supervision of the Bureaus of Competition and Consumer Protection and clear their activities through the appropriate operating Bureau.

(b) The names and geographic areas of responsibility of the respective regional offices are as follows:

(1) Northeast Region (located in New York City, New York), covering Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, Vermont, Puerto Rico, and the U.S. Virgin Islands.

(2) Southeast Region (located in Atlanta, Georgia), covering Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, and Tennessee.

(3) East Central Region (located in Cleveland, Ohio), covering Delaware, District of Columbia, Maryland, Michigan, Ohio, Pennsylvania, Virginia, and West Virginia.

(4) Midwest Region (located in Chicago, Illinois), covering Illinois, Indiana, Iowa, Kansas, Kentucky, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, and Wisconsin.

(5) Southwest Region (located in Dallas, Texas), covering Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.

(6) Northwest Region (located in Seattle, Washington), covering Alaska, Idaho, Montana, Oregon, Washington, and Wyoming.

(7) Western Region Los Angeles (located in Los Angeles, California), covering Arizona, Hawaii, Southern California, Southern Nevada, Guam, the Northern Mariana Islands, and American Samoa.

(8) Western Region San Francisco (located in San Francisco, California), covering Colorado, Northern California, Northern Nevada, and Utah.

(c) Each of the regional offices is supervised by a Regional Director and an Assistant Regional Director, who are available for conferences with attorneys, consumers, and other members of the public on matters relating to the Commission's activities.

■ 19. Revise § 0.20 to read as follows:

§ 0.20 Office of International Affairs.

The Office of International Affairs (OIA) is responsible for the agency's international antitrust and international consumer protection missions in coordination and consultation with the appropriate Bureaus, including the design and implementation of the Commission's international program. OIA provides support to the Bureaus of Competition and Consumer Protection with regard to the international aspects of investigation and prosecution of unlawful conduct; builds cooperative relationships between the Commission and foreign authorities; cooperates with foreign authorities on investigations and enforcement; works closely with the Bureaus to recommend agency policies to the Commission; works, through bilateral relationships, multilateral organizations, and trade fora to promote Commission priorities and policies; participates in the United States government interagency process to promote agency views on international issues within the FTC's mandate; and coordinates staff exchanges and internships at the FTC for staff of non-U.S. competition, consumer protection, and privacy agencies. OIA also assists young agencies around the world to build capacity to promote sound competition and consumer protection law enforcement.

PART 1—GENERAL PROCEDURES

■ 20. Revise the authority for subpart B of Part 1 to read as follows:

Authority: 15 U.S.C. 46; 15 U.S.C. 57a; 5 U.S.C. 552; 5 U.S.C. 601 note.

■ 21. Revise § 1.7 to read as follows:

§ 1.7 Scope of rules in this subpart.

The rules in this subpart apply to and govern proceedings for the promulgation of rules as provided in section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)). Such rules will be known as trade regulation rules. All other rulemaking proceedings will be governed by the rules in subpart C of this part, except as otherwise required by law or as otherwise specified in this chapter.

■ 22. Revise § 1.8 to read as follows:

§ 1.8 Nature, authority, and use of trade regulation rules.

(a) For the purpose of carrying out the provisions of the Federal Trade Commission Act, the Commission is empowered to promulgate trade regulation rules, which define with specificity acts or practices that are unfair or deceptive acts or practices in or affecting commerce. Trade regulation rules may include requirements prescribed for the purpose of preventing such acts or practices. A violation of a rule constitutes an unfair or deceptive act or practice in violation of section 5(a)(1) of that Act (15 U.S.C. 45(a)(1)), unless the Commission otherwise expressly provides in its rule. The respondents in an adjudicative proceeding may show that the alleged conduct does not violate the rule or assert any other defense to which they are legally entitled.

(b) The Commission at any time may conduct such investigations, make such studies, and hold such conferences as it may deem necessary. All or any part of any such investigation may be conducted under the provisions of part 2, subpart A of this chapter.

§ 1.9 [Amended]

■ 23. In § 1.9, remove the word ''shall'' from wherever it appears in the section and add, in its place, the word ''will''.

■ 24. Revise § 1.10 to read as follows:

§ 1.10 Advance notice of proposed rulemaking.

(a) Prior to the commencement of any trade regulation rule proceeding, the Commission must publish in the **Federal Register** an advance notice of such proposed proceeding.

(b) The advance notice must:

(1) Contain a brief description of the area of inquiry under consideration, the objectives which the Commission seeks to achieve, and possible regulatory alternatives under consideration by the Commission; and

(2) Invite the response of interested persons with respect to such proposed rulemaking, including any suggestions or alternative methods for achieving such objectives.

(c) The advance notice must be submitted to the Committee on

Commerce, Science, and Transportation of the Senate and to the Committee on Energy and Commerce of the House of Representatives.

(d) The Commission may, in addition to publication of the advance notice, use such additional mechanisms as it considers useful to obtain suggestions regarding the content of the area of inquiry before publication of a notice of proposed rulemaking pursuant to § 1.11.

■ 25. Revise § 1.11 to read as follows:

§ 1.11 Commencement of a rulemaking proceeding.

(a) *Notice of proposed rulemaking.* A trade regulation rule proceeding will commence with a notice of proposed rulemaking (NPRM). An NPRM will be published in the **Federal Register** not sooner than 30 days after it has been submitted to the Committee on Commerce, Science, and Transportation of the Senate and to the Committee on Energy and Commerce of the House of Representatives.

(b) *Contents of NPRM.* The NPRM will include:

(1) A statement containing, with particularity, the text of the proposed rule, including any alternatives, which the Commission proposes to promulgate;

(2) Reference to the legal authority under which the rule is proposed;

(3) A statement describing the reason for the proposed rule;

(4) An invitation to comment on the proposed rule, as provided in paragraph (d) of this section;

(5) A list of disputed issues of material fact designated by the Commission as necessary to be resolved, if any;

(6) An explanation of the opportunity for an informal hearing and instructions for submissions relating to such a hearing, as provided in paragraph (e) of this section; and

(7) A statement of the manner in which the public may obtain copies of the preliminary regulatory analysis, if that analysis is not in the notice.

(c) *Preliminary regulatory analysis.* Except as otherwise provided by statute, the Commission must, when commencing a rulemaking proceeding, issue a preliminary regulatory analysis, which must contain:

(1) A concise statement of the need for, and the objectives of, the proposed rule;

(2) A description of any reasonable alternatives to the proposed rule which may accomplish the stated objective of the rule in a manner consistent with applicable law;

(3) For the proposed rule, and for each of the alternatives described in the analysis, a preliminary analysis of the projected benefits and any adverse economic effects and any other effects, and of the effectiveness of the proposed rule and each alternative in meeting the stated objectives of the proposed rule; and

(4) The information required by the Regulatory Flexibility Act, 5 U.S.C. 601–612, and the Paperwork Reduction Act, 44 U.S.C. 3501–3520, if applicable.

(d) *Written comments.* The Commission will accept written submissions of data, views, and arguments on all issues of fact, law, and policy. The Commission may in its discretion provide for a separate rebuttal period following the comment period. The subject matter of any rebuttal comments must be confined to subjects and issues identified by the Commission in its notice or by other interested persons in comments and must not introduce new issues into the record. The NPRM will establish deadlines for filing written comments and for filing rebuttal comments on the proposed rule.

(e) *Opportunity for hearing.* The Commission will provide an opportunity for an informal hearing if an interested person requests to present their position orally or if the Commission in its discretion elects to hold an informal hearing. Any such request regarding an informal hearing must be submitted to the Commission no later than the close of the written comment period, including a rebuttal period, if any, and must include:

(1) A request to make an oral submission, if desired;

(2) A statement identifying the interested person's interests in the proceeding; and

(3) Any proposals to add disputed issues of material fact beyond those identified in the notice.

■ 26. Revise § 1.12 to read as follows:

§ 1.12 Notice of Informal Hearing and Designations.

(a) *Initial notice of informal hearing.* If an informal hearing has been requested under § 1.11(e), a notice of informal hearing will be published in the **Federal Register**. The initial notice of informal hearing will include:

(1) The designation of a presiding officer, pursuant to § 1.13(a)(1);

(2) The time and place of the informal hearing;

(3) A final list of disputed issues of material fact necessary to be resolved during the hearing, if any;

(4) A list of the interested persons who will make oral presentations;

(5) A list of the groups of interested persons determined by the Commission to have the same or similar interests in the proceeding;

(6) An invitation to interested persons to submit requests to conduct or have conducted cross-examination or to present rebuttal submissions, pursuant to § 1.13(b)(2), if desired; and

(7) Any other procedural rules necessary to promote the efficient and timely determination of the disputed issues to be resolved during the hearing.

(b) *Requests to conduct cross-examination or present rebuttal submissions.* Cross-examination and rebuttal submissions at an informal hearing are available only to address disputed issues of material fact necessary to be resolved. Requests for an opportunity to cross-examine or to present rebuttal submissions must be accompanied by a specific justification therefor. In determining whether to grant such requests, the presence of the following circumstances indicate that such requests should be granted:

(1) An issue for cross-examination or the presentation of rebuttal submissions, is an issue of specific fact in contrast to legislative fact;

(2) A full and true disclosure with respect to the issue can be achieved only through cross-examination rather than through rebuttal submissions or the presentation of additional oral submissions; and

(3) The particular cross-examination or rebuttal submission is required for the resolution of a disputed issue.

(c) *Final notice of informal hearing.* Based on requests submitted in response to the initial notice of public hearing, the Commission will publish a final notice of informal hearing in the **Federal Register**. The final notice of public hearing will include:

(1) A list of the interested persons who will conduct cross-examination regarding disputed issues of material fact;

(2) A list of any groups of interested persons with the same or similar interests in the proceeding who will be required to choose a single representative to conduct cross-examination on behalf of the group, as provided in paragraph (d) of this section; and

(3) A list of the interested persons who will be permitted to make rebuttal submissions regarding disputed issues of material fact.

(d) *Designation of group representatives for cross-examination.* After consideration of any submissions under § 1.11(e), the Commission will, if appropriate, identify groups of interested persons with the same or similar interests in the proceeding. The Commission may require any group of

interested persons with the same or similar interests in the proceeding to select a single representative to conduct cross-examination on behalf of the group.

■ 27. Revise § 1.13 to read as follows:

§ 1.13 Conduct of informal hearing by the presiding officer.

(a) *Presiding officer*—(1) *Designation.* In a trade regulation rule proceeding in which the Commission determines an informal hearing will be conducted, the initial notice of informal hearing must designate a presiding officer, who will be appointed by the Chief Presiding Officer specified in § 0.8 of this chapter.

(2) *Powers of the presiding officer.* The presiding officer is responsible for the orderly conduct of the informal hearing. The presiding officer has all powers necessary or useful to that end, including the following:

(i) To issue any public notice that may be necessary for the orderly conduct of the informal hearing;

(ii) To modify the location, format, or time limits prescribed for the informal hearing, except that the presiding officer may not increase the time allotted for an informal hearing beyond a total of five hearing days over the course of a thirty-day period, unless the Commission, upon a showing of good cause, extends the number of days for the hearing;

(iii) To prescribe procedures or issue rulings to avoid unnecessary costs or delay, including, but not limited to, the imposition of reasonable time limits on the number and duration of oral presentations from individuals or groups with the same or similar interests in the proceeding and requirements that any cross-examination, which a person may be entitled to conduct or have conducted, be conducted by the presiding officer on behalf of that person in such a manner as the presiding officer determines to be appropriate and to be required for a full and true disclosure with respect to any issue designated for consideration in accordance with § 1.13(b)(1);

(iv) To issue rulings selecting or modifying the designated representatives of groups of interested persons, as provided in paragraph (a)(3) of this section;

(v) To require that oral presentations at the informal hearing be under oath;

(vi) To require that oral presentations at the informal hearing be submitted in writing in advance of presentation; and

(viii) To rule on all requests of interested persons made during the course of the informal hearing.

(3) *Selection or modification of group representatives.* If a group of interested persons designated by the Commission under § 1.12(d) to select a group representative is unable to agree upon a representative, the presiding officer may select a representative for the group. The presiding officer may entertain requests by a member of a group of interested persons to conduct or have conducted cross-examination under paragraph (b)(2) of this section if, after good-faith effort, the person is unable to agree upon a single representative with other group members and is able to demonstrate that the group representative will not adequately represent the person's interests. If the presiding officer finds that there are substantial and relevant issues or data that will not be adequately presented by the group representative, then the presiding officer may allow that person to conduct or have conducted any appropriate cross-examination on issues affecting the person's particular interests.

(4) *Organization.* In the performance of their rulemaking functions, presiding officers are responsible to the chief presiding officer who must not be responsible to any other officer or employee of the Commission.

(5) *Ex parte communications.* Except as required for the disposition of ex parte matters as authorized by law, no presiding officer may consult any person or party with respect to any fact in issue unless such officer gives notice and opportunity for all parties to participate.

(b) *Additional procedures when there are disputed issues of material fact.* If requested under § 1.11(d), an informal hearing with the opportunity for oral presentations will be conducted by the presiding officer. In addition, if the Commission determines that there are disputed issues of material fact that are material and necessary to resolve, the informal hearing on such issues will be conducted in accordance with § 1.13(b)(2).

(1) *Nature of issues for consideration in accordance with § 1.13(b)(2)*—(i) *Issues that must be considered in accordance with § 1.13(b)(2).* The only issues that must be designated for consideration in accordance with paragraphs (b)(2) of this section are disputed issues of fact that are determined by the Commission to be material and necessary to resolve.

(ii) *Addition or modification of issues for consideration in accordance with § 1.13(b)(2).* The presiding officer may at any time on the presiding officer's own motion or pursuant to a written petition by interested persons, add or modify any issues designated pursuant to § 1.12(a). No such petition shall be considered unless good cause is shown why any such proposed issue was not proposed pursuant to § 1.11(e). In the event that new issues are designated, the presiding officer may determine whether interested persons may conduct cross-examination or present rebuttal submissions with respect to each new issue, as provided in § 1.12(b), and may select or modify group representatives for cross examination with respect to each new issue, as provided in paragraph (a)(3) of this section.

(2) *Cross-examination and the presentation of rebuttal submissions by interested persons.* The presiding officer will conduct or allow to be conducted cross-examination of oral presentations and the presentation of rebuttal submissions relevant to the disputed issues of material fact designated for consideration during the informal hearing. For that purpose, the presiding officer may require submission of written requests for presentation of questions to any person making oral presentations and will determine whether to ask such questions or any other questions. All requests for presentation of questions will be placed in the rulemaking record. The presiding officer will also allow the presentation of rebuttal submissions as appropriate and required for a full and true disclosure with respect to the disputed issues of material fact designated for consideration during the informal hearing.

(c) *Written transcript.* A verbatim transcript will be made of the informal hearing and placed in the rulemaking record.

(d) *Recommended decision.* The presiding officer will make a recommended decision based on their findings and conclusions as to all relevant and material evidence. The recommended decision will be made by the presiding officer who presided over the informal hearing except that such recommended decision may be made by another officer if the officer who presided over the hearing is no longer available to the Commission. The recommended decision must be rendered within sixty days of the completion of the hearing. If a petition for review of a ruling by the presiding officer has been filed under paragraph (e) of this section, the recommended decision must be rendered within sixty days following the resolution of that petition or any rehearing required by the Commission. The presiding officer's recommended decision will be limited to explaining the presiding officer's proposed resolution of disputed issues of material fact.

(e) *Post-hearing review by the Commission of rulings by the presiding*

officer. (1) Within ten days of the completion of the informal hearing, any interested person may petition the Commission for review of a ruling by the presiding officer denying or limiting the petitioner's ability to conduct cross-examination or make rebuttal submissions upon a showing that the ruling precluded disclosure of a disputed material fact that was necessary for fair determination by the Commission of the rulemaking proceeding as a whole. Such petitions must not exceed eight thousand words. This word count limitation includes headings, footnotes, and quotations, but does not include the cover, table of contents, table of citations or authorities, glossaries, statements with respect to oral argument, any addendums containing statutes, rules or regulations, any certificates of counsel, or proposed form of order. A petition hereunder will not stay the rulemaking proceeding unless the Commission so orders. All petitions filed under this paragraph will be a part of the rulemaking record.

(2) The Commission may, in its discretion, hear the appeal. Commission review, if granted, will be based on the petition and anything on the rulemaking record, without oral argument or further briefs, unless otherwise ordered by the Commission. If the Commission grants review, it will render a decision within thirty days of the announcement of its decision to review unless, upon a showing of good cause, the Commission extends the number of days for review.

■ 28. Revise § 1.14 to read as follows:

§ 1.14 Promulgation.

(a) The Commission, after review of the rulemaking record, may issue, modify, or decline to issue any rule. If the Commission wants further information or additional views of interested persons, it may withhold final action pending the receipt of such additional information or views. If it determines not to issue a rule, it may adopt and publish an explanation for not doing so.

(1) *Statement of basis and purpose.* If the Commission determines to promulgate a rule, it will adopt a statement of basis and purpose to accompany the rule, which must include:

(i) A statement regarding the prevalence of the acts or practices treated by the rule;

(ii) A statement as to the manner and context in which such acts or practices are unfair or deceptive; and

(iii) A statement as to the economic effect of the rule, taking into account the effect on small businesses and consumers.

(2) *Final regulatory analysis.* Except as otherwise provided by statute, if the Commission determines to promulgate a final rule, it will issue a final regulatory analysis relating to the final rule. Each final regulatory analysis must contain:

(i) A concise statement of the need for, and the objectives of, the final rule;

(ii) A description of any alternatives to the final rule that were considered by the Commission;

(iii) An analysis of the projected benefits and any adverse economic effects and any other effects of the final rule;

(iv) An explanation of the reasons for the determination of the Commission that the final rule will attain its objectives in a manner consistent with applicable law and the reasons the particular alternative was chosen;

(v) A summary of any significant issues raised by the comments submitted during the public comment period in response to the preliminary regulatory analysis, and a summary of the assessment by the Commission of such issues; and

(vi) The information required by the Regulatory Flexibility Act, 5 U.S.C. 601–612, and the Paperwork Reduction Act, 44 U.S.C. 3501–3520, if applicable.

(3) *Small entity compliance guide.* For each rule for which the Commission must prepare a final regulatory flexibility analysis, the Commission will publish one or more guides to assist small entities in complying with the rule. Such guides will be designated as ''small entity compliance guides.''

(b) If the Commission determines, upon its review of the rulemaking record, to propose a revised rule for further proceedings in accordance with this subpart, such proceedings, including the opportunity of interested persons to avail themselves of the procedures of § 1.13(b)(2), will be limited to those portions of the revised rule, the subjects and issues of which were not substantially the subject of comment in response to a previous notice of proposed rulemaking.

(c) The final rule will be published in the **Federal Register** and will include the Statement of Basis and Purpose for the rule or provide an explanation of the manner in which the public may obtain copies of that document.

■ 29. Revise § 1.16 to read as follows:

§ 1.16 Petition for exemption from trade regulation rule.

Any person to whom a rule would otherwise apply may petition the Commission for an exemption from such rule. The procedures for determining such a petition will be those of subpart C of this part.

■ 30. Revise § 1.18 to read as follows:

§ 1.18 Rulemaking record.

(a) *Definition.* For purposes of these rules the term rulemaking record includes the final rule, its statement of basis and purpose, the verbatim transcripts of the informal hearing, if any, written submissions, the recommended decision of the presiding officer, any communications placed on the rulemaking record pursuant to § 1.18(c), and any other information the Commission considers relevant to the rule.

(b) *Public availability.* The rulemaking record will be publicly available except when the Commission, for good cause shown, determines that it is in the public interest to allow any submission to be received in camera subject to the provisions of § 4.9 of this chapter.

(c) *Communications to Commissioners and Commissioners' personal staffs*—(1) *Communications by outside parties.* Except as otherwise provided in this subpart or by the Commission, after the Commission votes to issue a notice of proposed rulemaking, comment on the proposed rule should be directed as provided in the notice. Communications with respect to the merits of that proceeding from any outside party to any Commissioner or Commissioner's advisor will be subject to the following treatment:

(i) *Written communications.* Written communications, including written communications from members of Congress, received within the period for acceptance of initial or rebuttal written comments or other written submissions will be placed on the rulemaking record. Written communications received outside of the time periods designated for acceptance of written comments or other written submissions will be placed on public record unless the Commission votes to place them on the rulemaking record.

(ii) *Oral communications.* Oral communications to a Commissioner or Commissioner's advisor are permitted only when advance notice of such oral communications is published by the Commission's Office of Public Affairs in its Weekly Calendar and Notice of ''Sunshine'' Meetings. A Commissioner's advisor will ensure such oral communications are transcribed verbatim or summarized at the discretion of the Commissioner or Commissioner's advisor to whom such oral communications are made and promptly placed on the rulemaking record. Memoranda summarizing such

oral communications must list all persons attending or otherwise participating in the meeting at which the oral communication was made, and summarize all data presented and arguments made during the meeting.

(iii) *Congressional communications.* The provisions of paragraph (c)(1)(ii) of this section do not apply to communications from Members of Congress. Memoranda prepared by the Commissioner or Commissioner's advisor setting forth the contents of any oral congressional communications will be placed on the public record. If the communication occurs within the comment period and is transcribed verbatim or summarized, the transcript or summary will be promptly placed on the rulemaking record. A transcript or summary of any oral communication which occurs after the time period for acceptance of written comments will be placed promptly on the public record.

(2) *Communications by certain officers, employees, and agents of the Commission.* After the Commission votes to issue a notice of proposed rulemaking, any officer, employee, or agent of the Commission with investigative or other responsibility relating to any rulemaking proceeding within any operating bureau of the Commission is prohibited from communicating or causing to be communicated to any Commissioner or to the personal staff of any Commissioner any fact which is relevant to the merits of such proceeding and which is not on the rulemaking record of such proceeding, unless such communication is made available to the public and is included in the rulemaking record. The provisions of this subsection do not apply to any communication to the extent such communication is required for the disposition of ex parte matters as authorized by law.

■ 31. Revise § 1.19 to read as follows:

§ 1.19 Modification of a rule by the Commission at the time of judicial review.

If a reviewing court orders, under section 18(e)(2) of the Federal Trade Commission Act (15 U.S.C. 57a(e)(2)), further submissions and presentations on the rule, the Commission may modify or set aside its rule or make a new rule by reason of the additional submissions and presentations. Such modified or new rule will then be filed with the court together with an appropriate statement of basis and purpose and the return of such submissions and presentations.

■ 32. Revise § 1.20 to read as follows:

§ 1.20 Alternative procedures.

If the Commission determines at the commencement of a rulemaking proceeding to employ procedures other than those established in this subpart, it may do so by announcing those procedures in the **Federal Register** notice commencing the rulemaking proceeding.

By direction of the Commission.

April J. Tabor,

Secretary.

The Following Will Not Appear in the Code of Federal Regulations

Statement of Commissioner Rebecca Kelly Slaughter Joined by Chair Lina Khan and Commissioner Rohit Chopra Regarding the Adoption of Revised Section 18 Rulemaking Procedures

The FTC's revisions to Parts 0 and 1 of the Commission's Rules of Practice will bring the Commission's procedures for promulgating Trade Regulation Rules under Section 18 of the FTC Act in line with the statute's requirements. These changes reflect the Commission's serious appreciation of its statutory obligation to ''avoid unnecessary costs or delay'' [1] in those proceedings and our commitment to using all of our available tools robustly to protect consumers from the unfair and deceptive tricks and traps they face in our modern economy.

I. Background

The mandate of the Federal Trade Commission is to address ''unfair or deceptive acts or practices'' and ''unfair methods of competition'' in or affecting commerce. In 1975, Congress passed the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act [2] laying out specific procedures for the promulgation of ''Trade Regulation Rules'' to protect consumers in a dynamic and changing economic landscape. Indeed, the Commission rightfully responded to this grant of authority by initiating more than a dozen rulemakings in the few months and years after its passage.[3] Yet, in the intervening decades, we have nearly abandoned using Section 18 rulemaking as it was intended: To provide a participatory, dynamic process for setting out clear conduct rules for industry. The change in approach began in the early 1980s amid a broad deregulatory wave, including at the Commission. The Federal Trade Commission Improvements Act of 1980 instituted some lasting revisions around the edges of FTC rulemaking, including adding a requirement to issue an Advance Notice of Proposed Rulemaking (ANPRM) before initiating rulemaking.[4] However, the true and lasting changes to the FTC were self-imposed limitations through bureaucratic organization.

The FTC of the 1980s sought to radically reduce the agency's rulemaking capacity. A fundamental part of that posture are the agency-promulgated rules of practice. Parts 0 and 1 of these rules shape Commission behavior and process for Section 18 rulemaking. The imposition of requirements beyond what Congress provided in statute has led to the widespread belief among some commentators and policymakers that Section 18 rulemaking is too difficult to address many of the unfair and deceptive practices prevalent in the economy today.

II. Changes to the Rules of Practice

These changes to the rules of practice realign Commission practice with our statutory requirements and remove those extraneous and onerous procedures that serve only to delay Commission business. These streamlined Section 18 rules still provide far greater transparency, process, and opportunity for the public and businesses alike to be heard than APA notice-and-comment rulemaking procedures.

These changes include providing the Commission with greater accountability and control over Section 18 rulemaking including deciding the final list of disputed material facts to be resolved, deciding who will make oral presentations to the Commission and who will cross examine or present rebuttals submissions. The chair will now either serve as or designate the Chief Presiding Officer and the Commission will ensure orderly conduct for those rulemakings. Previously, the Chief Administrative Law Judge was designated as Chief Presiding Officer in Part 0, which reinforced the myth that Section 18 rulemakings required elaborate, interminable judicial processes instead of straightforward public participation. Additionally, these streamlined

[1] 15 U.S.C. 57a(c)(2).

[2] Public Law 93–637, 88 Stat. 2183 (1975).

[3] Though few of the Trade Regulation Rules from that initial burst of Section 18 activity have survived the ensuing deregulatory backlash, many other TRRs under various FTC authorities have continued to provide important regulatory guidance on issues of public concern. Among those are: The Negative Option Rule (16 CFR part 425); the Franchise Rule (16 CFR part 436); the Business Opportunity Rule (16 CFR part 437); the Credit Practices Rule (16 CFR part 444); the Funeral Rule (16 CFR part 453); and the Eyeglass Rule (16 CFR part 456).

[4] Public Law 96–252, Section 8(a)(3).

provisions allow Commission to designate disputed issues of material fact earlier in the rulemaking proceeding with the issuance of the Notice of Proposed Rulemaking (NPRM) and avoid delaying proceedings with unrelated matters late in the process.

These procedures also enhance Commission transparency by requiring that records of both written and oral communications to a Commissioner or their advisors during a rulemaking proceeding will be placed in the rulemaking record and be available to the public.

The revised rules respect the underlying statutory requirements of Section 18 that provide ample transparency and opportunity for public participation in the promulgation of Trade Regulation Rules. These requirements include: The publication of an ANPRM for comment; the advance submission of the ANPRM to our congressional oversight committees; the publication of an NPRM; the advance submission of the NPRM to the congressional committees; an informal hearing to resolve any disputed issue of material fact; and publication of a final rule accompanied by a statement of basis and purpose.[5] These statutory guidelines provide for substantially greater public engagement and congressional oversight than the Administrative Procedure Act, under which most federal rulemaking is conducted. The Commission's rules of practice should—and now do—adhere closely to this statutory framework.

III. Conclusion

Revitalizing the Commission's ability to issue timely Trade Regulation Rules under Section 18 will provide much needed clarity about how our century-old statute applies to contemporary economic realities and will allow the FTC to define with specificity what acts or practices are unfair or deceptive under Section 5 of the FTC Act.

Prospective trade rules will give businesses and consumers concrete guidance about their responsibilities and rights. Importantly the Commission will be able to exercise its prosecutorial discretion to seek a wide variety of relief, including redress, civil monetary penalties, reformation of contracts, and other relief, against first-time violators of Trade Regulation Rules under Section 19 of the FTC act. While rulemaking is no substitute for a permanent fix to our Section 13(b) authority to obtain monetary relief, trade rules can help ensure businesses will no longer be able to take advantage of consumers and cement their market position by engaging in practices that do people real harm until we catch them and take them to court the first time.

Self-imposed red tape has only created uncertainty and delay for the important business of this Commission. The imposition of those requirements decades ago was the FTC's signal to the business world that the brief era of Section 18 rulemaking had come to an end. With the adoption of these streamlined procedures we wish to signal a change in Commission practice and ambition: We intend to fulfil our mission to protect against unfair and deceptive practices in commerce and provide consumers and businesses with due process, clarity, and transparency while crafting the rules to do so.

[5] 15 U.S.C. 57a.

Dissenting Statement of Commissioner Christine S. Wilson

Regulations, even well-intentioned ones, impose costs that stifle innovation, raise the costs of doing business, limit consumer choice and increase the prices that consumers must pay, and ultimately undercut America's global competitiveness.[1] Congress empowered the FTC to issue trade regulations when it passed the Magnuson-Moss Act.[2] At the same time, it imposed significant procedural obligations on the Commission to cabin the agency's broad rulemaking discretion.

In the wake of the Magnuson-Moss Act, the agency engaged in a flurry of rulemaking activity that sought to regulate broad swaths of the economy.[3] The negative reaction from businesses and many in Congress was swift. During this period, the Washington Post famously accused the agency of attempting to be the ''national nanny.''[4] Congress found that the agency's rulemaking efforts were filled with ''excessive ambiguity, confusion, and uncertainty.''[5] Backlash from the agency's sweeping regulatory efforts of the late 1970s culminated in the Federal Trade Commission Improvements Act of 1980, which imposed additional procedural obligations on Section 18 rulemaking efforts.[6] In other words, Congress sought to cabin the agency's discretion even more in what famed legal scholar Earnest Gellhorn characterized as ''The Wages of Zealotry.''[7]

Considering the backlash to this agency's earlier era of unbounded rulemaking activity, I am gravely concerned about today's proposals to pare down procedural safeguards embedded in our rules of practice related to Section 18 rulemaking. I want to thank Commissioner Slaughter for her transparency in explaining the materials included in the Commission's Section 18 rule proposal. Making this kind of information available to the public helps to foster the public's understanding of our proposal and also creates an opportunity for more open dialogue. Considering the proposal outlined by Commissioner Slaughter today, I would find it constructive to discuss a number of questions.

First, with respect to the objective management of the rulemaking process: The role of a Presiding Officer is to oversee the fair adjudication of the hearing process and make independent recommendations to the Commission based on relevant and material evidence. During the 1970s rulemaking spree, the Presiding Officer was viewed as a puppet of agency management, leading to the perception that outcomes were biased and predetermined. To address this issue and build trust in the rulemaking process, Congress imposed obligations designed to ensure the independence of the Presiding Officer.[8] The Commission, heeding Congressional concerns regarding independence, required the Chief Administrative Law Judge to serve as the Chief Presiding Officer and

[1] I have issued several statements discussing this previously. *See* Regulatory Review of Safeguards Rule, Dissenting Statement of Commissioner Noah Joshua Phillips and Commissioner Christine S. Wilson (Mar. 5, 2019), available at *https://www.ftc.gov/system/files/documents/publicstatements/1466705/reg_review_of_safeguards_rule_cmr_phillips_wilson_dissent.pdf;* Notice of Proposed Rulemaking: Energy Labeling Rule, Dissenting Statement of Christine S. Wilson (Dec. 10, 2018), available at *https://www.ftc.gov/system/files/documents/publicstatements/1433166/2018-12-7_statement_of_c_wilson_energy_labeling.pdf.*

[2] Magnuson-Moss Warranty Act, Public Law 93–637, 88 Stat. 2183.

[3] I have described some of these rulemaking initiatives in recent statements. *See* Notice of Proposed Rulemaking for the Energy Labeling Rule, Dissenting Statement of Commissioner Christine S. Wilson (Dec. 22, 2020), available at *https://www.ftc.gov/system/files/documents/public_statements/1585242/commission_wilson_dissenting_statement_energy_labeling_rule_final12-22-2020revd2.pdf;* Advance Notice of Proposed Rulemaking for Regulatory Review of the Amplifier Rule, Concurring Statement of Commissioner Christine S. Wilson (Dec. 17, 2020), available at *https://www.ftc.gov/system/files/documents/public_statements/1585038/p974222amplifierrulewilsonstatement.pdf.*

[4] The FTC as National Nanny, Wash. Post (Mar. 1, 1978), *https://www.washingtonpost.com/archive/politics/1978/03/01/the-ftc-as-national-nanny/69f778f5-8407-4df0-b0e9-7f1f8e826b3b/.*

[5] S. Rep. No. 96–500, at 3 (1979).

[6] Federal Trade Commission Improvements Act of 1980, Public Law 96–252, 94 Stat. 374.

[7] Ernest Gellhorn, The Wages of Zealotry: The FTC Under Siege, 4 Regulation 33 (1980).

[8] Federal Trade Commission Improvements Act of 1980, Public Law 96–252, 94 Stat. 374.

empowered the Presiding Officers to lead the hearing process.

• In light of these Congressional concerns, why does today's proposal move away from using independent ALJs as Presiding Officers? How can we avoid public perception that the Commission is politicizing the rulemaking process if the Chair appoints the Presiding Officer?

• How can we preserve the independence of the Presiding Officer if the Commission, not the Presiding Officer, decides which issues will be discussed at the hearing and which parties will be permitted to testify, conduct cross-examination, and offer rebuttal evidence?

• How can the Commission ensure we get a neutral and thorough accounting of evidence and data instead of a cherry-picked record that serves an agenda?

• Under the revised rules, the Commission, not the Presiding Officer, will determine the list of disputed issues of material facts. How can stakeholders ensure that their proposed factual disputes will be part of the rulemaking record if their input is out of step with the majority view of the Commission?

Second, with respect to procedural limitations that impact public understanding and opportunities for input: The rule revisions remove self-imposed restrictions I view as deliberate choices by this agency to comply not just with the letter of our Congressional mandate but the spirit of the law. Following our rulemaking spree in the 1970s, the FTC was stripped of funding, stripped of legal authorities, and required to institute new and substantial rulemaking steps to foster public trust in our trade rules.[9] Recognizing this agency was on the brink of being shuttered, our rules of practice adopted a number of rulemaking procedures that provided for additional public comment periods, publication of a staff report, and multiple opportunities for the public to weigh in on disputed issues of material fact. While the procedures as revised may comply with the statute as drafted, I support the FTC's existing approach that provides for robust additional public input.

• If the agency is preparing to remove discretionary steps from our rulemaking process, are we concerned the more limited process will fail to identify unintended consequences of proposed rules, particularly those that could harm small businesses and marginalized communities?

• Is the Commission concerned that the public will view the more limited opportunities to comment on proposed rules as running counter to the democratic rationales for rulemaking my colleagues have previously espoused?

Additionally, rulemaking efforts are enhanced when the public has the input from expert staff at agencies overseeing the rulemaking process. The FTC has built transparency into our rules of practice by requiring that rulemaking staff publish a staff report containing their analysis of the rulemaking record and recommendations as to the form of the final rule. But the new rules eliminate the staff report requirement.

• Considering the value of staff reports, how will the Commission build trust in the enforcement of new trade rules without transparency into staff's recommendations?

• In what ways will the public's understanding of any final rules suffer because the Commission will no longer publish a report from expert FTC staff highlighting key issues and formulating recommendations based on the record?

The Commission's proposal to revise its rules of practice related to Section 18 rulemaking procedures is not a small adjustment enacted to improve efficiency. These changes have the potential to usher in a return to aggressive, unbounded rulemaking efforts that could transform entire industries without clear theories of law violations and empirical foundations for recommended regulatory burdens. Even as we speak, Congress is considering bills that run the gamut from giving the FTC expansive new authority and resources to eliminating the agency's jurisdiction. In the midst of so much criticism and scrutiny from so many angles regarding so many aspects of our jurisdiction, why are we embarking on this path of revisiting an era that led to such significant constraints on our jurisdiction?

As the saying goes, if you don't acknowledge the mistakes of the past, you are doomed to repeat them. One striking example of this disregard for history can be found in the House Judiciary Committee's Majority Staff Report, which 12 different times points to railroad regulation as a model for Big Tech.[10] In a stunning omission, nowhere in its 450 pages or 2,500 footnotes does the report mention the fact of the bipartisan repeal of this regulatory framework because it harmed consumers and stifled innovation; neither does it mention the benefits that came from deregulation.[11]

There are many at the FTC who lived through the 1970s and 1980s and experienced the public and Congressional backlash during those dark days of the agency's history. There are many others who worked with and learned from those who lived through that period. Current management would be wise to seek their guidance.

[FR Doc. 2021–15313 Filed 7–21–21; 8:45 am]

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[9] *Id. See also* J. Howard Beales III, The Federal Trade Commission's Use of Unfairness Authority: Its Rise, Fall, and Resurrection, 22 J. Pub. Pol'y & Mktg. 192 (2003).

[10] For other reactions to the Majority Staff Report, *see* Christine S. Wilson, Remarks for American Bar Association Webcast, Interview with Commissioner Wilson and Barry Nigro on the House Judiciary Report, (Nov. 13 2020), *https://www.ftc.gov/system/files/documents/public_statements/1588040/aba_interview_with_commissioner_wilson_on_the_house_judiciary_report.pdf* and Christine S. Wilson, Remarks for the 2020 Global Forum on Competition, (Dec. 7 2020), *https://www.ftc.gov/system/files/documents/publicstatements/1589376/wilson-oecd-2020remarks.pdf.*

[11] See Majority Staff Of H. Comm. On The Judiciary, 116th Cong., Investigation Of Competition In Digital Markets 7 (2020), *https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf* at 380 (''In the railroad industry, for example, a congressional investigation found that the expansion of common carrier railroads into the coal market undermined independent coal producers, whose wares the railroads would deprioritize in to give themselves superior access to markets. In 1893, the Committee on Interstate and Foreign Commerce wrote that '[n]o competition can exist between two producers of a commodity when one of them has the power to prescribe both the price and output of the other.' Congress subsequently enacted a provision to prohibit railroads from transporting any goods that they had produced or in which they held an interest.''); *id.* at 382 (''The 1887 Interstate Commerce Act, for example, prohibited discriminatory treatment by railroads.''); *id.* at 383 (''Historically, Congress has implemented nondiscrimination requirements in a variety of markets. With railroads, the Interstate Commerce Commission oversaw obligations and prohibitions applied to railroads designated as common carriers''); *see also* Christine S. Wilson & Keith Klovers, *The growing nostalgia for past regulatory misadventures and the risk of repeating these mistakes with Big Tech,* 8 J. Antitrust Enforcement 10, 12–14 (2019), *https://academic.oup.com/antitrust/article/8/1/10/564371* (discussing the benefits from dissolving the ICC).

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Part 145

[CBP Dec. 21–08]

RIN 1651–AB33

Mandatory Advance Electronic Information for International Mail Shipments; Correction

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

ACTION: Interim final rule; correcting amendments.

SUMMARY: On March 15, 2021, U.S. Customs and Border Protection (CBP) published in the **Federal Register** an Interim Final Rule, which amends the CBP regulations to provide for mandatory advance electronic data (AED) for international mail shipments. That document inadvertently misnumbered the regulatory text listing the circumstances when AED is not required for international mail shipments and made a typographical error in the authority citation.

DATES: Effective July 22, 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 and Border Protection, by telephone at (202) 344–2524, or email at *quintin.g.clarke@cbp.dhs.gov.* For legal questions, contact James V. DeBergh, Chief, Border Security Regulations Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, by telephone at 202–325–0098, or email at *jamesvan.debergh@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION: On March 15, 2021, CBP published in the **Federal Register** (86 FR 14245) an Interim Final Rule entitled Mandatory Advance Electronic Information for International Mail Shipments. As published, the Interim Final Rule inadvertently misnumbered the regulatory text found in 19 CFR 145.74(b)(2), which lists circumstances when AED is not required for international mail shipments. Specifically, section 145.74(b)(2) contains two subparagraphs numbered ''(iii)''. CBP is correcting the numbering by re-numbering the current subparagraphs (iv) and (v) as subparagraphs (v) and (vi) respectively. CBP is further correcting the numbering by renumbering the second subparagraph (iii) as subparagraph (iv). Finally, CBP is correcting a typographical error in the Authority section.

List of Subjects in 19 CFR Part 145

Exports, Lotteries, Postal Service, Reporting and recordkeeping requirements.

For reasons stated in the preamble, 19 CFR part 145 is amended by making the following correcting amendments:

PART 145—MAIL IMPORTATIONS

■ 1. The general authority citation for part 145 is revised to read as follows:

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

* * * * *

Subpart G also issued under 19 U.S.C. 1415, 1436.

§ 145.74 [Amended]

■ 2. Amend § 145.74 by redesignating the second paragraph (b)(2)(iii), and paragraphs (b)(2)(iv) and (v) as paragraphs (b)(2)(iv), (v), and (vi).

Alice A. Kipel,

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

[FR Doc. 2021–15460 Filed 7–21–21; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Chapter I

Notification of Temporary Travel Restrictions Applicable to Land Ports of Entry and Ferries Service Between the United States and Mexico

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

ACTION: Notification of continuation of temporary travel restrictions.

SUMMARY: This document announces the decision of the Secretary of Homeland Security (Secretary) to continue to temporarily limit the travel of individuals from Mexico into the United States at land ports of entry along the United States-Mexico border. Such travel will be limited to ''essential travel,'' as further defined in this document.

DATES: These restrictions go into effect at 12 a.m. Eastern Daylight Time (EDT) on July 22, 2021 and will remain in effect until 11:59 p.m. EDT on August 21, 2021, unless amended or rescinded prior to that time.

FOR FURTHER INFORMATION CONTACT: Stephanie Watson, Office of Field Operations Coronavirus Coordination Cell, U.S. Customs and Border Protection (CBP) at 202–325–0840.

SUPPLEMENTARY INFORMATION:

Background

On March 24, 2020, DHS published notice of its decision to temporarily limit the travel of individuals from Mexico into the United States at land ports of entry along the United States-Mexico border to ''essential travel,'' as further defined in that document.[1] The document described the developing circumstances regarding the COVID–19 pandemic and stated that, given the outbreak and continued transmission and spread of the virus associated with COVID–19 within the United States and globally, DHS had determined that the risk of continued transmission and spread of the virus associated with COVID–19 between the United States and Mexico posed a ''specific threat to human life or national interests.'' DHS later published a series of notifications continuing such limitations on travel until 11:59 p.m. EDT on July 21, 2021.[2]

DHS continues to monitor and respond to the COVID–19 pandemic. As of the week of July 12, 2021, there have been over 186 million confirmed cases globally, with over 4 million confirmed deaths.[3] There have been over 33.7 million confirmed and probable cases within the United States,[4] over 1.4 million confirmed cases in Canada,[5] and over 2.6 million confirmed cases in Mexico.[6]

DHS also notes positive developments in recent weeks. CDC reports that, as of July 15, over 336 million vaccine doses have been administered in the United

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[1] 85 FR 16547 (Mar. 24, 2020). That same day, DHS also published notice of its decision to temporarily limit the travel of individuals from Canada into the United States at land ports of entry along the United States-Canada border to ''essential travel,'' as further defined in that document. 85 FR 16548 (Mar. 24, 2020).

[2] *See* 86 FR 32766 (June 23, 2021); 86 FR 27800 (May 24, 2021); 86 FR 21189 (Apr. 22, 2021); 86 FR 14813 (Mar. 19, 2021); 86 FR 10816 (Feb. 23, 2021); 86 FR 4967 (Jan. 19, 2021); 85 FR 83433 (Dec. 22, 2020); 85 FR 74604 (Nov. 23, 2020); 85 FR 67275 (Oct. 22, 2020); 85 FR 59669 (Sept. 23, 2020); 85 FR 51633 (Aug. 21, 2020); 85 FR 44183 (July 22, 2020); 85 FR 37745 (June 24, 2020); 85 FR 31057 (May 22, 2020); 85 FR 22353 (Apr. 22, 2020). DHS also published parallel notifications of its decisions to continue temporarily limiting the travel of individuals from Canada into the United States at land ports of entry along the United States-Canada border to ''essential travel.'' *See* 86 FR 32764 (June 23, 2021); 86 FR 27802 (May 24, 2021); 86 FR 21188 (Apr. 22, 2021); 86 FR 14812 (Mar. 19, 2021); 86 FR 10815 (Feb. 23, 2021); 86 FR 4969 (Jan. 19, 2021); 85 FR 83432 (Dec. 22, 2020); 85 FR 74603 (Nov. 23, 2020); 85 FR 67276 (Oct. 22, 2020); 85 FR 59670 (Sept. 23, 2020); 85 FR 51634 (Aug. 21, 2020); 85 FR 44185 (July 22, 2020); 85 FR 37744 (June 24, 2020); 85 FR 31050 (May 22, 2020); 85 FR 22352 (Apr. 22, 2020).

[3] WHO, Coronavirus disease 2019 (COVID–19) Weekly Epidemiological Update (June 8, 2021), available at *https://www.who.int/emergencies/diseases/novel-coronavirus-2019/situation-reports* (accessed July 15, 2021).

[4] CDC, COVID Data Tracker: United States COVID–19 Cases, Deaths, and Laboratory Testing (NAATs) by State, Territory, and Jurisdiction, *https://covid.cdc.gov/covid-data-tracker/#cases_casesper100klast7days* (accessed July 15, 2021).

[5] WHO, Situation by Region, Country, Territory & Area, available at *https://covid19.who.int/table* (accessed July 15, 2021).

[6] *Id.*

States and over 59% of adults in the United States are fully vaccinated.[7] On June 7, 2021, CDC moved Canada and Mexico from COVID–19 Level 4 (Very High) to Level 3 (High) in recognition of conditions that, while still requiring significant safeguards, are improving.[8]

Notice of Action

Given the outbreak and continued transmission and spread of COVID–19 within the United States and globally, the Secretary has determined that the risk of continued transmission and spread of the virus associated with COVID–19 between the United States and Mexico poses an ongoing ''specific threat to human life or national interests.''

U.S. and Mexican officials have mutually determined that non-essential travel between the United States and Mexico currently poses additional risk of transmission and spread of the virus associated with COVID–19 and places the populace of both nations at increased risk of contracting the virus associated with COVID–19. Moreover, given the sustained human-to-human transmission of the virus, coupled with risks posed by new variants, returning to previous levels of travel between the two nations places the personnel staffing land ports of entry between the United States and Mexico, as well as the individuals traveling through these ports of entry, at increased risk of exposure to the virus associated with COVID–19. Accordingly, and consistent with the authority granted in 19 U.S.C. 1318(b)(1)(C) and (b)(2),[9] I have determined that land ports of entry along the U.S.-Mexico border will continue to suspend normal operations and will only allow processing for entry into the United States of those travelers engaged in ''essential travel,'' as defined below. Given the definition of ''essential travel'' below, this temporary alteration in land ports of entry operations should not interrupt legitimate trade between the two nations or disrupt critical supply chains that ensure food, fuel, medicine, and other critical materials reach individuals on both sides of the border.

For purposes of the temporary alteration in certain designated ports of entry operations authorized under 19 U.S.C. 1318(b)(1)(C) and (b)(2), travel through the land ports of entry and ferry terminals along the United States-Mexico border shall be limited to ''essential travel,'' which includes, but is not limited to—

- U.S. citizens and lawful permanent residents returning to the United States;
- Individuals traveling for medical purposes (*e.g.,* to receive medical treatment in the United States);
- Individuals traveling to attend educational institutions;
- Individuals traveling to work in the United States (*e.g.,* individuals working in the farming or agriculture industry who must travel between the United States and Mexico in furtherance of such work);
- Individuals traveling for emergency response and public health purposes (*e.g.,* government officials or emergency responders entering the United States to support federal, state, local, tribal, or territorial government efforts to respond to COVID–19 or other emergencies);
- Individuals engaged in lawful cross-border trade (*e.g.,* truck drivers supporting the movement of cargo between the United States and Mexico);
- Individuals engaged in official government travel or diplomatic travel;
- Members of the U.S. Armed Forces, and the spouses and children of members of the U.S. Armed Forces, returning to the United States; and
- Individuals engaged in military-related travel or operations.

The following travel does not fall within the definition of ''essential travel'' for purposes of this Notification—

- Individuals traveling for tourism purposes (*e.g.,* sightseeing, recreation, gambling, or attending cultural events).

At this time, this Notification does not apply to air, freight rail, or sea travel between the United States and Mexico, but does apply to passenger rail, passenger ferry travel, and pleasure boat travel between the United States and Mexico. These restrictions are temporary in nature and shall remain in effect until 11:59 p.m. EDT on August 21, 2021. This Notification may be amended or rescinded prior to that time, based on circumstances associated with the specific threat. Meanwhile, as part of an integrated U.S. government effort and guided by the objective analysis and recommendations of public health and medical experts, DHS is working closely with counterparts in Mexico and Canada to identify conditions under which restrictions may be eased safely and sustainably.

The Commissioner of U.S. Customs and Border Protection (CBP) is hereby directed to prepare and distribute appropriate guidance to CBP personnel on the continued implementation of the temporary measures set forth in this Notification. The CBP Commissioner may determine that other forms of travel, such as travel in furtherance of economic stability or social order, constitute ''essential travel'' under this Notification. Further, the CBP Commissioner may, on an individualized basis and for humanitarian reasons or for other purposes in the national interest, permit the processing of travelers to the United States not engaged in ''essential travel.''

Alejandro N. Mayorkas,

Secretary, U.S. Department of Homeland Security.

[FR Doc. 2021–15574 Filed 7–21–21; 8:45 am]

BILLING CODE 9112–FP–P

[7] *See* CDC, COVID Data Tracker: COVID–19 Vaccinations in the United States, *https://covid.cdc.gov/covid-data-tracker/#vaccinations* (accessed July 15, 2021).

[8] *See* CDC, Travel Notice; COVID–19 in Canada (June 7, 2021), *https://wwwnc.cdc.gov/travel/notices/covid-4/coronavirus-canada* (accessed June 10, 2021); CDC, Travel Notice: COVID–19 in Mexico (June 7, 2021), *https://wwwnc.cdc.gov/travel/notices/covid-4/coronavirus-mexico* (accessed June 10, 2021). In addition, on June 8, 2021, the Department of State moved Canada and Mexico from Level 4 (Do Not Travel) to Level 3 (Reconsider Travel). *See* Department of State, Canada Travel Advisory (June 8, 2021), *https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/canada-travel-advisory.html* (accessed June 10, 2021); Department of State, Mexico Travel Advisory (June 8, 2021), *https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/mexico-travel-advisory.html* (accessed June 10, 2021).

[9] 19 U.S.C. 1318(b)(1)(C) provides that ''[n]otwithstanding any other provision of law, the Secretary of the Treasury, when necessary to respond to a national emergency declared under the National Emergencies Act (50 U.S.C. 1601 *et seq.*) or to a specific threat to human life or national interests,'' is authorized to ''[t]ake any . . . action that may be necessary to respond directly to the national emergency or specific threat.'' On March 1, 2003, certain functions of the Secretary of the Treasury were transferred to the Secretary of Homeland Security. *See* 6 U.S.C. 202(2), 203(1). Under 6 U.S.C. 212(a)(1), authorities ''related to Customs revenue functions'' were reserved to the Secretary of the Treasury. To the extent that any authority under section 1318(b)(1) was reserved to the Secretary of the Treasury, it has been delegated to the Secretary of Homeland Security. *See* Treas. Dep't Order No. 100–16 (May 15, 2003), 68 FR 28322 (May 23, 2003). Additionally, 19 U.S.C. 1318(b)(2) provides that ''[n]otwithstanding any other provision of law, the Commissioner of U.S. Customs and Border Protection, when necessary to respond to a specific threat to human life or national interests, is authorized to close temporarily any Customs office or port of entry or take any other lesser action that may be necessary to respond to the specific threat.'' Congress has vested in the Secretary of Homeland Security the ''functions of all officers, employees, and organizational units of the Department,'' including the Commissioner of CBP. 6 U.S.C. 112(a)(3).

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Chapter I

Notification of Temporary Travel Restrictions Applicable to Land Ports of Entry and Ferries Service Between the United States and Canada

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

ACTION: Notification of continuation of temporary travel restrictions.

SUMMARY: This document announces the decision of the Secretary of Homeland Security (Secretary) to continue to temporarily limit the travel of individuals from Canada into the United States at land ports of entry along the United States-Canada border. Such travel will be limited to ''essential travel,'' as further defined in this document.

DATES: These restrictions go into effect at 12 a.m. Eastern Daylight Time (EDT) on July 22, 2021 and will remain in effect until 11:59 p.m. EDT on August 21, 2021, unless amended or rescinded prior to that time.

FOR FURTHER INFORMATION CONTACT: Stephanie Watson, Office of Field Operations Coronavirus Coordination Cell, U.S. Customs and Border Protection (CBP) at 202–325–0840.

SUPPLEMENTARY INFORMATION:

Background

On March 24, 2020, DHS published notice of its decision to temporarily limit the travel of individuals from Canada into the United States at land ports of entry along the United States-Canada border to ''essential travel,'' as further defined in that document.[1] The document described the developing circumstances regarding the COVID–19 pandemic and stated that, given the outbreak and continued transmission and spread of the virus associated with COVID–19 within the United States and globally, DHS had determined that the risk of continued transmission and spread of the virus associated with COVID–19 between the United States and Canada posed a ''specific threat to human life or national interests.'' DHS later published a series of notifications continuing such limitations on travel until 11:59 p.m. EDT on July 21, 2021.[2]

DHS continues to monitor and respond to the COVID–19 pandemic. As of the week of July 12, 2021, there have been over 186 million confirmed cases globally, with over 4 million confirmed deaths.[3] There have been over 33.7 million confirmed and probable cases within the United States,[4] over 1.4 million confirmed cases in Canada,[5] and over 2.6 million confirmed cases in Mexico.[6]

DHS also notes positive developments in recent weeks. CDC reports that, as of July 15, over 336 million vaccine doses have been administered in the United States and over 59% of adults in the United States are fully vaccinated.[7] On June 7, 2021, CDC moved Canada and Mexico from COVID–19 Level 4 (Very High) to Level 3 (High) in recognition of conditions that, while still requiring significant safeguards, are improving.[8]

Notice of Action

Given the outbreak and continued transmission and spread of COVID–19 within the United States and globally, the Secretary has determined that the risk of continued transmission and spread of the virus associated with COVID–19 between the United States and Canada poses an ongoing ''specific threat to human life or national interests.''

U.S. and Canadian officials have mutually determined that non-essential travel between the United States and Canada currently poses additional risk of transmission and spread of the virus associated with COVID–19 and places the populace of both nations at increased risk of contracting the virus associated with COVID–19. Moreover, given the sustained human-to-human transmission of the virus, coupled with risks posed by new variants, returning to previous levels of travel between the two nations places the personnel staffing land ports of entry between the United States and Canada, as well as the individuals traveling through these ports of entry, at increased risk of exposure to the virus associated with COVID–19. Accordingly, and consistent with the authority granted in 19 U.S.C. 1318(b)(1)(C) and (b)(2),[9] I have determined that land ports of entry along the U.S.-Canada border will continue to suspend normal operations and will only allow processing for entry

[1] 85 FR 16548 (Mar. 24, 2020). That same day, DHS also published notice of its decision to temporarily limit the travel of individuals from Mexico into the United States at land ports of entry along the United States-Mexico border to ''essential travel,'' as further defined in that document. 85 FR 16547 (Mar. 24, 2020).

[2] *See* 86 FR 32764 (June 23, 2021); 86 FR 27802 (May 24, 2021); 86 FR 21188 (Apr. 22, 2021); 86 FR 14812 (Mar. 19, 2021); 86 FR 10815 (Feb. 23, 2021); 86 FR 4969 (Jan. 19, 2021); 85 FR 83432 (Dec. 22, 2020); 85 FR 74603 (Nov. 23, 2020); 85 FR 67276 (Oct. 22, 2020); 85 FR 59670 (Sept. 23, 2020); 85 FR 51634 (Aug. 21, 2020); 85 FR 44185 (July 22, 2020); 85 FR 37744 (June 24, 2020); 85 FR 31050 (May 22, 2020); 85 FR 22352 (Apr. 22, 2020). DHS also published parallel notifications of its decisions to continue temporarily limiting the travel of individuals from Mexico into the United States at land ports of entry along the United States-Mexico border to ''essential travel.'' *See* 86 FR 32766 (June 23, 2021); 86 FR 27800 (May 24, 2021); 86 FR 21189 (Apr. 22, 2021); 86 FR 14813 (Mar. 19, 2021); 86 FR 10816 (Feb. 23, 2021); 86 FR 4969 (Jan. 19, 2021); 85 FR 83433 (Dec. 22, 2020); 85 FR 74604 (Nov. 23, 2020); 85 FR 67275 (Oct. 22, 2020); 85 FR 59669 (Sept. 23, 2020); 85 FR 51633 (Aug. 21, 2020); 85 FR 44183 (July 22, 2020); 85 FR 37745 (June 24, 2020); 85 FR 31057 (May 22, 2020); 85 FR 22353 (Apr. 22, 2020).

[3] WHO, Coronavirus disease 2019 (COVID–19) Weekly Epidemiological Update (June 8, 2021), available at *https://www.who.int/emergencies/diseases/novel-coronavirus-2019/situation-reports* (accessed July 15, 2021).

[4] CDC, COVID Data Tracker: United States COVID–19 Cases, Deaths, and Laboratory Testing (NAATs) by State, Territory, and Jurisdiction, *https://covid.cdc.gov/covid-data-tracker/#cases_casesper100klast7days* (accessed July 15, 2021).

[5] WHO, Situation by Region, Country, Territory & Area, available at *https://covid19.who.int/table* (accessed July 15, 2021).

[6] *Id.*

[7] *See* CDC, COVID Data Tracker: COVID–19 Vaccinations in the United States, *https://covid.cdc.gov/covid-data-tracker/#vaccinations* (accessed July 15, 2021).

[8] *See* CDC, Travel Notice; COVID–19 in Canada (June 7, 2021), *https://wwwnc.cdc.gov/travel/notices/covid-4/coronavirus-canada* (accessed June 10, 2021); CDC, Travel Notice: COVID–19 in Mexico (June 7, 2021), *https://wwwnc.cdc.gov/travel/notices/covid-4/coronavirus-mexico* (accessed June 10, 2021). In addition, on June 8, 2021, the Department of State moved Canada and Mexico from Level 4 (Do Not Travel) to Level 3 (Reconsider Travel). *See* Department of State, Canada Travel Advisory (June 8, 2021), *https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/canada-travel-advisory.html* (accessed June 10, 2021); Department of State, Mexico Travel Advisory (June 8, 2021), *https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/mexico-travel-advisory.html* (accessed June 10, 2021).

[9] 19 U.S.C. 1318(b)(1)(C) provides that ''[n]otwithstanding any other provision of law, the Secretary of the Treasury, when necessary to respond to a national emergency declared under the National Emergencies Act (50 U.S.C. 1601 *et seq.*) or to a specific threat to human life or national interests,'' is authorized to ''[t]ake any . . . action that may be necessary to respond directly to the national emergency or specific threat.'' On March 1, 2003, certain functions of the Secretary of the Treasury were transferred to the Secretary of Homeland Security. *See* 6 U.S.C. 202(2), 203(1). Under 6 U.S.C. 212(a)(1), authorities ''related to Customs revenue functions'' were reserved to the Secretary of the Treasury. To the extent that any authority under section 1318(b)(1) was reserved to the Secretary of the Treasury, it has been delegated to the Secretary of Homeland Security. *See* Treas. Dep't Order No. 100–16 (May 15, 2003), 68 FR 28322 (May 23, 2003). Additionally, 19 U.S.C. 1318(b)(2) provides that ''[n]otwithstanding any other provision of law, the Commissioner of U.S. Customs and Border Protection, when necessary to respond to a specific threat to human life or national interests, is authorized to close temporarily any Customs office or port of entry or take any other lesser action that may be necessary to respond to the specific threat.'' Congress has vested in the Secretary of Homeland Security the ''functions of all officers, employees, and organizational units of the Department,'' including the Commissioner of CBP. 6 U.S.C. 112(a)(3).

into the United States of those travelers engaged in ''essential travel,'' as defined below. Given the definition of ''essential travel'' below, this temporary alteration in land ports of entry operations should not interrupt legitimate trade between the two nations or disrupt critical supply chains that ensure food, fuel, medicine, and other critical materials reach individuals on both sides of the border.

For purposes of the temporary alteration in certain designated ports of entry operations authorized under 19 U.S.C. 1318(b)(1)(C) and (b)(2), travel through the land ports of entry and ferry terminals along the United States-Canada border shall be limited to ''essential travel,'' which includes, but is not limited to—

- U.S. citizens and lawful permanent residents returning to the United States;
- Individuals traveling for medical purposes (*e.g.,* to receive medical treatment in the United States);
- Individuals traveling to attend educational institutions;
- Individuals traveling to work in the United States (*e.g.,* individuals working in the farming or agriculture industry who must travel between the United States and Canada in furtherance of such work);
- Individuals traveling for emergency response and public health purposes (*e.g.,* government officials or emergency responders entering the United States to support federal, state, local, tribal, or territorial government efforts to respond to COVID–19 or other emergencies);
- Individuals engaged in lawful cross-border trade (*e.g.,* truck drivers supporting the movement of cargo between the United States and Canada);
- Individuals engaged in official government travel or diplomatic travel;
- Members of the U.S. Armed Forces, and the spouses and children of members of the U.S. Armed Forces, returning to the United States; and
- Individuals engaged in military-related travel or operations.

The following travel does not fall within the definition of ''essential travel'' for purposes of this Notification—

- Individuals traveling for tourism purposes (*e.g.,* sightseeing, recreation, gambling, or attending cultural events).

At this time, this Notification does not apply to air, freight rail, or sea travel between the United States and Canada, but does apply to passenger rail, passenger ferry travel, and pleasure boat travel between the United States and Canada. These restrictions are temporary in nature and shall remain in effect until 11:59 p.m. EDT on August 21, 2021. This Notification may be amended or rescinded prior to that time, based on circumstances associated with the specific threat. Meanwhile, as part of an integrated U.S. government effort and guided by the objective analysis and recommendations of public health and medical experts, DHS is working closely with counterparts in Mexico and Canada to identify conditions under which restrictions may be eased safely and sustainably.

The Commissioner of U.S. Customs and Border Protection (CBP) is hereby directed to prepare and distribute appropriate guidance to CBP personnel on the continued implementation of the temporary measures set forth in this Notification. The CBP Commissioner may determine that other forms of travel, such as travel in furtherance of economic stability or social order, constitute ''essential travel'' under this Notification. Further, the CBP Commissioner may, on an individualized basis and for humanitarian reasons or for other purposes in the national interest, permit the processing of travelers to the United States not engaged in ''essential travel.''

Alejandro N. Mayorkas,

Secretary, U.S. Department of Homeland Security.

[FR Doc. 2021–15573 Filed 7–21–21; 8:45 am]

BILLING CODE 9112–FP–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

30 CFR Part 550

[Docket No.: BOEM 2021–0028]

RIN 1010–AE08

Maximum Daily Civil Penalty Amounts for Violations of the Federal Oil and Gas Royalty Management Act

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends the Bureau of Ocean Energy Management (BOEM) regulations that set maximum daily civil penalty (MDCP) amounts for violations of the Federal Oil and Gas Royalty Management Act (FOGRMA). The amended BOEM regulations will cross-reference regulations of the Office of Natural Resources Revenue (ONRR) that also set MDCP amounts for FOGRMA violations. This cross-reference will ensure consistency between BOEM's FOGRMA MDCP amounts and ONRR's FOGRMA MDCP amounts. It will also ensure consistent compliance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Inflation Adjustment Act) and related Office of Management and Budget (OMB) guidance, while reducing unnecessary duplication of effort and costs to BOEM.

DATES: This rule is effective on July 22, 2021.

FOR FURTHER INFORMATION CONTACT: Deanna Meyer-Pietruszka, Bureau of Ocean Energy Management, Chief, Office of Policy, Regulation and Analysis, at *deanna.meyer-pietruszka@boem.gov* or by mail to 1849 C Street NW, Mail Stop 5238, Washington, DC 20240 or by calling (202) 208–6352.

SUPPLEMENTARY INFORMATION:

Background and Legal Authority

The Inflation Adjustment Act, Public Law 114–74, sec. 701 (codified at 28 U.S.C. 2461 note), became law on November 2, 2015. It required Federal agencies to adjust the level of civil monetary penalties imposed under each agency's regulations with an initial ''catch-up'' adjustment through rulemaking, if warranted, and then to make subsequent annual adjustments for inflation. Agencies were required to publish the initial annual inflation adjustments in the **Federal Register** no later than January 15, 2017, and are required to publish annual adjustments no later than January 15th of each subsequent year. The purpose of these inflation adjustments is to maintain the deterrent effect of civil penalties and to further the policy goals of the underlying statutes that authorize the penalties.

BOEM has authority to impose civil penalties for violations of FOGRMA under 30 U.S.C. 1719 and delegations of authority by the Secretary of the Interior. BOEM's regulations implementing its authority to impose penalties under FOGRMA are found at 30 CFR 550.1450–.1477. Specifically, BOEM may impose civil penalties under FOGRMA—after providing notice of noncompliance (NONC) and an opportunity to correct the violation—for noncompliance with any applicable statute, regulation, order, or lease term relating to any Federal oil or gas lease. *See* 30 CFR 550.1451. BOEM may also impose penalties under FOGRMA, without providing prior notice or an opportunity to correct the violation, for the knowing or willful preparation, maintenance, or submission of false, inaccurate, or misleading written information. *See id.* at 550.1460.

Sections 550.1453 and 550.1460 of BOEM's existing regulations specify the MDCP amounts, as prescribed by

section 109 of FOGRMA (30 U.S.C. 1719).[1] As required by the Inflation Adjustment Act, however, BOEM's FOGRMA civil penalty amounts must be adjusted annually for inflation.

Within the Department of the Interior (the Department), ONRR is the agency responsible for collecting revenue from energy leases and auditing royalty payments under FOGRMA. Like BOEM, ONRR has authority to impose civil penalties for certain violations of FOGRMA. ONRR's civil penalty regulations are found in 30 CFR part 1241. As required by the Inflation Adjustment Act, ONRR also must annually adjust its regulatory MDCP amounts for inflation. ONRR published such a final rule for calendar year 2017 on April 24, 2017. *See* 82 FR 18858. Each year since, ONRR has calculated and adjusted the MDCP amounts in 30 CFR part 1241 in accordance with the Inflation Adjustment Act. On February 2, 2021, ONRR published the final rule adjusting the MDCP amounts in 30 CFR part 1241 for calendar year 2021. *See* 86 FR 7808.[2]

Because FOGRMA sets the MDCP amounts for penalties assessed by BOEM and ONRR for violations of FOGRMA and because the Inflation Adjustment Act uniformly applies to require adjustments to the civil penalties that may be assessed by both agencies as calculated from the same base year, BOEM's FOGRMA MDCP amounts must be the same as ONRR's FOGRMA MDCP amounts.

Changes Made to Existing BOEM Regulations

Through this rule, BOEM amends §§ 550.1453 and 550.1460 of its FOGRMA civil penalty regulations in order to cross-reference to ONRR's civil penalty regulations in 30 CFR part 1241. By cross-referencing to ONRR's regulations, BOEM's MDCP amounts for FOGRMA violations will be the same as ONRR's MDCP amounts, ensuring ongoing consistency within the Department as ONRR adjusts the FOGRMA MDCP amounts annually for inflation. In addition, this rule will avoid the duplication of effort and unnecessary expenditures within the Department that would occur if both BOEM and ONRR were to develop and publish separate final rules every year adjusting their corresponding FOGRMA MDCP amounts.

Administrative Procedure Act Requirements

Section 701(b)(1)(D) of the Inflation Adjustment Act states that agencies must adjust civil monetary penalties ''notwithstanding section 553 of title 5, United States Code [the Administrative Procedure Act (APA)].'' OMB interprets that provision to mean the APA's public procedures of notice and comment rulemaking are not required to implement annual civil monetary penalty inflation adjustments. OMB Memorandum M–21–10, December 23, 2020 (M–21–10), p. 3. In this manner, Congress exempted the annual inflation adjustments under the Inflation Adjustment Act from the APA notice and comment requirements (5 U.S.C. 553(b)), allowing agencies to publish annual inflation adjustments as final rules without prior proposed rules.

In addition, the APA provides a good cause exemption from notice and comment rulemaking when an agency finds that prior notice and public procedure are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B). BOEM finds that it is unnecessary to issue a proposed rule prior to this final rule because the Inflation Adjustment Act does not provide discretion to BOEM—the act specifies the adjustments to be made, the methodology to be employed, and the index for inflation to be utilized. BOEM cannot choose to take a different course in response to public comments.

The APA also exempts ''rules of agency, organization, procedure, or practice'' from notice and comment rulemaking. 5 U.S.C. 553(b)(A). BOEM's decision to address the civil penalty inflation adjustment required under the Inflation Adjustment Act by cross-referencing to ONRR's regulations, which are subject to the same inflation adjustment standards under the Inflation Adjustment Act, rather than annually amending the FOGRMA penalties in each affected BOEM regulation, is an exercise of procedural rulemaking, which primarily concerns BOEM's internal operations. Here, BOEM is organizing its internal procedures to meet its own legal duties. Moreover, while prior notice and comment is required for rules that affect rights or duties of the public, BOEM's reliance on cross-referencing does not affect the rights of any regulated parties because the civil penalty amounts will be the same regardless of whether those amounts are cross-referenced to ONRR's regulations or calculated and published separately by BOEM. ONRR must calculate and adjust the MDCP amounts in 30 CFR part 1241 annually in accordance with the Inflation Adjustment Act and related OMB guidance, just as BOEM must do.

Procedural Requirements

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order (E.O.) 12866 provides that the OMB Office of Information and Regulatory Affairs (OIRA) will review all significant rules. Consistent with OIRA criteria, this rule is not significant. OMB M–21–10 at 3.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. E.O. 13563 directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 further emphasizes that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. BOEM has developed this rule in a manner consistent with these requirements, to the extent permitted by statute.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires an agency to prepare a regulatory flexibility analysis for all rules unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The RFA applies only to rules for which an agency is required to first publish a proposed rule. (*See* 5 U.S.C. 603(a) and 604(a)). For the reasons discussed in part III of this rule, BOEM is not

[1] Under existing §§ 550.1451 and .1453(a), BOEM may initially impose civil penalties of up to $500 per day for each violation of a statute, regulation, order, or lease term for any Federal oil and gas lease that is not corrected within 20 days of receipt of a NONC identifying the violation. Under existing § 550.1453(b), BOEM may increase the MDCP amount up to $5,000 per day for each violation not corrected within 40 days of the NONC. In addition, under existing § 550.1460(b), BOEM may impose civil penalties, without prior notice, of up to $25,000 per day per violation for the knowing or willful preparation, maintenance, or submission of false, inaccurate, or misleading written information.

[2] Specifically, in relevant part, ONRR amended 30 CFR 1241.52(a)(2) to authorize civil penalties of up to $1,288 per day for each violation of a statute, regulation, order, or lease term that is not corrected within 20 days of receipt of a NONC identifying the violation. *See* 86 FR 7808, 7810. Under the amended 30 CFR 1241.52(b), ONRR may impose civil penalties of up to $12,891 per day for each violation that is not corrected within 40 days of receipt of the NONC. Finally, ONNR amended 30 CFR 1241.60(b)(2) to authorize imposition of penalties, without prior notice, of up to $64,452 per day per violation for knowing or willful preparation, maintenance, or submission of false, inaccurate, or misleading written information. *Id.*

required to publish a proposed rule prior to this final rule. Thus, the RFA does not apply to this rulemaking.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act (as codified at 5 U.S.C. 804(2)) because this rule will not:

(1) Have an annual effect on the economy of $100 million or more;

(2) Cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments, or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (E.O. 12630)

This rule does not affect a taking of private property or otherwise have takings implications under E.O. 12630. Therefore, a takings implication assessment is not required.

Federalism (E.O. 13132)

Under the criteria in section 1 of E.O. 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. This rule will not substantially and directly affect the relationship between the Federal and State governments. To the extent that State and local governments have a role in Outer Continental Shelf activities, this rule will not affect that role. Therefore, a federalism summary impact statement is not required.

Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

(1) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(2) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (E.O. 13175 and Departmental Policy)

The Department strives to strengthen its government-to-government relationship with American Indian and Alaska Native Tribes through a commitment to consultation with the tribes and recognition of their right to self-governance and tribal sovereignty. The Department also is respectful of its responsibilities for consultation with Alaska Native Claims Settlement Act (ANCSA) Corporations. BOEM evaluated this rule under the Department's consultation policy, under Departmental Manual part 512 chapters 4 and 5, and under the criteria in E.O. 13175. BOEM determined that this rule has no substantial direct effects on Federally recognized Indian tribes or ANCSA Corporations and that consultation under the Department's tribal and ANCSA consultation policies is not required.

Paperwork Reduction Act

This rule does not contain information collection requirements, and a submission to the OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required.

National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed analysis under the National Environmental Policy Act of 1969 (NEPA) is not required if the rule is covered by a categorical exclusion (*see* 43 CFR 46.205). This rule meets the criteria set forth at 43 CFR 46.210(i) for a Departmental categorical exclusion in that this rule is ''of an administrative, financial, legal, technical, or procedural nature . . . .'' BOEM also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211. Therefore, a statement of energy effects is not required.

List of Subjects in 30 CFR Part 550

Administrative practice and procedure, Continental shelf, Environmental impact statements, Environmental protection, Federal lands, Government contracts, Investigations, Mineral resources, Oil and gas exploration, Outer continental shelf, Penalties, Pipelines, Rights-of-way, Reporting and recordkeeping requirements, Sulfur.

Laura Daniel-Davis,

Principal Deputy Assistant Secretary, Land and Minerals Management.

For the reasons given in the preamble, the Bureau of Ocean Energy Management hereby amends 30 CFR part 550 as follows:

PART 550—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

■ 1. The authority citation for part 550 continues to read as follows:

Authority: 30 U.S.C. 1751, 31 U.S.C. 9701, 43 U.S.C. 1334.

Subpart N—Outer Continental Shelf Civil Penalties

■ 2. Revise § 550.1453 to read as follows:

§ 550.1453 What if I do not correct the violation?

(a) We may send you a Notice of Civil Penalty if you do not correct all of the violations identified in the Notice of Noncompliance within 20 days after you receive the Notice of Noncompliance (or within a longer time period specified in that Notice). The Notice of Civil Penalty will tell you how much penalty you must pay for each day, beginning with the date of the Notice of Noncompliance, for each violation identified in the Notice of Noncompliance for as long as you do not correct the violation. The maximum civil penalty amount for each day for each uncorrected violation is as specified in 30 CFR 1241.52(a)(2).

(b) If you do not correct all of the violations identified in the Notice of Noncompliance within 40 days after you receive the Notice of Noncompliance (or 20 days following the expiration of a longer time period specified in that Notice), we may increase the penalty for each day, beginning with the date of the Notice of Noncompliance, for each violation for as long as you do not correct the violation. The maximum civil penalty amount for each day for each uncorrected violation is as specified in 30 CFR 1241.52(b).

■ 3. Amend § 550.1460 by revising paragraph (b) to read as follows:

§ 550.1460 May I be subject to penalties without prior notice and an opportunity to correct?

* * * * *

(b) Under 30 U.S.C. 1719(d), you may be subject to civil penalties up to the maximum amount specified in 30 CFR

1241.60(b)(2) for each violation for each day that it continues if you:

(1) Knowingly or willfully prepare, maintain, or submit false, inaccurate, or misleading reports, notices, affidavits, records, data, or other written information.

(2) [Reserved]

[FR Doc. 2021–15388 Filed 7–21–21; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 310

[Docket ID: DoD–2021–OS–0054]

RIN 0790–AL14

Privacy Act of 1974; Implementation

AGENCY: Office of the Secretary of Defense, Department of Defense (DoD).

ACTION: Direct final rule with request for comments.

SUMMARY: The Department of Defense (DoD or Department) is giving concurrent notice of a new Department-wide system of records DoD 0007, ''Defense Reasonable Accommodation and Assistive Technology Records,'' and this rulemaking, which exempts portions of this system of records from certain provisions of the Privacy Act of 1974, as amended, because of national security requirements. This rule is being published as a direct final rule as the Department does not expect to receive any adverse comments. If such comments are received, this direct final rule will be withdrawn and a proposed rule for comments will be published.

DATES: The rule is effective on September 30, 2021 unless comments are received that would result in a contrary determination. Comments will be accepted on or before September 20, 2021. If adverse comment is received, the Department will publish a timely withdrawal of the rule in the **Federal Register**.

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, *OSD.DPCLTD@mail.mil,* (703) 571–0070.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, DoD is establishing a new Department-wide system of records titled DoD 0007, ''Defense Reasonable Accommodation and Assistive Technology Records.'' This system of records covers both electronic and paper records and will be used by DoD components and offices to maintain records about accommodations based on disability requested by or provided to employees and applicants for employment and participants in DoD programs and activities. The Rehabilitation Act of 1973, as amended, generally requires Federal agencies to provide accommodations which enable individuals with disabilities to perform DoD employment and participate in DoD programs and activities, unless such accommodation would impose an undue burden. In addition, DoD's Computer/Electronic Accommodations Program (CAP) provides assistive (computer/electronic) technology solutions to individuals—including injured, wounded, or ill Service members—with hearing, vision, dexterity, cognitive, and/or communications impairments in the form of an accessible work environment. This also includes the request and delivery of personal assistance services for covered individuals. Such disability accommodations include: (1) Making existing facilities readily accessible to and usable by individuals with disabilities; (2) job restructuring, modification of work schedules or place of work, extended leave, telecommuting, or reassignment to a vacant position; and/or (3) acquisition or modification of equipment or devices, including computer software and hardware, appropriate adjustments or modifications of examinations, training materials or policies, the provision of qualified readers and/or interpreters, personal assistants, service animals, and other similar accommodations.

II. Privacy Act Exemption

The Privacy Act permits Federal agencies to exempt eligible records in a system of records from certain provisions of the Act, including the provisions providing individuals with a right to request access to and amendment of their own records and accountings of disclosures of such 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. The Office of the Secretary is amending 32 CFR part 310 to add a new Privacy Act exemption rule for this system of records. The DoD is adding an exemption for this system of records because some of its records may contain classified national security information and providing notice, access, amendment, and disclosure of accounting of those records to an individual, as well as certain record-keeping requirements, 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 claiming an exemption from several provisions of the Privacy Act, including various access, amendment, disclosure of accounting, and certain record-keeping and notice requirements, 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.

III. Direct Final Rulemaking

This rule is being published as a direct final rule as the Department does not expect to receive any significant adverse comments. If such comments are received, this direct final rule will be withdrawn and a proposed rule for comments will be published. If no such comments are received, this direct final rule will become effective ten days after the comment period expires.

For purposes of this rule, a significant adverse comment is one that explains (1) why the rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a significant adverse comment necessitates withdrawal of this direct final rule, the Department will consider whether the comment raises an issue serious enough to warrant a substantive response had it been submitted in a

standard notice-and-comment process. A comment recommending an addition to the rule will not be considered significant and adverse unless the comment explains how this direct final rule would be ineffective without the addition.

An agency typically uses direct final rulemaking when it anticipates the rule will be non-controversial. The Department has determined that this rule is suitable for direct final rulemaking. The rule exempts this Privacy Act system of records on the basis that it may contain classified information. This exemption relieves the Department from the requirements of several provisions of the Privacy Act, including various access, amendment, disclosure of accounting, and certain recordkeeping and notice requirements. The purpose of the rule is to prevent disclosure of any information properly classified pursuant to executive order and protect against harm to the national security. This exemption should not be controversial and is consistent with federal law and policy regarding the appropriate handling and protection of national security information. Accordingly, pursuant to 5 U.S.C. 553(b), the Department has for good cause determined that the notice and comment requirements are unnecessary.

This direct final rule adds to the DoD's Privacy Act exemptions for Department-wide systems of records found in 32 CFR 310.13. 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 0007 is also published in this 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 also emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. It has been determined that Privacy Act rules for the DoD are not significant rules under these Executive orders.

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

It has been determined that the Privacy Act rules for the DoD does not involve Federal mandates 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 such rules will not significantly or uniquely affect small governments.

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

It has been determined that Privacy Act rules for the DoD impose no additional reporting or recordkeeping requirements on the public under the Paperwork Reduction Act of 1995.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6)

It has been certified that this Privacy Act rule for the DoD does not have significant economic impacts on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the DoD.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), it has been determined that this direct final rule is not a major rule, as defined by 5 U.S.C. 804(2).

Executive Order 13132, ''Federalism''

It has been determined that the Privacy Act rules for the DoD do not have federalism implications. The rules do 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 amended as follows:

PART 310—[AMENDED]

■ 1. The authority citation for part 310 continues to read as follows:

Authority: 5 U.S.C. 552a.

■ 2. Amend § 310.13 by adding reserve paragraph (e)(3), (4), and (5) and paragraph (e)(6) to read as follows:

§ 310.13 Exemptions for DoD-wide systems.

* * * * *

(e) * * *

(6) *System identifier and name.* DoD 0007, ''Defense Reasonable Accommodation and Assistive Technology 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)(4)(G), (H), and (I); and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(1).

(iii) *Exemption from the particular subsections.* Exemption from the particular subsections pursuant to exemption (k)(1) is justified for the following reasons:

(A) *Subsections (c)(3), (c)(4), (d)(1), and (d)(2).* Records in this system of records may contain information concerning individuals that is properly classified pursuant to executive order. Application of exemption (k)(1) for such records 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. Accordingly, application of exemption (k)(1) may be necessary.

(B) *Subsections (d)(3) and (4).* Subsections (d)(3) and (4) are inapplicable to the extent an exemption is claimed from (d)(2).

(C) *Subsections (e)(4)(G) and (H) and Subsection (f).* Subsections (e)(4)(G) and (H) and subsection (f) are inapplicable to the extent exemption is claimed from the access and amendment provisions of subsection (d). Because portions of this system are exempt from the individual access and amendment provisions of subsection (d) for the reasons noted in paragraphs (e)(6)(iii)(A) and (B) of this section, DoD is not required to establish requirements, rules, or procedures with respect to such access or amendment provisions. Providing notice to individuals with respect to the existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access, view, and seek to amend records pertaining to themselves in the system would potentially undermine national security and the confidentiality of classified information. Accordingly, application of exemption (k)(1) may be necessary.

(D) *Subsection (e)(4)(I).* To the extent that subsection (e)(4)(I) is construed to require more detailed disclosure than the broad information currently published in the system notice concerning categories of sources of records in the system, an exemption from this provision is necessary to protect national security and the confidentiality of sources and methods, and other classified information.

(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: July 19, 2021.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2021–15600 Filed 7–21–21; 8:45 am]

BILLING CODE 5001–06–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2020–0674; FRL–8713–02–R9]

Air Plan Approval; California; Yolo-Solano Air Quality Management District; Graphic Arts and Printing Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a revision to the Yolo-Solano Air Quality Management District (YSAQMD) portion of the California State Implementation Plan (SIP). This revision concerns emissions of volatile organic compounds (VOCs) from graphic arts printing operations. We are approving a local rule that regulates these emission sources under the Clean Air Act (CAA or the Act).

DATES: This rule will be effective on August 23, 2021.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2020–0674. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* 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 through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Nicole Law or La Kenya Evans, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone at: (415) 947–4126 or (415) 947–3245 or by email at *Law.Nicole@epa.gov* or *Evans.LaKenya@epa.gov.*

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

Table of Contents

I. Proposed Action
II. Public Comments
III. EPA Action
IV. Incorporation by Reference
V. Statutory and Executive Order Reviews

I. Proposed Action

On February 26, 2021 (86 FR 11686), the EPA proposed to approve the following rule into the California SIP.

Local agency	Rule #	Rule title	Revised	Submitted
YSAQMD	2.29	Graphic Arts Printing Operations	07/11/2018	08/20/2018

We proposed to approve this rule because we determined that it complies with the relevant CAA requirements. Our proposed action contains more information on the rule and our evaluation.

II. Public Comments

The EPA's proposed action provided a 30-day public comment period. During this period, we received no comments.

III. EPA Action

No comments were submitted. Therefore, as authorized in section 110(k)(3) of the Act, the EPA is fully approving this rule into the California SIP. The July 11, 2018, version of Rule 2.29 will replace the previously approved version of this rule in the SIP.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the YSAQMD rule described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents available through *www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, 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 Clean Air Act; and

• Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 20, 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, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 8, 2021.

Elizabeth Adams,

Acting Regional Administrator, Region IX.

For the reasons stated in the preamble, the Environmental Protection Agency amends part 52, chapter I, title 40 of the Code of Federal Regulations 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 F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(207)(i)(C)(*9*) and (c)(559) to read as follows:

§ 52.220 Identification of plan-in part.

* * * * *

(c) * * *

(207) * * *

(i) * * *

(C) * * *

(*9*) Previously approved on August, 21, 1998 in paragraph (c)(207)(i)(C)(*6*) of this section and now deleted with replacement in paragraph (c)(559)(i)(A)(*1*) of this section, Rule 2.29, ''Graphic Arts Printing Operations,'' revised July 11, 2018.

* * * * *

(559) The following rules were submitted on August 20, 2018, by the Governor's designee as an attachment to a letter dated August 15, 2018.

(i) *Incorporation by reference.* (A) Yolo-Solano Air Quality Management District.

(*1*) Rule 2.29, ''Graphic Arts Printing Operations,'' revised on July 11, 2018.

(*2*) [Reserved]

(B) [Reserved]

(ii) [Reserved]

* * * * *

[FR Doc. 2021–15476 Filed 7–21–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[EPA–R04–OW–2020–0056; FRL–8737–01–R4]

Ocean Dumping; Modification of an Ocean Dredged Material Disposal Site Offshore Port Everglades, Florida

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is expanding the size of the EPA designated ocean dredged material disposal site (ODMDS) offshore of Port Everglades, Florida (referred to hereafter as the existing Port Everglades ODMDS), pursuant to the Marine Protection, Research and Sanctuaries Act (MPRSA). The primary purpose for the site modification is to enlarge the site to provide for the long-term disposal capacity to dump suitable material dredged from the Port Everglades Harbor in ocean waters. The modified site will be subject to monitoring and management to ensure continued protection of the marine environment.

DATES: *Effective:* August 23, 2021.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R04–OW–2020–0056. All documents in the docket are listed on the *http://www.regulations.gov* website.

FOR FURTHER INFORMATION CONTACT: Wade Lehmann, U.S. Environmental Protection Agency, Region 4, Water Division, Oceans and Estuarine Management Section, 61 Forsyth Street, Atlanta, Georgia 30303; phone number (404) 562–8082; email: *Lehmann.Wade@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA proposed rulemaking on March 13, 2020, and re-released for further public review on May 22, 2020 (85 FR 14622 and 85 FR 31133), which was a proposal to expand the size of the Port Everglades ODMDS. Additionally, EPA is releasing a Finding of No Significant Impact and a final Environmental Assessment (EA), pursuant to the National Environmental Policy Act, which are available in the docket for this action (Docket ID No. EPA–R04–OW–2020–0056). EPA's responses to comments received on the proposed rule and the draft EA are also available in the docket for this action.

I. Potentially Affected Persons

Persons potentially affected by this action include those who seek or might seek permits or approval to dispose of

dredged material into ocean waters pursuant to the MPRSA, 33 U.S.C. 1401 to 1445. The EPA's action would be relevant to persons, including organizations and government bodies seeking to dispose of dredged material in ocean waters offshore of Port Everglades, Florida. Currently, the U.S. Army Corps of Engineers (USACE) would be most affected by this action. Potentially affected categories and persons include:

Category	Examples of potentially regulated persons
Federal Government	USACE Civil Works projects, and other Federal agencies.
Industry and general public	Port authorities, marinas and harbors, shipyards and marine repair facilities, berth owners.
State, local and tribal governments	Governments owning and/or responsible for ports, harbors, and/or berths, government agencies requiring disposal of dredged material associated with public works projects.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding persons likely to be affected by this action. For any questions regarding the applicability of this action to a particular entity, please refer to the contact person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Background

a. History of Disposal Sites Offshore of Port Everglades, Florida

There is currently one designated ODMDS off the coast of Port Everglades in Florida. The existing Port Everglades ODMDS is located three nautical miles offshore of Fort Lauderdale. EPA designated the Port Everglades ODMDS in 2005 with an area of 1.34 square nautical miles (nmi^2).

The USACE Jacksonville District and EPA Region 4 identified a need to either designate a new ODMDS or modify the existing Port Everglades ODMDS. The reasons for modifying the ocean disposal capacity are based on future dredged material capacity requirements, historical dredging volumes, estimates of dredging volumes for future proposed projects, and limited capacity of upland disposal in the area.

EPA is expanding the existing Port Everglades ODMDS rather than designate a new site off the coast of Fort Lauderdale for ocean dumping of dredged material. The modification of the existing Port Everglades ODMDS for dredged material, however, does not mean that the USACE or the EPA has approved the use of the existing Port Everglades ODMDS or a modified Port Everglades ODMDS for open water disposal of dredged material from any specific project. Before any person can ocean dump dredged material at an ODMDS, EPA and the USACE must evaluate the project according to the ocean dumping regulatory criteria (40 CFR part 227) and the USACE must issue a permit or other authorization document (*e.g.,* contract specifications) for the transportation and disposal of dredged material and must attain concurrence from EPA. Under section 103 of the MPRSA, the USACE is the Federal agency that initially determines whether to issue a permit authorizing the ocean disposal of dredged materials. In the case of Federal navigation projects, the USACE may implement the MPRSA directly in the Federal projects involving ocean disposal of dredged materials. The USACE relies on EPA's ocean dumping criteria when evaluating permit requests for (and implementing Federal projects involving) the transportation of dredged material for the purpose of dumping it into ocean waters. MPRSA permits and Federal projects involving ocean dumping of dredged material are subject to EPA review and concurrence under MPRSA 33 U.S.C. 1413(c). EPA may concur with or without conditions or decline to concur on the permit, *i.e.,* non-concur. If EPA concurs with conditions, the final permit or authorization must include those conditions. If EPA declines to concur (non-concurs), the USACE cannot issue the permit for ocean dumping of dredged material or authorize the disposal. EPA's site modification is supported by a final Environmental Assessment (EA), which EPA previously provided for public notice as draft and is available in the docket for this action (Docket ID No. EPA–R04–OW–2020–0056).

b. Location and Configuration of the Port Everglades ODMDS

With this action, EPA expands the size of the Port Everglades ODMDS, which is at depths between −587 to −761 feet of water (−179 to −232 meters). The ODMDS expansion increases the area of the existing Port Everglades ODMDS from approximately 1.34 nmi^2 to 3.21 nmi^2. The ODMDS is bounded by the coordinates listed below. The coordinates for the site are in North American Datum 83 (NAD 83):

Modified Port Everglades ODMDS

(A) 26°08.750′ N, 80°01.000′ W
(B) 26°08.750′ N, 80°02.578′ W
(C) 26°06.500′ N, 80°02.578′ W
(D) 26°06.500′ N, 80°01.000′ W

The Site Management and Monitoring Plan (SMMP) allows EPA to adaptively manage the site to maximize its capacity, minimize the potential for mounding and loss of fine sediments outside of the site, and minimize the potential for any long-term adverse effects to the marine environment.

c. Management and Monitoring of the Site

The ODMDS is expected to receive dredged material from the Federal navigation project at Port Everglades Harbor, Florida, and dredged material from other applicants who obtain a permit for the disposal of dredged material at the ODMDS. All persons using the site shall comply with the conditions set forth in the most recent approved SMMP, which EPA (in conjunction with the USACE) specifically developed for the ODMDS. The SMMP includes management and monitoring provisions to ensure that dredged materials disposed at the ODMDS are suitable for disposal in the ocean and that adverse impacts of disposal, if any, are addressed to the maximum extent practicable. The SMMP includes provisions to avoid and minimize potential impacts to coral reefs present near Port Everglades. The SMMP for the ODMDS also addresses management of the site to ensure adverse mounding and dispersal of fine sediments does not occur and to ensure that disposal events minimize interference with other uses of ocean waters near the ODMDS.

d. MPRSA Criteria

In evaluating the ODMDS, the EPA assessed the site according to the criteria of the MPRSA, with emphasis on the general and specific regulatory criteria of 40 CFR part 228, to determine whether the site designation satisfies those criteria. The EPA's EA provides an extensive evaluation of the criteria and other related factors for the modification of the ODMDS.

General Criteria (40 CFR 228.5)

(a) Sites must be selected to minimize interference with other activities in the marine environment, particularly avoiding areas of existing fisheries or

shellfisheries, and regions of heavy commercial or recreational navigation (40 CFR 228.5(a)).

Historically, an interim site located approximately 1.6 nautical miles from shore was used for ocean disposal of dredged material from Port Everglades Harbor but was discontinued in the 1980s due to the significant potential for adverse impacts from sediments to nearby coral reef resources. EPA designated the existing Port Everglades Harbor ODMDS in 2005 to fulfill the need for an EPA designated ODMDS near Port Everglades. The evaluation for the 2005 designation included considerations of potential interference with other activities in the marine environment including avoiding areas of existing critical fisheries or shellfisheries, and regions of heavy commercial or recreational navigation. EPA re-considered the evaluations from 2010 through to the present time throughout the NEPA process.

(b) Sites must be situated such that temporary perturbations to water quality or other environmental conditions during initial mixing caused by disposal operations would be reduced to normal ambient levels or undetectable contaminant concentrations or effects before reaching any beach, shoreline, marine sanctuary, or known geographically limited fishery or shellfishery (40 CFR 228.5(b)).

The ODMDS area will be used only for disposal of dredged material found to be suitable under the Ocean Dumping Regulations at 40 CFR parts 220 through 228. Based on the USACE and EPA sediment testing and evaluation procedures, disposal of dredged maintenance material and proposed new work material is not expected to have any long-term impact on water quality. The Port Everglades ODMDS is located sufficiently far from shore and fisheries resources to allow temporary water quality disturbances caused by disposal of dredged material to be reduced to ambient conditions before reaching any environmentally sensitive areas.

(c) The sizes of disposal sites will be limited in order to localize for identification and control any immediate adverse impacts, and to permit the implementation of effective monitoring and surveillance to prevent adverse long-range impacts. Size, configuration, and location are to be determined as part of the disposal site evaluation (40 CFR 228.5(d)).

The location, size, and configuration of the ODMDS should provide sufficient long-term disposal capacity expected for anticipated dredging projects, while also permitting effective site management, site monitoring, and limiting environmental impacts to the surrounding area to the greatest extent practicable.

Based on projected new work and maintenance dredging, and permitted dredged material disposal needs, EPA and the USACE estimated that the ODMDS should be approximately 3.21 nmi^2 in size to meet the anticipated long-term disposal needs of the nearby area. Expanding the ODMDS to 3.21 nmi^2 provides an estimated capacity of approximately 6.7 million cubic yards, which is sufficient to manage future unknown disposal operations from public and private entities and provide protection of the marine environment at the ODMDS.

When determining the size of the site, EPA considered the need to implement effective monitoring and surveillance programs to ensure that the environment of the site could be protected, and that navigational safety would not be compromised by the mounding of dredged material. EPA and the USACE have developed a SMMP for the site that, when implemented, will be used to determine if disposal at the site is significantly affecting the environment within the site or adjacent areas. At a minimum, the monitoring program will consist of bathymetric surveys, sediment grain size analysis, chemical analysis of constituents of concern in the sediments, and an assessment of the benthic community structure.

(d) EPA will, wherever feasible, designate ocean dumping sites beyond the edge of the continental shelf and other such sites where historical disposal has occurred (40 CFR 228.5(e)).

The Port Everglades ODMDS is beyond the edge of the continental shelf.

Specific Criteria (40 CFR 228.6)

(1) Geographical Position, Depth of Water, Bottom Topography and Distance from Coast (40 CFR 228.6(a)(1)).

The ODMDS is on the Florida Continental Slope, 3.3 nautical miles offshore of Fort Lauderdale, Florida. Water depths range from −179 to −232 meters (−587 to −761 feet), with an average depth of 207 meters (−678 feet). Sediments consist of sand with various mixtures of sand and silts with scattered rubble hardbottom. The EA contains a map of the ODMDS. The ODMDS remains fully off the continental shelf at a distance that is not expected to allow sediments to travel to nearby shore-associated coral reef habitat.

(2) Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Areas of Living Resources in Adult or Juvenile Phases (40 CFR 228.6(a)(2)).

The ODMDS location was selected to avoid the presence of any exclusive breeding, spawning, nursery, feeding, or passage areas for adult or juvenile phases of living resources.

(3) Location in Relation to Beaches and Other Amenity Areas (40 CFR 228.6(a)(3)).

The center of the ODMDS is several miles from any beaches or amenity areas. No significant impacts to beaches or amenity areas associated with the Port Everglades ODMDS have been detected, and the expansion is not expected to affect that conclusion. The U.S. Navy maintains facilities south of the ODMDS, and EPA and the USACE consulted the Navy to verify that no impediments will exist with the expanded ODMDS.

(4) Types and Quantities of Wastes Proposed to be Disposed of, and Proposed Methods of Release, including Methods of Packing the Waste, if any (40 CFR 228.6(a)(4)).

Only suitable dredged material that meets the Ocean Dumping Criteria in 40 CFR parts 227 and 228 will be disposed in the ODMDS and only pursuant to a duly issued permit or authorization (*e.g.,* contract specifications) for a Federal project with concurrence by EPA. Dredged materials dumped in this area will be primarily sand and rock with some fines that originate from the Port Everglades Harbor. Average yearly disposal of dredged maintenance material into the ODMDS is expected to be approximately 30,000 cubic yards and variable volumes of new work dredged material up to 6.7 million cubic yards. None of the material is packaged in any manner.

Under section 103 of the MPRSA, the USACE is the Federal agency that initially determines whether to issue a permit authorizing the ocean disposal of dredged materials. In the case of Federal navigation projects involving ocean disposal of dredged materials, in lieu of the permit procedure, the USACE authorizes projects based upon application of the same criteria, and other factors to be evaluated, the same procedures, and the same requirements that apply to the issuance of permits. The USACE applies the EPA's ocean dumping criteria when evaluating permit requests for (and implementing Federal projects involving) the transportation of dredged material for the purpose of dumping it into ocean waters. MPRSA permits and Federal projects involving ocean dumping of dredged material are subject to EPA's review and concurrence. EPA may concur, with or without conditions, or

decline to concur on the request for concurrence on the suitability of dredged material for disposal in the ODMDS. If EPA concurs with conditions, the final permit or project authorization (*e.g.,* contract specifications) must include those conditions. If EPA declines to concur (non-concurs) on an ocean dumping permit for dredged material, the USACE cannot issue the permit or authorize ocean dumping for the Federal project.

(5) *Feasibility of Surveillance and Monitoring (40 CFR 228.6(a)(5)).*

EPA expects monitoring and surveillance at the ODMDS to be feasible and readily performed from ocean or regional class research vessels. Monitoring and surveillance are addressed in the SMMP. The area of the ODMDS has been surveyed and sampled in 2004, 2007 and 2014. EPA will monitor the site for physical, biological, and chemical attributes as well as for potential impacts. Bathymetric surveys will be conducted routinely, and benthic infauna and epibenthic organisms will be monitored, as described in the SMMP for the site.

(6) *Dispersal, Horizontal Transport and Vertical Mixing Characteristics of the Area, including Prevailing Current Direction and Velocity, if any (40 CFR 228.6(a)(6)).*

Current velocities vary throughout the water column and are subject to wind and the Florida current-based circulations which are generally northerly with eddies occurring that drive currents south. Currents measured at nearby sites are predominantly to the north or south on the order of 1–4 knots (50–200 centimeters per second).

(7) *Existence and Effects of Current and Previous Discharges and Dumping in the Area (including Cumulative Effects) (40 CFR 228.6(a)(7)).*

Historic disposal of dredged material in the existing Port Everglades ODMDS has resulted in temporary increases in suspended sediment concentrations during disposal operations, burial of benthic organisms within the site, and slight changes in the abundance and composition of benthic assemblages. Short-term, long-term, and cumulative effects of dredged material disposal in the ODMDS would be similar to those for the previously designated site and are expected to be temporary and return to baseline over time.

(8) *Interference with Shipping, Fishing, Recreation, Mineral Extraction, Desalination, Fish and Shellfish Culture, Areas of Special Scientific Importance and Other Legitimate Uses of the Ocean (40 CFR 228.6(a)(8)).*

The transport of dredged material to the ODMDS will cause minor, short-term interferences with commercial and recreational boat traffic. during normal disposal operations. EPA has not identified an area of special scientific importance at or near the site. There are no aquaculture areas near the site. There may be recreational fishing in the area. The likelihood of direct interference with these activities, however, is low. The U.S. Navy, Fort Lauderdale Branch, Naval Surface Warfare Center range is located south of the ODMDS and the expansion of the ODMDS will not impair U.S. Navy operations in the area. The SMMP for the ODMDS contains provisions for corrective measures if potential adverse impacts to potential hardbottom habitat related to dredged material disposal are identified.

(9) *The Existing Water Quality and Ecology of the Sites as Determined by Available Data or Trend Assessment of Baseline Surveys (40 CFR 228.6(a)(9)).*

Water quality at the site is typical of the Florida coast. Water and sediment quality analyses conducted in the vicinity of the ODMDS and experience with historic disposal at the existing Port Everglades ODMDS have not identified any adverse water quality impacts from ocean disposal of dredged material. The site supports benthic and epibenthic fauna characteristic of the region.

(10) *Potentiality for the Development or Recruitment of Nuisance Species in the Disposal Site (40 CFR 228.6(a)(10)).*

Nuisance species, considered as any undesirable organism not previously existing at a location, have not been observed at, or in the vicinity of, the ODMDS. Disposal of dredged material, as well as monitoring, has been ongoing for the past 14 years. Nuisance species have not been found. The dredged material to be disposed at the ODMDS is expected to be from similar locations to those dredged previously; therefore, it expected that any benthic organisms transported to the site would be relatively similar in nature to those already present.

(11) *Existence at or in Close Proximity to the Site of any Significant Natural or Cultural Feature of Historical Importance (40 CFR 228.6(a)(11)).*

EPA conducted a survey of this site in 2013 to identify areas of potential hardbottom resources as well as any historical artifacts. The survey revealed the presence of only two anomalies that, when evaluated, were not indicative of potential historical or natural features. Probable wreckage from one modern sailing vessel was identified in the northeast corner of the site. Scattered rubble covering potential hardbottom habitat was identified scattered within the expanded footprint.

The SMMP for the ODMDS contains measures to monitor potential identified hardbottom resources.

III. Environmental Statutory Review

a. National Environmental Policy Act

EPA's primary voluntary NEPA document for expanding the existing Port Everglades ODMDS is the EA, prepared by EPA in cooperation with the USACE and issued for public review and comment as draft in January 2020. Anyone desiring a copy of the EA may access it through the docket for this action (Docket ID No. EPA–R04–OW–2020–0056) or obtain a copy from the address given above. The draft EA issued in March 2020 amends the draft EA that was previously published for public review and comment in August 2013. Comments received on the March draft EA are provided in the Response to Comments document appended to the docket. The EA provides the threshold environmental review for modification of the ODMDS.

The action discussed in the EA is the designation of an ODMDS offshore Port Everglades, Florida. The purpose of the action is to provide an environmentally acceptable option for the ocean disposal of dredged material. The reason for the ODMDS expansion is based primarily on demonstrated lack of capacity for ocean disposal of dredged material from the Port Everglades Harbor area including the upcoming Federal Navigation Project and any additional port projects into the future. The actual need for ocean disposal for particular, specific future projects, and the suitability of the material for ocean disposal, will be determined on a case-by-case basis as part of the USACE process for reviewing ocean disposal actions and a public review process for its own actions to ocean dump dredged material from Federal Projects. Subsequent proceedings to develop permits and terms of the authorization for Federal projects will include evaluation of disposal alternatives; the existence of a designated site merely provides an option for disposition of suitable material.

EPA's EA discusses the reasons for expanding the ODMDS and examines ocean disposal site alternatives. The reasons to expand the existing Port Everglades ODMDS are based on: Future capacity modeling; potential movement of fine sediments estimated dredging volumes for proposed projects; and limited capacity of upland disposal facilities in the area. EPA considered other configurations for the expanded site but the other options were discarded due to potential for adverse

impacts to protected coral resources. The following three ocean disposal alternatives were considered in the EA.

No Action Alternative

EPA identified the No Action Alternative as not modifying the size of the existing Port Everglades ODMDS. Implementation of this alternative would not have addressed the inadequate capacity at the existing ocean dump site to accommodate future ocean disposal of dredging projections. As a result, the No Action Alternative does not meet the action's purpose and need. However, EPA developed and evaluated the No Action Alternative as a basis to compare the effects of the other alternatives considered.

Alternative 1: Modification of the existing Port Everglades ODMDS to encompass a 3.21 nmi² area in a north-south orientation (Preferred Alternative).

Modification of the existing Port Everglades ODMDS in a north-south orientation to encompass a 3.21 nmi² area as described above is the environmentally and operationally preferred alternative and considered the most viable option. The existing Port Everglades ODMDS is relatively small and has a limited capacity. Modifying the existing Port Everglades ODMDS to increase capacity would accommodate the anticipated volumes of material projected for possible ocean disposal associated with: The congressionally authorized widening and deepening of the Port Everglades Harbor Federal navigation channel; congressionally authorized maintenance dredging; the Broward County sand bypass and navigation projects; and potential future private interests. It is the most feasible option based on containing dredged material from disposal operations while potentially affecting the least potential hardbottom habitat. A detailed justification for this preferred alternative is included in Section 2 in the EA.

Alternative 2: Modification of the existing Port Everglades ODMDS to encompass a 2.89 nmi² area in an east-west orientation.

In order to inform viable options for expanding the existing site, EPA evaluated the data and information included in the September 2013 *Evaluation of Dredged Material Behavior at the Port Everglades Harbor Federal Project Ocean Dredged Material Disposal Site.* EPA specifically considered the option of expanding the site in an east-west orientation. Although designating an expanded ODMDS in an east-west orientation would provide adequate site capacity, an east-west orientation had a greater level of risk for adverse impact to hardbottom habitat. As described in the EA, a site more adequately protective of potential hardbottom areas was selected as the preferred alternative with a north-south orientation (Alternative 1).

b. Magnuson-Stevens Act

The USACE, in conjunction with EPA, submitted an essential fish habitat (EFH) assessment to the National Marine Fisheries Service (NMFS), pursuant to the Magnuson-Stevens Act, 16 U.S.C. 1855(b)(2). The USACE determined that the expansion of the existing Port Everglades ODMDS will not significantly affect managed species or EFH.

On March 13, 2020, EPA issued a letter to NMFS that described the EPA's plans to conduct a Remotely Operated Vehicle (ROV) survey to supplement the available data to further characterize potential hardbottom geomorphology and biological community in the expanded footprint of the Port Everglades ODMDS. On March 19, 2020, NMFS responded by letter requesting that in the event results from the ROV survey indicate that significant hardbottom resources occur in the expanded ODMDS and use of the ODMDS will adversely affect those resources, EPA should re-initiate consultation. EPA is committed to continue working in close coordination with NMFS and will evaluate the ROV survey results when they become available. If significant hardbottom resources occur in the expanded ODMDS and the use of the ODMDS will adversely affect those resources, EPA will re-initiate consultation with NMFS pursuant to the Magnuson-Stephens Act.

c. Coastal Zone Management Act

EPA evaluated site designations for consistency with the enforceable policies of Florida's approved coastal zone management program. On behalf of EPA, the USACE Jacksonville District documented that the site expansion is consistent with the Florida Coastal Management Program to the maximum extent practicable. The Florida Department of Environmental Protection issued Coastal Zone Consistency for the Port Everglades ODMDS on April 29, 2011. EPA further coordinated with Florida to determine whether any additional information has become available that may warrant changes to the State's 2011 determination. Florida responded, on April 17, 2020, that its position has not changed and that the action remains consistent to the maximum extent practicable with the enforceable policies of the State's approved coastal program.

d. Endangered Species Act

The Endangered Species Act, as amended, 16 U.S.C. 1531 to 1544, requires Federal agencies to consult with NMFS and the U.S. Fish and Wildlife Service to ensure that any action authorized, funded, or carried out by the Federal agency is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of any critical habitat. EPA has concluded consultation with NMFS, which provided a Biological Opinion for the South Atlantic District of the U.S. Army Corps of Engineers on March 7, 2014, applicable for the proposed expansion of the ODMDS. NMFS's Biological Opinion indicted that the expanded ODMDS will have no effect on federally-listed species or critical habitat. During a teleconference between EPA and NMFS on August 18, 2020, and in email correspondence issued on April 21, 2021, NMFS verified there are no changes to its Biological Opinion.

The expansion of the Port Everglades ODMDS will have no effect on federally-listed terrestrial or freshwater species under the jurisdiction of the U.S. Fish and Wildlife Service.

e. National Historic Preservation Act

The National Historic Preservation Act (NHPA), 16 U.S.C. 470 to 470a–2, requires Federal agencies to consider the effect of their actions on districts, sites, buildings, structures, or objects, included in, or eligible for inclusion in the National Register of Historic Places (NRHP). The depths of the ODMDS (greater than 700 feet depth) exclude potential habitation or resources related to human settlements. In a letter dated April 9, 2020, the Florida State Historic Preservation Office stated that no historic properties would be affected by the expansion of the ODMDS.

IV. Statutory and Executive Order Reviews

This rule expands the area of the Port Everglades ODMDS pursuant to Section 102 of the MPRSA. This action complies with applicable executive orders and statutory provisions as follows:

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

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

subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

b. Executive Order 13089: Coral Reef Protection

This action considers Executive Order 13089 on Coral Reef Protection ''to preserve and protect the biodiversity, health, heritage, and social and economic value of U.S. coral reef ecosystems and the marine environment.'' The SMMP is designed to reduce potential impacts from sediments on corals from vessels during transit to the ODMDS.

c. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). This site designation, does not require persons to obtain, maintain, retain, report, or publicly disclose information to or for a Federal agency.

d. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires Federal agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business defined by the Small Business Administration's size regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. After considering the economic impacts of this rule, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities.

e. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1531 to 1538, for State, local, or tribal governments or the private sector. This action imposes no new enforceable duty on any State, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of the UMRA because it contains no regulatory requirements that might significantly or uniquely affect small government entities. Those entities are already subject to existing permitting requirements for the disposal of dredged material in ocean waters.

f. Executive Order 13132: Federalism

This action does not have federalism implications. It does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this action. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comments on this action from State and local officials.

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

This action does not have tribal implications, as specified in Executive Order 13175 because the modification of the existing Port Everglades ODMDS will not have a direct effect on Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. The depths of the ODMDS (greater than 700 feet depth) exclude potential habitation or resources related to human settlements. In addition, EPA sent notification of the Seminole Tribe of Florida and the Miccosukee Tribe of Indians of Florida regarding the proposed action to modify the Port Everglades ODMDS and received no comments. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under Section 5–501 of the Executive order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This action is not subject to Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355) because it is not a ''significant regulatory action'' as defined under Executive Order 12866.

j. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA'''), Public Law 104–113, 12(d) (15 U.S.C. 272), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through Office of Management and Budget, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action includes environmental monitoring and measurement as described in EPA's SMMP. EPA will not require the use of specific, prescribed analytic methods for monitoring and managing the ODMDS. The Agency plans to allow the use of any method, whether it constitutes a voluntary consensus standard or not, that meets the monitoring and measurement criteria discussed in the SMMP.

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

Executive Order 12898 (59 FR 7629) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA determined that this rule will not have disproportionately high and adverse

human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. EPA has assessed the overall protectiveness of expanding the Port Everglades ODMDS against the criteria established pursuant to the MPRSA to ensure that any adverse impact to the environment will be mitigated to the greatest extent practicable.

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Authority: This action is issued under the authority of Section 102 of the Marine Protection, Research, and Sanctuaries Act, as amended, 33 U.S.C. 1412 and 1418.

Dated: July 13, 2021.

John Blevins,

Acting Regional Administrator, EPA Region 4.

For the reasons set out in the preamble, EPA amends chapter I, title 40 of the Code of Federal Regulations as follows:

PART 228—CRITERIA FOR THE MANAGEMENT OF DISPOSAL SITES FOR OCEAN DUMPING

■ 1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

■ 2. Section 228.15 is amended by revising paragraphs (h)(22)(i) through (iii) and (vi) to read as follows:

§ 228.15 Dumping sites designated on a final basis.

* * * * *

(h) * * *

(22) * * *

(i) Location: Corner Coordinates (NAD 1983) 26°06.500′, 80°01.000′; 26°06.500′, 80°02.578′; 26°08.750′, 80°02.578′; 26°08.750′, 80°01.000′.

(ii) Size: Approximately 3.2 square nautical miles in size.

(iii) Depth: Ranges from approximately 587 to 761 feet (179 to 232 meters).

* * * * *

(vi) Restrictions:

(A) Disposal shall be limited to dredged material from the Port Everglades, Florida, area;

(B) Disposal shall be limited to dredged material determined to be suitable for ocean disposal according to 40 CFR parts 227 and 228; and

(C) Transportation and disposal shall comply with conditions and monitoring requirements set forth in the most recent approved Site Management and Monitoring Plan and conditions and monitoring requirements incorporated into the permit or Federal project authorization.

* * * * *

[FR Doc. 2021–15529 Filed 7–21–21; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 414

[CMS–5534–N]

Medicare Program; Calendar Year 2021 Alternative Payment Model (APM) Incentive Payment Advisory for Clinicians—Request for Current Billing Information for Qualifying APM Participants

AGENCY: Centers for Medicare & Medicaid Services (CMS), Health and Human Services (HHS).

ACTION: Payment advisory.

SUMMARY: This advisory is to alert certain clinicians who are Qualifying APM participants (QPs) and eligible to receive an Alternative Payment Model (APM) Incentive Payment that CMS does not have the current billing information needed to disburse the payment. This advisory provides information to these clinicians on how to update their billing information to receive this payment.

DATES: Updated billing information must be received no later than November 1, 2021 (see **SUPPLEMENTARY INFORMATION** for details).

FOR FURTHER INFORMATION CONTACT: Tanya Dorm, (410) 786–2216.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Medicare Quality Payment Program, an eligible clinician who participates in an Advanced Alternative Payment Model (APM) and meets the applicable payment amount or patient count thresholds for a performance year is a Qualifying APM Participant (QP) for that year. An eligible clinician who is a QP for a year based on their performance in a QP Performance Period earns a 5-percent lump sum APM Incentive Payment that is paid in a payment year that occurs 2 years after the QP Performance Period. The amount of the APM Incentive Payment is equal to 5 percent of the estimated aggregate paid amounts for covered professional services furnished by the QP during the calendar year (CY) immediately preceding the payment year.

II. Provisions of the Advisory

The Centers for Medicare & Medicaid Services (CMS) has identified those eligible clinicians who earned an APM Incentive Payment in CY 2021 based on their CY 2019 QP status.

When CMS disbursed the CY 2021 APM Incentive Payments, CMS was unable to verify current Medicare billing information for some QPs and was therefore unable to issue payment. In order to successfully disburse the APM Incentive Payment, CMS is requesting assistance in identifying current Medicare billing information for these QPs in accordance with 42 CFR 414.1450(c)(8).

CMS has compiled a list of QPs we have identified as having unverified billing information. These QPs, and any others who anticipated receiving an APM Incentive Payment but have not, should follow the instructions to provide CMS with updated billing information at the following web address: *https://qpp-cm-prod-content.s3.amazonaws.com/uploads/1498/QP%20Notice%20for%20APM%20Incentive%20Payment.zip*.

If you have any questions concerning submission of information through the website, please contact the Quality Payment Program Help Desk at 1–866–288–8292.

All submissions must be received no later than November 1, 2021. After that time, any claims by a QP to an APM Incentive Payment will be forfeited for the CY 2021 payment year.

The Administrator of the Centers for Medicare & Medicaid Services (CMS), Chiquita Brooks-LaSure, having reviewed and approved this document, authorizes Lynette Wilson, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Dated: July 19, 2021.

Lynette Wilson,

Federal Register Liaison, Centers for Medicare & Medicaid Services.

[FR Doc. 2021–15652 Filed 7–21–21; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 21–93; FCC 21–58; FR ID 38122]

Establishing Emergency Connectivity Fund To Close the Homework Gap; Corrections

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: On May 11, 2021, the Federal Communications Commission (Commission) released a Report and Order in the matter of ''Establishing Emergency Connectivity Fund to Close the Homework Gap.'' This document contains corrections to the final regulations that appeared in the **Federal Register** of May 28, 2021.

DATES: Effective July 22, 2021.

FOR FURTHER INFORMATION CONTACT: Johnnay Schrieber, Wireline Competition Bureau, (202) 418–7400 or by email at *Johnnay.Schrieber@fcc.gov.* The Commission asks that requests for accommodations be made as soon as possible in order to allow the agency to satisfy such requests whenever possible. Send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530.

SUPPLEMENTARY INFORMATION: The Commission published a document amending part 54 in the **Federal Register** of May 28, 2021 (86 FR 29136). This document corrects § 54.1710(a)(1)(v), (x), and (xi) of the rules.

Need for the correction. As published, the final regulations contain an error, which requires immediate correction.

List of Subjects in 47 CFR Part 54

Communications common carriers, Internet, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Final Rules

Accordingly, 47 CFR part 54 is corrected by making the following correcting amendments:

PART 54—UNIVERSAL SERVICE

■ 1. The authority for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 229, 254, 303(r), 403, 1004, 1302, and 1601–1609, unless otherwise noted.

■ 2. Amend § 54.1710 by revising paragraphs (a)(1)(v), (x), and (xi) to read as follows:

§ 54.1710 Emergency Connectivity Fund requests for funding.

(a) * * *

(1) * * *

(v) The library or library consortia eligible is for assistance from a State library administrative agency under the Library Services and Technology Act, does not operate as for-profit businesses, and their budgets are completely separate from any school (including, but not limited to, elementary and secondary schools, colleges, and universities).

* * * * *

(x) The applicant or the relevant student, school staff member, or library patron has received, or the applicant has ordered the equipment and services for which funding is sought.

(xi) The equipment and services the school, library, or consortium purchases or will purchase using Emergency Connectivity Fund support will be used primarily for educational purposes and will not be sold, resold, or transferred in consideration for money or any other thing of value, except as allowed by § 54.1713.

* * * * *

[FR Doc. 2021–15494 Filed 7–21–21; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2012–0042; FF09E21000 FXES11110900000 212]

RIN 1018–AX13

Endangered and Threatened Wildlife and Plants; Revision of the Critical Habitat Designation for the Jaguar in Compliance With a Court Order

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are issuing this final rule to comply with a court order to vacate Unit 6 and the New Mexico portion of Unit 5 from the March 5, 2014, final rule designating approximately 764,207 acres (309,263 hectares) of land in New Mexico and Arizona as critical habitat for the jaguar (*Panthera onca*) under the Endangered Species Act of 1973, as amended (Act). In compliance with the court order, this final rule removes approximately 110,438 acres (44,693 hectares) of land within New Mexico from the designation of critical habitat for the jaguar.

DATES: This rule is effective July 22, 2021. However, the court order had legal effect immediately upon being filed on January 27, 2021.

FOR FURTHER INFORMATION CONTACT: U.S. Fish and Wildlife Service, Attn: Jeff Humphrey, at 9828 North 31st Avenue #C3, Phoenix, Arizona 85051, by telephone at 602–242–0210, or by email at *incomingazcorr@fws.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

On March 5, 2014, we published in the **Federal Register** a final rule (79 FR 12572) designating approximately 764,207 acres (309,263 hectares) of land in New Mexico and Arizona as critical habitat for the jaguar under the Act (16 U.S.C. 1531 *et seq.*). The jaguar's critical habitat designation is set forth in our regulations in title 50 of the Code of Federal Regulations (CFR) at § 17.95(a) (50 CFR 17.95(a)). Please see the March 5, 2014, final rule for a complete discussion of previous Federal actions.

On May 20, 2015, the New Mexico Farm & Livestock Bureau, New Mexico Cattlegrowers' Association, and New Mexico Federal Lands Council filed a lawsuit challenging the March 5, 2014, final rule's designation of Unit 6 and the portions of Unit 5 in New Mexico, and seeking declaratory judgment and injunctive relief. On October 25, 2017, the district court denied plaintiffs' petition for injunctive relief and affirmed the Service's decision.

On January 7, 2019, plaintiffs appealed the district court decision to the U.S. Court of Appeals for the Tenth Circuit. On March 17, 2020, the appellate court reversed the decision of the district court and remanded the relevant portions of the jaguar critical habitat rule for proceedings consistent with its decision. See *New Mexico Farm & Livestock Bureau, New Mexico Cattlegrowers' Association, and New Mexico Federal Lands Council* v. *United States Department of the Interior,* 952 F.3d 1216 (March 17, 2020). Upon remand, on January 27, 2021, the district court ordered the Service to vacate the March 5, 2014, final rule's designation of Unit 6 and the New Mexico portion of Unit 5. This rule implements the January 27, 2021, order of the district court.

Administrative Procedure

This rulemaking is necessary to comply with the January 27, 2021, court order. Therefore, under these circumstances, the Service Director (Director) has determined, pursuant to 5 U.S.C. 553(b)(3)(B), that prior notice and opportunity for public comment are impracticable and unnecessary. Because the court order had legal effect immediately upon being filed on January 27, 2021, the Director has further determined, pursuant to 5 U.S.C. 553(d)(3), that the agency has good cause to make this rule effective immediately upon publication.

Effects of the Rule

This rule is an administrative action to remove approximately 110,438 acres (44,693 hectares) of land within New Mexico from the jaguar's critical habitat designation at 50 CFR 17.95(a).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Amendment

Accordingly, for the reasons given in the preamble, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below.

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.95, in paragraph (a), in the entry for ''Jaguar (*Panthera onca*),'' by:

■ a. Removing the words ''and Hidalgo County, New Mexico,'' in paragraph (1); and

■ b. Revising paragraphs (5) and (7).

The revisions read as follows:

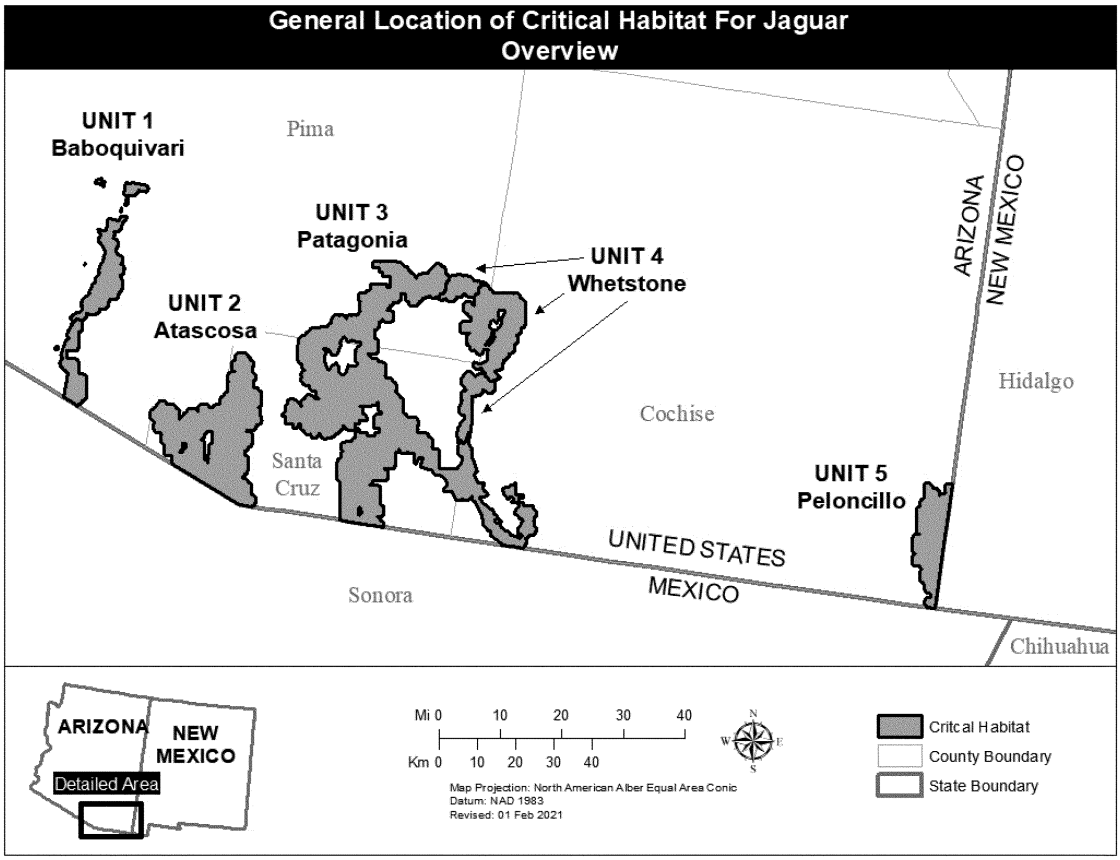
§ 17.95 Critical habitat—fish and wildlife.

(a) * * *

Jaguar (*Panthera onca*)

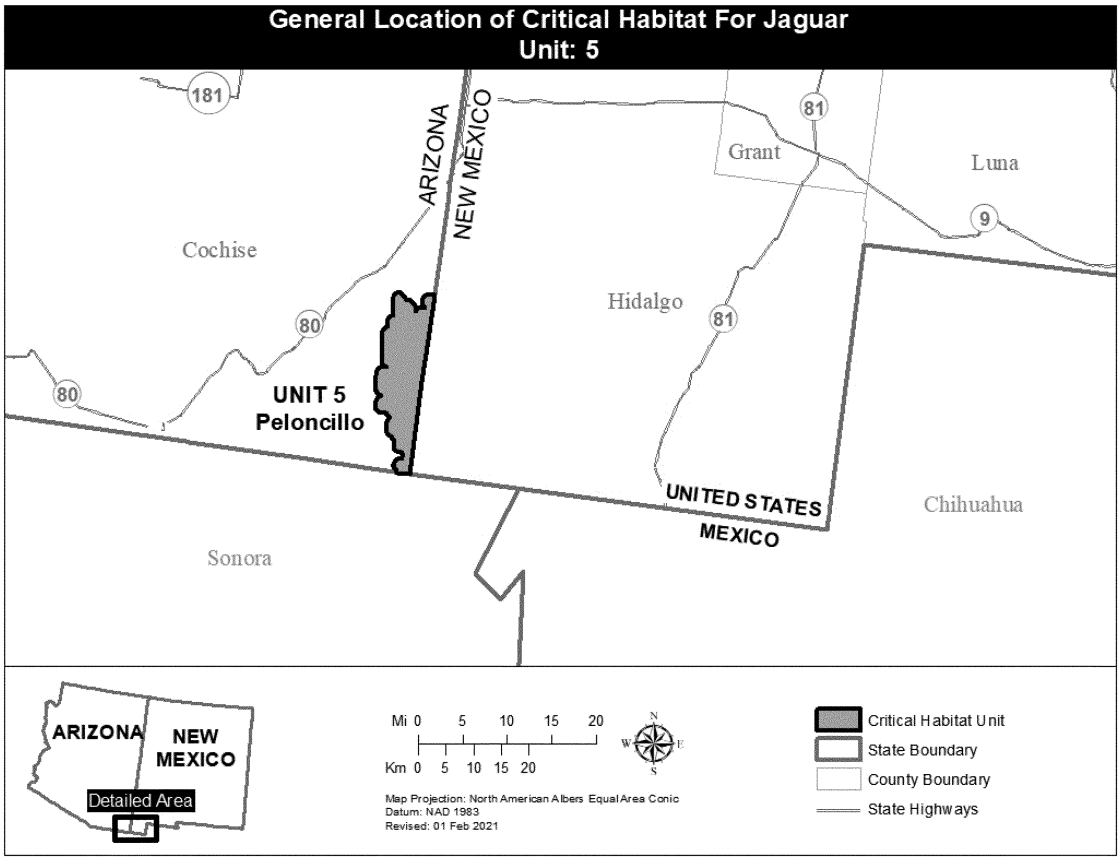
* * * * *

(5) *Note:* Index map follows:



* * * * *

(7) Unit 5: Peloncillo Unit, Cochise County, Arizona. Map of Unit 5 follows:



* * * * *

Martha Williams,

Principal Deputy Director Exercising the Delegated Authority of the Director U.S. Fish and Wildlife Service.

[FR Doc. 2021–15525 Filed 7–21–21; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–HQ–ES–2021–0034; 4500030113]

RIN 1018–BF82

Endangered and Threatened Wildlife and Plants; Removing Textual Descriptions of Critical Habitat Boundaries for Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; technical amendment.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are removing the textual descriptions of critical habitat boundaries from those designations for plants for which the maps have been determined to be sufficient to stand as the official delineation of critical habitat. For these entries, the boundaries of critical habitat as mapped or otherwise described will be the official delineation of the designation. The coordinates and/or plot points that we are removing from the Code of Federal Regulations will be available to the public at the lead field office of the Service responsible for the designation and online at the Federal eRulemaking Portal. This action does not increase, decrease, or otherwise change the boundaries of any critical habitat designation. We are taking this action in accordance with our May 1, 2012, revision of the regulations related to publishing textual descriptions of critical habitat boundaries in the Code of Federal Regulations and as part of our response to Executive Order 13563 (Jan. 18, 2011) directing Federal agencies to review their existing regulations and then to modify or streamline them in accordance with what they learned.

DATES: This rule is effective August 23, 2021.

ADDRESSES: This final rule is available online at the Federal eRulemaking Portal at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Carey Galst, U.S. Fish and Wildlife Service, MS: ES, 5275 Leesburg Pike, Falls Church, VA 22041–3803; telephone 703–358–1954. If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule amendment. We have reviewed our critical habitat designations published in the Code of Federal Regulations for plants. Based on that review, we have found that we can provide more cost-efficient, helpful, and streamlined critical habitat designations by removing the often-lengthy textual descriptions of critical habitat boundaries from those designations for which the maps have been determined to be sufficient to stand as the official delineation of critical habitat. This rule does not increase, decrease, or in any other way alter the critical habitat designations from which we are removing the textual descriptions of boundaries. A change to the Code of Federal Regulations can only be completed by issuing a final rule.

The basis for our action. Executive Order 13563 directs Federal agencies to review their existing regulations and then to modify or streamline them in accordance with what they learned. This action results from our review of

our critical habitat regulations. This change will save taxpayer resources and make the critical habitat designations published in the Code of Federal Regulations more user-friendly.

Background

On May 1, 2012, we published a final rule (77 FR 25611) revising our regulations related to publishing textual descriptions of proposed and final critical habitat boundaries in the **Federal Register** for codification in the Code of Federal Regulations (CFR). In the interest of making the process of designating critical habitat more user-friendly for affected parties and the public as a whole, as well as more efficient and cost effective, we maintained the publication of maps of proposed and final critical habitat designations but made optional the inclusion of any textual description of the boundaries of the designation in the **Federal Register** for codification in the CFR. The boundaries of critical habitat as mapped or otherwise described in the Regulation Promulgation section of a rulemaking that is published in the **Federal Register** is the official delineation of the critical habitat designation. This approach began with critical habitat designations published after the effective date of the final rule (May 31, 2012).

Specifically, for critical habitat rules published after May 31, 2012, the map(s), as clarified or refined by any textual language within the rule, establish the legal boundaries of a critical habitat. Each critical habitat area is shown on a map, with more-detailed information discussed in the preamble or the rulemaking documents published in the **Federal Register**. The map published in the CFR is generated from the coordinates and/or plot points corresponding to the location of the boundaries. These coordinates and/or plot points are included in the administrative record for the designation and are available to the public online and at the Service field office responsible for the designation. In addition, if the Service concludes that additional tools or supporting information are appropriate and would help the public understand the official boundary map, we make the additional tools and supporting information available on our internet site and at the Service field office responsible for the critical habitat designation.

The preamble to the May 1, 2012, final rule (77 FR 25611) explained how the Service would handle boundaries for critical habitat that had already been designated before May 31, 2012; the rule states that ''for existing critical habitat designations, we also intend to remove the textual descriptions of final critical habitat boundaries set forth in the CFR in order to save the annual reprinting cost, but we must do so in separate rulemakings to ensure that removing the textual descriptions does not change the existing boundaries of those designations'' (77 FR 25618). We have now begun applying this approach to critical habitat designations promulgated prior to May 31, 2012. This rule is the third, and final, in a series of rules based on our evaluation of the map(s) in each critical habitat designation at 50 CFR 17.95, 17.96, and 17.99 to remove the textual descriptions without changing the existing boundaries of those designations if we determine the map(s) will be sufficient to inform the public of the boundaries of the designations and can therefore stand as the official delineation of the designation.

On October 27, 2017, we published a final rule (82 FR 49751) removing textual descriptions of critical habitat boundaries from those designations for plants on the Hawaiian Islands of Kauai, Niihau, and Hawaii at 50 CFR 17.99. That final rule established that the map, as clarified or refined by any textual language within the rule, constitutes the definition of the boundaries of the critical habitat for the applicable designation. It did not alter the locations of any boundaries.

On April 27, 2018, we published a final rule (83 FR 18698) removing textual descriptions of critical habitat boundaries from those designations for mammals, birds, amphibians, fishes, clams, snails, arachnids, crustaceans, and insects for which the maps were determined to be sufficient to stand as the official delineation of critical habitat at 50 CFR 17.95. That final rule established that the map, as clarified or refined by any textual language within the rule, constitutes the definition of the boundaries of the critical habitat for the applicable designation. For critical habitat designations at 50 CFR 17.95(a)–(b) and (d)–(i) with maps that did not meet our sufficiency criteria, we added a statement (''The map provided is for informational purposes only.'') to clarify that the textual descriptions, not the maps, in those entries are the official delineation of critical habitat. The rule did not alter the locations of any boundaries.

This revision to 50 CFR 17.96 is the third, and final, rule in a series of rules to remove the textual descriptions of critical habitat boundaries from those designations for which the maps have been determined to be sufficient to stand as the official delineation of critical habitat.

This Rule

For 50 CFR 17.96, we evaluated the map(s) in each entry to determine whether or not the map(s) can stand as the official delineation of the designation. All of the entries in 50 CFR 17.96 fall within 17.96(a) (critical habitat for flowering plants). In each entry we looked for a combination of certain map elements—including, but not limited to, the name of the species (or of the grouping of species), the unit number and/or name, the names of counties and/or States shown, a clear map key, and an appropriate map scale—to determine whether or not the maps are sufficient to serve as the official delineation of the designation.

In this rule, we are removing the textual descriptions of critical habitat boundaries from those entries at 50 CFR 17.96(a) that have maps sufficient to stand as the official delineation of the designation. In those entries, we are removing the word ''Note:'' (or ''NOTE:'' or ''*Note:*'') if it precedes a map that will now stand as the official delineation of the critical habitat designation. For critical habitat designations at 50 CFR 17.96(a) with maps that do not meet our sufficiency criteria, we are adding a statement (''[The] map provided is for informational purposes only.'') to clarify that the textual descriptions, not the maps, in those entries are the official delineation of critical habitat.

For certain designations, we are retaining the textual descriptions of the boundaries of either the entire designated critical habitat unit or of the areas excluded from the critical habitat designation to clarify or refine the provided map, in accordance with 50 CFR 17.94. We determined that for some designations, providing textual descriptions of the boundaries enhanced the clarity of the designation, so we have opted to retain those textual descriptions. In addition, we found that in some instances retaining the textual description of an excluded area is necessary because the relevant map(s) do not adequately show the excluded area(s), which can be very small within a much larger critical habitat unit. Retaining those textual descriptions ensures that the public has accurate and complete information regarding critical habitat units and areas excluded from critical habitat designation.

This rule does not increase, decrease, or in any other way alter the critical habitat designations from which we are removing the textual descriptions of boundaries. This administrative action will save taxpayer resources. The

Service spent approximately $75,500 to reprint the critical habitat designations at 50 CFR 17.96 for the most-recent print edition of the CFR. Based on a review of the print edition of the CFR, we estimate that this rule will remove approximately 179 pages of the relevant CFR volume, amounting to a savings of approximately $14,320 per year in printing costs for the Service. Over many years, eliminating the need to reprint Universal Transverse Mercator (UTM) coordinate pairs and other textual descriptions at 50 CFR 17.96 will result in a considerable cumulative cost savings for the Service and the public as a whole. The detailed UTM coordinates or other textual descriptions we are removing in this rule will continue to be available online at the Federal eRulemaking Portal (see **ADDRESSES**) and at the lead Service field office responsible for the designation to assist the public in understanding the official boundary.

We note that the Service never maintained that requiring detailed textual descriptions was legally necessary. Instead, the first critical habitat regulations required only that critical habitat designations be ''accompanied by maps and/or geographical descriptions'' (43 FR 870 876 (Jan. 4, 1978)). Although the Service subsequently added the requirement that critical habitat designations include textual descriptions describing the specific boundary limits of the critical habitat, there is nothing in the preamble to that rule indicating that the Service did so because the Act required it. Rather, it was in response to several commenters, who had opined that the proposed rule was not sufficiently clear in setting out the method by which critical habitat boundaries would be described (45 FR 13009, 13015 (Feb. 27, 1980)).

Removing these unnecessary textual descriptions will significantly reduce the length of some critical habitat designations, making each designation easier to locate in the CFR; will not weaken the effectiveness of the Act; and will not undermine the public's ability to identify the boundaries of critical habitat designations.

The information printed in the CFR is the legally binding delineation of critical habitat. If there is ambiguity due to the scale of the map such that additional regulatory text is needed to ensure that the public has adequate notice of the boundaries, we provide additional regulation text. The only change to the CFR that we are making with this action is removing the detailed textual description of the boundaries of the specific areas designated as critical habitat (*e.g.,* latitude-longitude and UTM coordinates). We still generate those data and make them available at *http://www.regulations.gov* and at the lead field office of the Service responsible for the critical habitat designation. Neither the critical habitat designation nor the underlying data on which it is based can be changed without undergoing a further rulemaking.

As stated earlier, the actions we are taking in this rule do not increase, decrease, or otherwise alter the critical habitat boundaries or areas. For 50 CFR 17.96(a), we are merely removing the reference points (*e.g.,* UTM or latitude-longitude coordinates) of the textual descriptions from existing final critical habitat designations, and we are doing so only where we have determined that the existing maps are sufficient to inform the public of the boundaries of the designations and can therefore stand as the official delineation of critical habitat. However, we will continue to provide the reference points of the textual descriptions at *http://www.regulations.gov* and at the lead field office of the Service responsible for the critical habitat designation.

The actions we are taking in this rule require us to also revise 50 CFR 17.94(b), to set forth an explanation of which critical habitat designations have maps that stand as the official delineation of critical habitat and which do not.

We are publishing this final rule without a prior proposal because we find that there is good cause for doing so pursuant to 5 U.S.C. 553(b)(3)(B). The ''good cause'' exception applies when an agency finds ''that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' Publication of a proposed rule for this action is unnecessary because this is an administrative action that does not increase, decrease, or otherwise change critical habitat boundaries or areas. Therefore, this action will not affect any legal rights. Rather, it will merely reduce the publication length of some rules designating critical habitat, which will save taxpayer resources and make each designation easier to locate in the CFR. We find that it is in the best interest of the public to promulgate these administrative and technical changes to 50 CFR 17.96 without undergoing procedures that are unnecessary.

Required Determinations

Regulatory Planning and Review—Executive Orders 12866 and 13563

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has determined that this rule is not significant. Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.,* whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include such businesses as manufacturing and mining concerns with fewer than 500 employees,

wholesale trade entities with fewer than 100 employees, and retail and service businesses with less than $5 million in annual sales. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

This rule will not have a significant economic impact on a substantial number of small entities as defined under the RFA. This rule is an administrative action to remove the textual descriptions from critical habitat designations at 50 CFR 17.96(a) that have maps sufficient to stand as the official delineation of critical habitat. This action does not increase, decrease, or in any other way alter the areas or boundaries of the critical habitat designations from which we are removing the textual descriptions of boundaries.

This action will save taxpayer resources. The Service spent approximately $75,500 to reprint the critical habitat designations at 50 CFR 17.96 for the most-recent print edition of the CFR. Based on a review of the print edition of the CFR, we estimate that this rule will remove approximately 179 pages of the relevant CFR volume, amounting to a savings of approximately $14,320 per year in printing costs for the Service. While over many years, eliminating the need to reprint Universal Transverse Mercator (UTM) coordinate pairs and other textual descriptions at 50 CFR 17.96 will result in a considerable cumulative cost savings to the Service and the public as a whole, this rule will result in only a small annual savings to the Service and the public.

Therefore, for the reasons above, we certify that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the Services make the following findings:

a. This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions: (1) ''A condition of Federal assistance'' or (2) ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority''; the provision would either ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding''; and the State, local, or Tribal governments ''lack authority . . . to amend their financial or programmatic responsibilities to continue providing required services.'' At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.'' This rule does not produce a Federal mandate under either of these definitions.

b. This rule will not significantly or uniquely affect small governments, because the revisions to the regulations in this rule should make our critical habitat designations more user-friendly and will make the process more cost-effective for the Service and the public as a whole. As such, we do not believe that a Small Government Agency Plan is required.

Takings—Executive Order 12630

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have evaluated this rule, and we have determined that this rule does not pose significant takings implications. The revisions to the regulations set forth in this rule do not involve individual property rights.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), the rule does not have significant Federalism effects. A federalism summary impact statement is not required. The revisions to the regulations addressed in this rule are intended to promote the usability of the regulations and make the process of designating critical habitat more cost-effective, and thus should not significantly affect or burden the authority of the States to govern themselves.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), this rule follows the Civil Justice Reform principles for regulations that do not unduly burden the Federal judicial system, by meeting the requirements of sections 3(a) and 3(b) of the Executive Order. The revisions to the regulations addressed in this rule should not significantly affect or burden the judicial system.

Paperwork Reduction Act of 1995

This rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA)

We analyzed this rule in accordance with the criteria of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), 43 CFR part 46, and 516 Departmental Manual (DM) 2 and 8.

A categorical exclusion from NEPA documentation applies to policies, directives, regulations, and guidelines that are ''of an administrative, financial, legal, technical, or procedural nature'' (43 CFR 46.210(i)). This rule falls within this categorical exclusion because it is administrative and technical in nature—it affects only the format in which the critical habitat boundaries are delineated in the regulations. However, even if an individual Federal action falls within a categorical exclusion, the Service must still prepare environmental documents pursuant to NEPA if one of the 12 exceptions listed in 43 CFR 46.215 applies.

We have reviewed each of the 12 exceptions and have found that because this rule is administrative in nature, none of the exceptions apply. Although the exception at 43 CFR 46.215(h) applies to actions that ''have a significant impact'' on listed species or designated critical habitat, this action will not have any such significant impact, because it is administrative in nature and affects only the format in which critical habitat boundaries are delineated and not the substance of the critical habitat designations. Therefore, this action meets the requirements for a

categorical exclusion from the NEPA process.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175 ''Consultation and Coordination with Indian Tribal Governments,'' and the Department of the Interior Manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Native American Tribes on a government-to-government basis. We have evaluated the potential effects on federally recognized Tribes from these revisions to our regulations. We have determined that there are no potential effects to federally recognized Tribes, as the revisions to the regulations are intended to promote the usability of critical habitat designations and save taxpayer monies. We will continue to coordinate with Tribes as we promulgate critical habitat designations.

Energy Supply, Distribution, or Use

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. ''Significant energy action'' means any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking that is a significant regulatory action under Executive Order 12866 or any successor order, and is likely to have a significant adverse effect on the supply, distribution, or use of energy; or that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. This rule does not qualify as a significant regulatory action under Executive Order 12866 and will not have a significant adverse effect on the supply, distribution, or use of energy, and has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245, unless otherwise noted.

■ 2. Amend § 17.94 by revising the table in paragraph (b) to read as follows:

§ 17.94 Critical habitats.

* * * * *

(b) * * *

If the critical habitat map appears in . . .	Then . . .
(1) A critical habitat designation in § 17.95(a), (b), (d), (e), (f), (g), (h), or (i), or in § 17.96(a), and the designation does not state that the map(s) is for informational purposes only, or (2) A critical habitat designation in § 17.99, or (3) A critical habitat designation published and effective after May 31, 2012,	The map provided by the Secretary of the Interior, as clarified or refined by any textual language within the rule, constitutes the definition of the boundaries of a critical habitat. Each critical habitat area will be shown on a map, with more-detailed information discussed in the preamble of the rulemaking documents published in the **Federal Register** and made available from the lead field office of the Service responsible for such designation. Each area will be referenced to the State(s), county(ies), or other local government units within which all or part of the critical habitat is located. General descriptions of the location and boundaries of each area may be provided to clarify or refine what is included within the boundaries depicted on the map, or to explain the exclusion of sites (e.g., paved roads, buildings) within the mapped area. Unless otherwise indicated within the critical habitat descriptions, the names of the State(s) and county(ies) are provided for informational purposes only and do not constitute the boundaries of the area.
(4) A critical habitat designation that states that the map(s) is for informational purposes only, or (5) A critical habitat designation published and effective on or prior to May 31, 2012, that is set forth at § 17.95(c),	The map provided by the Secretary of the Interior is for reference purposes to guide Federal agencies and other interested parties in locating the general boundaries of the critical habitat. The map does not, unless otherwise indicated, constitute the definition of the boundaries of a critical habitat. Critical habitats are described by reference to surveyable landmarks found on standard topographic maps of the area and to the States and county(ies) within which all or part of the critical habitat is located. Unless otherwise indicated within the critical habitat description, the State and county(ies) names are provided for informational purposes only.

■ 3. Amend § 17.96(a) as follows:

■ a. In the entry Family Apiaceae: *Lilaeopsis schaffneriana* var. *recurva* (Huachuca water umbel), by revising the note.

■ b. In the entry Family Apiaceae: *Lomatium cookii* (Cook's lomatium, Cook's desert parsley), by:

■ i. Removing paragraphs (6)(ii) through (v);

■ ii. Redesignating paragraph (6)(vi) as (6)(ii), and removing the word ''NOTE:'';

■ iii. Removing paragraph (7)(ii);

■ iv. Redesignating paragraph (7)(iii) as (7)(ii), and removing the word ''NOTE:'';

■ v. Removing paragraphs (8)(ii) through (vi);

■ vi. Redesignating paragraph (8)(vii) as (8)(ii), and removing the word ''NOTE:'';

■ vii. Removing paragraphs (10)(ii) and (iii);

■ viii. Redesignating paragraph (10)(iv) as (10)(ii), and removing the word ''NOTE:'';

■ ix. Removing paragraph (11)(ii);

■ x. Redesignating paragraph (11)(iii) as (11)(ii), and removing the word ''NOTE:'';

■ xi. Removing paragraph (12)(ii);

■ xii. Redesignating paragraph (12)(iii) as (12)(ii), and removing the word ''NOTE:'';

■ xiii. Removing paragraph (13)(ii);

■ xiv. Redesignating paragraph (13)(iii) as (13)(ii), and removing the word ''NOTE:'';
■ xv. Revising paragraph (14)(ii);
■ xvi. Removing the word ''NOTE:'' from paragraph (14)(iii);
■ xvii. Removing paragraphs (15)(ii) and (iii);
■ xviii. Redesignating paragraph (15)(iv) as (15)(ii), and removing the word ''NOTE:'';
■ xix. Removing paragraph (16)(ii);
■ xx. Redesignating paragraph (16)(iii) as (16)(ii), and removing the word ''NOTE:'';
■ xxi. Removing paragraph (17)(ii);
■ xxii. Redesignating paragraph (17)(iii) as (17)(ii), and removing the word ''NOTE:'';
■ xxiii. Removing paragraph (18)(ii);
■ xxiv. Redesignating paragraph (18)(iii) as (18)(ii), and removing the word ''NOTE:'';
■ xxv. Removing paragraph (19)(ii);
■ xxvi. Redesignating paragraph (19)(iii) as (19)(ii), and removing the word ''NOTE:'';
■ xxvii. Removing paragraph (20)(ii);
■ xxviii. Redesignating paragraph (20)(iii) as (20)(ii), and removing the word ''NOTE:'';
■ xxix. Revising paragraph (21)(ii);
■ xxx. Removing the word ''NOTE:'' from paragraph (21)(iii);
■ xxxi. Removing paragraph (22)(ii); and
■ xxxii. Redesignating paragraph (22)(iii) as (22)(ii), and removing the word ''NOTE:''.
■ c. In the entry Family Asclepiadaceae: *Asclepias welshii* (Welsh's milkweed), by revising the note.
■ d. In the entry Family Asteraceae: *Ambrosia pumila* (San Diego ambrosia), by:
■ i. Removing and reserving paragraph (6)(i);
■ ii. Removing paragraph (6)(ii);
■ iii. Redesignating paragraph (6)(iii) as (6)(ii), and removing the word ''NOTE:'';
■ iv. Removing and reserving paragraph (7)(i);
■ v. Removing paragraph (7)(ii);
■ vi. Redesignating paragraph (7)(iii) as (7)(ii), and removing the word ''NOTE:'';
■ vii. Removing and reserving paragraph (8)(i);
■ viii. Removing paragraphs (8)(ii) through (iv);
■ ix. Redesignating paragraph (8)(v) as (8)(ii), and removing the word ''NOTE:'';
■ x. Revising paragraph (9)(i);
■ xi. Removing paragraph (9)(ii);
■ xii. Redesignating paragraph (9)(iii) as (9)(ii), and removing the word ''NOTE:'';
■ xiii. Removing and reserving paragraph (10)(i);
■ xiv. Removing the word ''NOTE:'' from paragraph (10)(ii);
■ xv. Removing and reserving paragraph (11)(i);
■ xvi. Removing paragraphs (11)(ii) and (iii); and
■ xvii. Redesignating paragraph (11)(iv) as (11)(ii), and removing the word ''NOTE:''.
■ e. In the entry Family Asteraceae: *Cirsium hydrophilum* var. *hydrophilum* (Suisun thistle), by:
■ i. Removing and reserving paragraph (6)(i);
■ ii. Removing the word ''NOTE:'' from paragraph (6)(ii);
■ iii. Removing and reserving paragraph (7)(i);
■ iv. Removing the word ''NOTE:'' from paragraph (7)(ii);
■ v. Removing and reserving paragraph (8)(i); and
■ vi. Removing the word ''NOTE:'' from paragraph (8)(ii).
■ f. In the entry Family Asteraceae: *Cirsium loncholepis* (La Graciosa thistle), by:
■ i. Revising paragraph (6)(i);
■ ii. Removing paragraphs (6)(ii) through (xvi);
■ iii. Redesignating paragraph (6)(xvii) as (6)(ii), and removing the word ''NOTE:'';
■ iv. Revising paragraph (7)(i);
■ v. Removing paragraph (7)(ii);
■ vi. Redesignating paragraph (7)(iii) as (7)(ii), and removing the word ''NOTE:'';
■ vii. Removing and reserving paragraph (8)(i);
■ viii. Removing the word ''NOTE:'' from paragraph (8)(ii);
■ ix. Removing and reserving paragraph (9)(i);
■ x. Removing paragraph (9)(ii);
■ xi. Redesignating paragraph (9)(iii) as (9)(ii), and removing the word ''NOTE:'';
■ xii. Removing and reserving paragraph (10)(i);
■ xiii. Removing the word ''NOTE:'' from paragraph (10)(ii);
■ xiv. Removing and reserving paragraph (11)(i);
■ xv. Removing paragraphs (11)(ii) and (iii); and
■ xvi. Redesignating paragraph (11)(iv) as (11)(ii), and removing the word ''NOTE:''.
■ g. In the entry Family Asteraceae: *Deinandra conjugens* (Otay tarplant), by adding a sentence to the end of paragraph (1).
■ h. In the entry Family Asteraceae: *Deinandra increscens* ssp. *villosa* (Gaviota tarplant), by adding a sentence to the end of paragraph (1).
■ i. In the entry for Family Asteraceae: *Enceliopsis nudicaulis* var. *corrugata* (Ash Meadows sunray), by revising the note.
■ j. In the entry Family Asteraceae: *Erigeron decumbens* var. *decumbens* (Willamette daisy), by:
■ i. Removing and reserving paragraph (6)(i);
■ ii. Removing paragraph (6)(ii);
■ iii. Redesignating paragraph (6)(iii) as (6)(ii), and removing the word ''NOTE:'';
■ iv. Removing and reserving paragraph (7)(i);
■ v. Removing the word ''NOTE:'' from paragraph (7)(ii);
■ vi. Removing and reserving paragraph (8)(i);
■ vii. Removing paragraphs (8)(ii) and (iii);
■ viii. Redesignating paragraph (8)(iv) as (8)(ii), and removing the word ''NOTE:'';
■ ix. Removing and reserving paragraph (9)(i);
■ x. Removing paragraph (9)(ii);
■ xi. Redesignating paragraph (9)(iii) as (9)(ii), and removing the word ''NOTE:'';
■ xii. Removing and reserving paragraph (10)(i);
■ xiii. Removing the word ''NOTE:'' from paragraph (10)(ii);
■ xiv. Removing and reserving paragraph (11)(i);
■ xv. Removing paragraphs (11)(ii) through (iv);
■ xvi. Redesignating paragraph (11)(v) as (11)(ii), and removing the word ''NOTE:'';
■ xvii. Removing and reserving paragraph (12)(i);
■ xviii. Removing paragraph (12)(ii);
■ xix. Redesignating paragraph (12)(iii) as (12)(ii), and removing the word ''NOTE:'';
■ xx. Removing and reserving paragraph (13)(i);
■ xxi. Removing paragraphs (13)(ii) through (v);
■ xxii. Redesignating paragraph (13)(vi) as (13)(ii), and removing the word ''NOTE:'';
■ xxiii. Removing and reserving paragraph (14)(i);
■ xxiv. Removing paragraphs (14)(ii) through (v); and
■ xxv. Redesignating paragraph (14)(vi) as (14)(ii), and removing the word ''NOTE:''.
■ k. In the entry Family Asteraceae: *Erigeron Parishii* (Parish's Daisy), by:
■ i. Revising the heading; and
■ ii. Adding a sentence to the end of paragraph (1).
■ l. In the entry Family Asteraceae: *Grindelia fraxino-pratensis* (Ash Meadows gumplant), by revising the note.
■ m. In the entry Family Asteraceae: *Helianthus paradoxus* (Pecos sunflower), by adding a sentence to the end of paragraph (1).
■ n. In the entry Family Asteraceae: *Holocarpha macradenia* (Santa Cruz tarplant), by adding a sentence to the end of paragraph (1).
■ o. In the entry Family Asteraceae: *Lasthenia conjugens* (Contra Costa Goldfields), by revising the heading and paragraph (1).

■ p. In the entry Family Asteraceae: *Pentachaeta lyonii* (Lyon's pentachaeta), by:
■ i. Removing and reserving paragraph (6)(i);
■ ii. Revising paragraph (6)(ii);
■ iii. Removing paragraphs (6)(iii) through (v);
■ iv. Removing and reserving paragraph (7)(i);
■ v. Removing paragraphs (7)(ii) and (iii);
■ vi. Redesignating paragraph (7)(iv) as (7)(ii), and removing the word ''Note:'';
■ vii. Removing and reserving paragraph (8)(i);
■ viii. Revising paragraph (8)(ii);
■ ix. Removing paragraphs (8)(iii) through (v);
■ x. Removing and reserving paragraph (9)(i);
■ xi. Revising paragraph (9)(ii);
■ xii. Removing and reserving paragraph (10)(i);
■ xiii. Revising paragraph (10)(ii);
■ xiv. Removing paragraphs (10)(iii) through (v);
■ xv. Removing and reserving paragraph (11)(i); and
■ xvi. Removing the word ''Note:'' from paragraph (11)(ii).
■ q. In the entry Family Asteraceae: *Senecio franciscanus* (San Francisco Peaks groundsel), by revising the note.
■ r. In the entry Family Asteraceae: *Stephanomeria malheurensis* (Malheur wire-lettuce), by revising the note.
■ s. In the entry Family Asteraceae: *Taraxacum californicum* (California taraxacum), by
■ i. Removing and reserving paragraph (6)(i);
■ ii. Removing the word ''Note:'' from paragraph (6)(ii);
■ iii. Removing and reserving paragraph (7)(i);
■ iv. Removing the word ''Note:'' from paragraph (7)(ii);
■ v. Removing and reserving paragraph (8)(i);
■ vi. Removing the word ''Note:'' from paragraph (8)(ii);
■ vii. Removing and reserving paragraph (9)(i);
■ viii. Revising paragraph (9)(ii);
■ ix. Removing and reserving paragraph (10)(i);
■ x. Removing the word ''Note:'' from paragraph (10)(ii);
■ xi. Removing and reserving paragraph (11)(i);
■ xii. Removing the word ''Note:'' from paragraph (11)(ii);
■ xiii. Removing and reserving paragraph (12)(i);
■ xiv. Revising paragraph (12)(ii);
■ xv. Removing and reserving paragraph (13)(i);
■ xvi. Revising paragraph (13)(ii);
■ xvii. Removing and reserving paragraph (14)(i);
■ xviii. Revising paragraph (14)(ii);
■ xix. Removing and reserving paragraph (15)(i);
■ xx. Revising paragraph (15)(ii);
■ xxi. Removing and reserving paragraph (16)(i); and
■ xxii. Revising paragraph (16)(ii).
■ t. In the entry Family Berberidaceae: *Berberis nevinii* (Nevin's barberry), by revising paragraph (1).
■ u. In the entry Family Boraginaceae: *Amsinckia grandiflora* (large-flowered fiddleneck), by revising the note.
■ v. In the entry Family Brassicaceae: *Arabis perstellata* (Braun's rock-cress), by revising paragraph (1).
■ w. In the entry Family Brassicaceae: *Erysimum capitatum* var. *angustatum* (Contra Costa Wallflower), by revising the heading and the note.
■ x. In the entry Family Brassicaceae: *Lesquerella Kingii* ssp. *Bernardina* (San Bernardino Mountains Bladderpod), by revising the heading and paragraph (1).
■ y. In the entry Family Brassicaceae: *Thlaspi californicum* (Kneeland Prairie penny-cress), by adding a sentence to the end of paragraph (1).
■ z. In the entry Family Caryophyllaceae: *Arenaria ursina* (Bear Valley sandwort), by adding a sentence to the end of paragraph (1).
■ aa. In the entry Family Chenopodiaceae: *Nitrophila mohavensis* (Amargosa niterwort), by revising the note.
■ bb. In the entry Family Cistaceae: *Hudsonia montana* (Mountain golden heather), by revising the heading and the note.
■ cc. In the entry Family Cyperaceae: *Carex lutea* (Golden sedge), by:
■ i. Revising the heading;
■ ii. Removing paragraphs (6)(ii) through (iv);
■ iii. Redesignating paragraph (6)(v) as (6)(ii);
■ iv. Removing paragraph (7)(ii);
■ v. Redesignating paragraph (7)(iii) as (7)(ii);
■ vi. Removing paragraph (8)(ii);
■ vii. Redesignating paragraph (8)(iii) as (8)(ii);
■ viii. Removing paragraphs (9)(ii) and (iii);
■ ix. Redesignating paragraph (9)(iv) as (9)(ii);
■ x. Removing paragraphs (10)(ii) through (vi);
■ xi. Redesignating paragraph (10)(vii) as (10)(ii);
■ xii. Removing paragraphs (11)(ii) through (iv);
■ xiii. Redesignating paragraph (11)(v) as (11)(ii);
■ xiv. Removing paragraphs (12)(ii) through (iv);
■ xv. Redesignating paragraph (12)(v) as (12)(ii);
■ xvi. Removing paragraphs (13)(ii) through (iv); and
■ xvii. Redesignating paragraph (13)(v) as (13)(ii).
■ dd. In the entry Family Cyperaceae: *Carex specuicola* (Navajo sedge), by revising the note.
■ ee. In the entry Family Euphorbiaceae: *Chamaesyce hooveri* (Hoover's Spurge), by:
■ i. Revising the heading;
■ ii. Removing the second sentence of paragraph (4);
■ iii. Removing the word ''Note:'' from paragraph (5);
■ iv. Removing the second sentence of paragraph (6);
■ v. Removing the word ''Note:'' from paragraph (7);
■ vi. Revising paragraph (9);
■ vii. Removing and reserving paragraph (10)(i);
■ viii. Removing paragraphs (10)(ii) and (iii);
■ ix. Redesignating paragraph (10)(iv) as (10)(ii), and removing the word ''Note:'';
■ x. Removing and reserving paragraph (11)(i);
■ xi. Removing paragraphs (11)(ii) through (v);
■ xii. Redesignating paragraph (11)(vi) as (11)(ii), and removing the word ''Note:'';
■ xiii. Removing and reserving paragraph (12)(i);
■ xiv. Removing paragraphs (12)(ii) through (vii); and
■ xv. Redesignating paragraph (12)(viii) as (12)(ii), and removing the word ''Note:''.
■ ff. In the entry Family Fabaceae: *Astragalus Albens* (Cushenbury Milk-Vetch), by revising the heading and paragraph (1).
■ gg. In the entry Family Fabaceae: *Astragalus ampullarioides* (Shivwits milk-vetch), by:
■ i. Removing and reserving paragraph (6)(i);
■ ii. Removing the word ''Note:'' from paragraph (6)(ii);
■ iii. Revising paragraph (7);
■ v. Removing and reserving paragraph (8)(i);
■ vi. Removing paragraphs (8)(ii) and (iii);
■ vii. Redesignating paragraph (8)(iv) as (8)(ii) and removing the word ''Note:'';
■ viii. Removing and reserving paragraph (9)(i); and
■ ix. Removing the word ''Note:'' from paragraph (9)(ii).
■ hh. In the entry Family Fabaceae: *Astragalus brauntonii* (Braunton's milk-vetch), by:
■ i. Removing and reserving paragraph (6)(i);

■ ii. Revising paragraph (6)(ii);
■ iii. Removing paragraphs (6)(iii) through (v);
■ iv. Removing and reserving paragraph (7)(i);
■ v. Removing paragraphs (7)(ii) through (vi);
■ vi. Redesignating paragraph (7)(vii) as (7)(ii), and removing the word ''Note:'';
■ vii. Removing and reserving paragraph (8)(i);
■ viii. Removing the word ''Note:'' from paragraph (8)(ii);
■ ix. Removing and reserving paragraph (9)(i);
■ x. Removing the word ''Note:'' from paragraph (9)(ii);
■ xi. Removing and reserving paragraph (10)(i);
■ xii. Removing the word ''Note:'' from paragraph (10)(ii);
■ xiii. Removing and reserving paragraph (11)(i); and
■ xiv. Removing the word ''Note:'' from paragraph (11)(ii).
■ ii. In the entry Family Fabaceae: *Astragalus holmgreniorum* (Holmgren milk-vetch), by:
■ i. Removing and reserving paragraph (6)(i);
■ ii. Removing paragraphs (6)(ii) and (iii);
■ iii. Redesignating paragraph (6)(iv) as (6)(ii), and removing the word ''Note:'';
■ iv. Removing and reserving paragraph (7)(i);
■ v. Removing paragraph (7)(ii);
■ vi. Redesignating paragraph (7)(iii) as (7)(ii), and removing the word ''Note:'';
■ vii. Removing and reserving paragraph (8)(i); and
■ viii. Removing the word ''Note:'' from paragraph (8)(ii).
■ jj. In the entry Family Fabaceae: *Astragalus jaegerianus* (Lane Mountain milk-vetch), by:
■ i. Removing and reserving paragraph (5)(i);
■ ii. Removing the word ''Note:'' from paragraph (5)(ii);
■ iii. Removing and reserving paragraph (6)(i); and
■ iv. Removing the word ''Note:'' from paragraph (6)(ii).
■ kk. In the entry Family Fabaceae: *Astragalus lentiginosus* var. *piscinensis* (Fish Slough milk-vetch), by adding a sentence to the end of paragraph (1).
■ ll. In the entry Family Fabaceae: *Astragalus magdalenae* var. *peirsonii* (Peirson's Milk-Vetch), by:
■ i. Revising the heading;
■ ii. Removing and reserving paragraph (6)(i);
■ iii. Removing paragraphs (6)(ii) through (iv);
■ iv. Redesignating paragraph (6)(v) as (6)(ii), and removing the word ''Note:'';
■ v. Removing and reserving paragraph (7)(i);
■ vi. Removing paragraphs (7)(ii) and (iii);
■ vii. Redesignating paragraph (7)(iv) as (7)(ii), and removing the word ''Note:'';
■ viii. Removing and reserving paragraph (8)(i); and
■ ix. Removing the word ''Note:'' from paragraph (8)(ii).
■ mm. In the entry Family Fabaceae: *Astragalus montii* (Heliotrope milk-vetch), by adding a note immediately before the map.
■ nn. In the entry Family Fabaceae: *Astragalus phoenix* (Ash Meadows milk-vetch), by revising the note.
■ oo. In the entry Family Fabaceae: *Astragalus pycnostachyus* var. *lanosissimus* (Ventura Marsh milk-vetch), by adding a sentence to the end of paragraph (1).
■ pp. In the entry Family Fabaceae: *Lupinus sulphureus* ssp. *kincaidii* (Kincaid's lupine), by:
■ i. Removing and reserving paragraph (6)(i);
■ ii. Removing the word ''Note:'' from paragraph (6)(ii);
■ iii. Removing and reserving paragraph (7)(i);
■ iv. Removing paragraph (7)(ii);
■ v. Redesignating paragraph (7)(iii) as (7)(ii), and removing the word ''Note:'';
■ vi. Removing and reserving paragraph (8)(i);
■ vii. Removing paragraphs (8)(ii) through (iv);
■ viii. Redesignating paragraph (8)(v) as (8)(ii), and removing the word ''Note:'';
■ ix. Removing and reserving paragraph (9)(i);
■ x. Removing paragraph (9)(ii);
■ xi. Redesignating paragraph (9)(iii) as (9)(ii), and removing the word ''Note:'';
■ xii. Removing and reserving paragraph (10)(i);
■ xiii. Removing the word ''Note:'' from paragraph (10)(ii);
■ xiv. Removing and reserving paragraph (11)(i);
■ xv. Removing paragraphs (11)(ii) and (iii);
■ xvi. Redesignating paragraph (11)(iv) as (11)(ii), and removing the word ''Note:'';
■ xvii. Removing and reserving paragraph (12)(i);
■ xviii. Removing paragraphs (12)(ii) through (x);
■ xix. Redesignating paragraph (12)(xi) as (12)(ii), and removing the word ''Note:'';
■ xx. Removing and reserving paragraph (13)(i); and
■ xxi. Removing the word ''Note:'' from paragraph (13)(ii).
■ qq. In the entry Family Gentianaceae: *Centaurium namophilum* (spring-loving centaury), by revising the note.
■ rr. In the entry Family Hydrophyllaceae: *Eriodictyon capitatum* (Lompoc yerba santa), by revising paragraph (1).
■ ss. In the entry Family Lamiaceae: *Acanthomintha ilicifolia* (San Diego thornmint), by:
■ i. Removing and reserving paragraph (6)(i);
■ ii. Removing paragraph (6)(ii);
■ iii. Redesignating paragraph (6)(iii) as (6)(ii), and removing the word ''Note:'';
■ iv. Removing and reserving paragraph (7)(i);
■ v. Removing paragraphs (7)(ii) through (ix);
■ vi. Redesignating paragraph (7)(x) as (7)(ii), and removing the word ''Note:'';
■ vii. Removing and reserving paragraph (8)(i);
■ viii. Removing paragraphs (8)(ii) and (iii); and
■ ix. Redesignating paragraph (8)(iv) as (8)(ii), and removing the word ''Note:''.
■ tt. In the entry Family Lamiaceae: *Hedeoma todsenii* (Todsens pennyroyal), by revising the note.
■ uu. In the entry Family Lamiaceae: *Monardella viminea* (willowy monardella), by:
■ i. Removing and reserving paragraph (5)(i);
■ ii. Removing paragraph (5)(ii); and
■ iii. Redesignating paragraph (5)(iii) as (5)(ii), and removing the word ''Note:''.
■ vv. In the entry Family Liliaceae: *Chlorogalum purpureum* (purple amole), by adding a sentence to the end of paragraph (1).
■ ww. In the entry Family Limnanthaceae: *Limnanthes floccosa* ssp. *californica* (Butte County Meadowfoam), by:
■ i. Revising the heading;
■ ii. Removing paragraphs (4)(i) and (ii);
■ iii. Removing the second sentence of paragraphs (5), (6), and (7); and
■ iv. Removing the word ''Note:'' from paragraph (8).
■ xx. In the entry Family Limnanthaceae: *Limnanthes floccosa* ssp. *grandiflora* (large-flowered woolly meadowfoam), by:
■ i. Removing paragraph (6)(ii);
■ ii. Redesignating paragraph (6)(iii) as (6)(ii), and removing the word ''Note:'';
■ iii. Removing paragraphs (7)(ii) through (v);
■ iv. Redesignating paragraph (7)(vi) as (7)(ii), and removing the word ''Note:'';
■ v. Removing paragraphs (8)(ii) through (v);
■ vi. Redesignating paragraph (8)(vi) as (8)(ii), and removing the word ''Note:'';
■ vii. Removing paragraph (9)(ii);
■ viii. Redesignating paragraph (9)(iii) as (9)(ii), and removing the word ''Note:'';
■ ix. Removing paragraph (10)(ii);
■ x. Redesignating paragraph (10)(iii) as (10)(ii), and removing the word ''Note:'';

■ xi. Removing paragraphs (11)(ii) through (ix);
■ xii. Redesignating paragraph (11)(x) as (11)(ii), and removing the word ''Note:'';
■ xiii. Removing paragraph (12)(ii);
■ xiv. Redesignating paragraph (12)(iii) as (12)(ii), and removing the word ''Note:'';
■ xv. Removing paragraph (13)(ii); and
■ xvi. Redesignating paragraph (13)(iii) as (13)(ii), and removing the word ''Note:''.
■ yy. In the entry Family Loasaceae: *Mentzelia leucophylla* (Ash Meadows blazing star), by revising the note.
■ zz. In the entry Family Malvaceae: *Kokia drynarioides* (koki'o), by revising the notes in paragraphs 1., 2., and 3.
■ aaa. In the entry Family Malvaceae: *Sidalcea keckii* (Keck's checkermallow), by adding a sentence to the end of paragraph (1).
■ bbb. In the entry Family Malvaceae: *Sidalcea oregana* var. *calva* (Wenatchee Mountains checker-mallow), by adding a sentence to the end of paragraph (1).
■ ccc. In the entry Family Onagraceae: *Oenothera deltoides* ssp. *howellii* (Antioch Dunes Evening-Primrose), by revising the heading and the note.
■ ddd. In the entry Family Orchidaceae: *Piperia yadonii* (Yadon's piperia), by:
■ i. Removing and reserving paragraph (6)(i);
■ ii. Revising paragraph (6)(ii);
■ iii. Removing paragraph (6)(iii);
■ iv. Removing and reserving paragraph (8)(i);
■ v. Revising paragraph (8)(ii);
■ vi. Removing paragraphs (8)(iii) and (iv);
■ vii. Removing and reserving paragraph (9)(i);
■ viii. Removing paragraphs (9)(ii) and (iii);
■ ix. Redesignating paragraph (9)(iv) as (9)(ii), and removing the word ''Note:'';
■ x. Removing and reserving paragraph (10)(i);
■ xi. Revising paragraph (10)(ii);
■ xii. Removing paragraph (10)(iii);
■ xiii. Removing and reserving paragraph (11)(i);
■ xiv. Revising paragraph (11)(ii);
■ xv. Removing and reserving paragraph (12)(i);
■ xvi. Removing paragraphs (12)(ii) through (xiv);
■ xvii. Redesignating paragraph (12)(xv) as (12)(ii), and revising its introductory text;
■ xviii. Removing and reserving paragraph (13)(i);
■ xix. Removing the word ''Note:'' from paragraph (13)(ii);
■ xx. Removing and reserving paragraph (14)(i); and
■ xxi. Removing the word ''Note:'' from paragraph (14)(ii).
■ eee. In the entry Family Orobanchaceae: *Castilleja cinerea* (Ash-Gray Indian Paintbrush), by:
■ i. Revising the heading; and
■ ii. Adding a sentence to the end of paragraph (1).
■ fff. In the entry Family Poaceae: *Neostapfia colusana* (Colusa Grass), by revising the heading and paragraph (1).
■ ggg. In the entry Family Poaceae: *Orcuttia inaequalis* (San Joaquin Valley Orcutt Grass), by:
■ i. Revising the heading;
■ ii. Removing the second sentence of paragraph (4);
■ iii. Removing the word ''NOTE:'' from paragraph (5);
■ iv. Removing the second sentence of paragraph (6);
■ v. Removing the word ''NOTE:'' from paragraph (7);
■ vi. Removing and reserving paragraph (8)(i);
■ vii. Removing paragraphs (8)(ii) and (iii);
■ viii. Redesignating paragraph (8)(iv) as (8)(ii), and removing the word ''NOTE:'';
■ ix. Revising paragraph (9);
■ x. Removing and reserving paragraph (10)(i);
■ xi. Removing paragraph (10)(ii);
■ xii. Redesignating paragraph (10)(iii) as (10)(ii), and removing the word ''NOTE:'';
■ xiii. Removing and reserving paragraph (11)(i);
■ xiv. Removing paragraphs (11)(ii) through (iv); and
■ xv. Redesignating paragraph (11)(v) as (11)(ii), and removing the word ''NOTE:''.
■ hhh. In the entry Family Poaceae: *Orcuttia pilosa* (Hairy Orcutt Grass), by:
■ i. Revising the heading;
■ ii. Removing the second sentence of paragraph (4);
■ iii. Removing the word ''NOTE:'' from paragraph (5);
■ iv. Removing the second sentence of paragraph (6);
■ v. Removing the word ''NOTE:'' from paragraph (7);
■ vi. Removing and reserving paragraph (8)(i);
■ vii. Removing paragraphs (8)(ii) and (iii);
■ viii. Redesignating paragraph (8)(iv) as (8)(ii), and removing the word ''NOTE:'';
■ ix. Revising paragraphs (9) and (10);
■ x. Removing the word ''NOTE:'' from paragraph (11).
■ iii. In the entry Family Poaceae: *Orcuttia tenuis* (Slender Orcutt Grass), by:
■ i. Revising the heading;
■ ii. Removing paragraphs (4)(i) and (ii);
■ iii. Redesignating paragraph (4)(iii) as (4)(i), and removing the word ''NOTE:'';
■ iv. Removing paragraphs (4)(iv) through (vi);
■ v. Redesignating paragraph (4)(vii) as (4)(ii), and removing the word ''NOTE:'';
■ vi. Removing paragraphs (4)(viii) through (xii);
■ vii. Redesignating paragraph (4)(xiii) as (4)(iii), and removing the word ''NOTE:'';
■ viii. Removing paragraph (4)(xiv);
■ ix. Redesignating paragraph (4)(xv) as (4)(iv), and removing the word ''NOTE:'';
■ x. Removing and reserving paragraph (5)(i);
■ xi. Removing paragraphs (5)(ii) through (iv);
■ xii. Redesignating paragraph (5)(v) as (5)(ii), and removing the word ''NOTE:'';
■ xiii. Revising paragraph (6)(i);
■ xiv. Removing paragraph (6)(ii);
■ xv. Redesignating paragraph (6)(iii) as (6)(ii), and removing the word ''NOTE:'';
■ xvi. Removing the second sentence of paragraph (7);
■ xvii. Removing the word ''NOTE:'' from paragraph (8);
■ xviii. Revising paragraph (9)(i);
■ xix. Removing paragraph (9)(ii);
■ xx. Redesignating paragraph (9)(iii) as (9)(ii), and removing the word ''NOTE:'';
■ xxi. Removing the second sentence of paragraph (10); and
■ xxii. Removing the word ''NOTE:'' from paragraph (11).
■ jjj. In the entry Family Poaceae: *Orcuttia viscida* (Sacramento Orcutt Grass), by:
■ i. Revising the heading;
■ ii. Removing the second sentence of paragraph (4);
■ iii. Removing the word ''NOTE:'' from paragraph (5);
■ iv. Removing the second sentence of paragraph (6);
■ v. Removing the word ''NOTE:'' from paragraph (7);
■ vi. Removing the second sentence of paragraph (8); and
■ vii. Removing the word ''NOTE:'' from paragraph (9).
■ kkk. In the entry Family Poaceae: *Poa atropurpurea* (San Bernardino bluegrass), by:
■ i. Removing and reserving paragraph (6)(i);
■ ii. Removing the word ''NOTE:'' from paragraph (6)(ii);
■ iii. Removing and reserving paragraph (7)(i);
■ iv. Removing the word ''NOTE:'' from paragraph (7)(ii);
■ v. Removing and reserving paragraph (8)(i);
■ vi. Removing the word ''NOTE:'' from paragraph (8)(ii);
■ vii. Removing and reserving paragraph (9)(i);
■ viii. Removing the word ''NOTE:'' from paragraph (9)(ii);
■ ix. Removing and reserving paragraph (10)(i);

■ x. Removing the word ''NOTE:'' from paragraph (10)(ii);
■ xi. Removing and reserving paragraph (11)(i);
■ xii. Removing the word ''NOTE:'' from paragraph (11)(ii);
■ xiii. Revising paragraph (12)(i);
■ xiv. Removing the word ''NOTE:'' from paragraph (12)(ii);
■ xv. Removing and reserving paragraph (13)(i); and
■ xvi. Revising paragraph (13)(ii).
■ lll. In the entry Family Poaceae: *Tuctoria greenei* (Greene's Tuctoria), by:
■ i. Removing the second sentence of paragraph (4);
■ ii. Removing the word ''NOTE:'' from paragraph (5);
■ iii. Removing the second sentence of paragraph (6);
■ iv. Removing the word ''NOTE:'' from paragraph (7);
■ v. Removing the second sentence of paragraph (8);
■ vi. Removing the word ''NOTE:'' from paragraph (9);
■ vii. Removing and reserving paragraph (10)(i);
■ viii. Removing paragraphs (10)(ii) through (v);
■ ix. Redesignating paragraph (10)(vi) as (10)(ii), and removing the word ''NOTE:'';
■ x. Redesignating paragraph (11) as paragraph (12), paragraph (12) as paragraph (13), and paragraph (13) as paragraph (11);
■ xi. In newly redesignated paragraph (11), removing the second sentence;
■ xii. In newly redesignated paragraph (12), removing the word ''NOTE:'';
■ xiii. Removing and reserving newly redesignated paragraph (13)(i);
■ xiv. Removing newly redesignated paragraphs (13)(ii) and (iii); and
■ xv. Redesignating newly redesignated paragraph (13)(iv) as (13)(ii), and removing the word ''NOTE:''.
■ mmm. In the entry Family Poaceae: *Tuctoria mucronata* (Solano Grass), by:
■ i. Revising the heading;
■ ii. Removing the second sentence of paragraph (4); and
■ iii. Removing the word ''Note:'' from paragraph (5).
■ nnn. In the entry Family Poaceae: *Zizania texana* (Texas Wild-Rice), by revising the heading and the note.
■ ooo. In the entry Family Polemoniaceae: *Navarretia fossalis* (spreading navarretia), by:
■ i. Removing and reserving paragraph (6)(i);
■ ii. Removing the word ''NOTE:'' from paragraph (6)(ii);
■ iii. Removing and reserving paragraph (7)(i);
■ iv. Removing the word ''NOTE:'' from paragraph (7)(ii);
■ v. Removing and reserving paragraph (8)(i);
■ vi. Removing the word ''NOTE:'' from paragraph (8)(ii);
■ vii. Removing and reserving paragraph (9)(i);
■ viii. Removing the word ''Note:'' from paragraph (9)(ii);
■ ix. Removing and reserving paragraph (10)(i);
■ x. Removing the word ''Note:'' from paragraph (10)(ii);
■ xi. Removing and reserving paragraph (11)(i);
■ xii. Removing the word ''Note:'' from paragraph (11)(ii);
■ xiii. Removing and reserving paragraph (12)(i);
■ xiv. Removing the word ''Note:'' from paragraph (12)(ii);
■ xv. Removing and reserving paragraph (13)(i);
■ xvi. Removing the word ''Note:'' from paragraph (13)(ii);
■ xvii. Removing and reserving paragraph (14)(i);
■ xviii. Removing the word ''Note:'' from paragraph (14)(ii);
■ xix. Removing and reserving paragraph (15)(i);
■ xx. Removing the word ''Note:'' from paragraph (15)(ii);
■ xxi. Removing and reserving paragraph (16)(i);
■ xxii. Removing the word ''Note:'' from paragraph (16)(ii);
■ xxiii. Removing and reserving paragraph (17)(i);
■ xxiv. Removing the word ''Note:'' from paragraph (17)(ii);
■ xxv. Removing and reserving paragraph (18)(i);
■ xxvi. Removing the word ''Note:'' from paragraph (18)(ii);
■ xxvii. Removing and reserving paragraph (19)(i);
■ xxviii. Removing the word ''Note:'' from paragraph (19)(ii);
■ xxix. Removing and reserving paragraph (20)(i);
■ xxx. Removing the word ''Note:'' from paragraph (20)(ii);
■ xxxi. Removing and reserving paragraph (21)(i);
■ xxxii. Removing paragraphs (21)(ii) through (x);
■ xxxiii. Redesignating paragraph (21)(xi) as (21)(ii), and removing the word ''Note:'';
■ xxxiv. Removing and reserving paragraph (22)(i);
■ xxxv. Removing paragraphs (22)(ii) and (iii);
■ xxxvi. Redesignating paragraph (22)(iv) as (22)(ii), and removing the word ''Note:'';
■ xxxvii. Removing and reserving paragraph (23)(i);
■ xxxviii. Removing paragraphs (23)(ii) through (iv);
■ xxxix. Redesignating paragraph (23)(v) as (23)(ii), and removing the word ''Note:'';
■ xl. Removing and reserving paragraph (24)(i);
■ xli. Removing the word ''Note:'' from paragraph (24)(ii);
■ xlii. Removing and reserving paragraph (25)(i);
■ xliii. Removing paragraph (25)(ii); and
■ xliv. Redesignating paragraph (25)(iii) as (25)(ii), and removing the word ''Note:''.
■ ppp. In the entry Family Polygonaceae: *Chorizanthe pungens* var. *pungens* (Monterey spineflower), by:
■ i. Removing and reserving paragraph (6)(i);
■ ii. Removing the word ''NOTE:'' from paragraph (6)(ii);
■ iii. Removing and reserving paragraph (7)(i);
■ iv. Removing paragraphs (7)(ii) and (iii);
■ v. Redesignating paragraph (7)(iv) as (7)(ii), and removing the word ''NOTE:'';
■ vi. Removing and reserving paragraph (8)(i);
■ vii. Removing the word ''NOTE:'' from paragraph (8)(ii);
■ viii. Revising paragraphs (9), (10), (11), (12), and (13);
■ ix. Removing and reserving paragraph (14)(i); and
■ x. Removing the word ''NOTE:'' from paragraph (14)(ii).
■ qqq. In the entry Family Polygonaceae: *Chorizanthe robusta* var. *hartwegii* (Scotts Valley spineflower), by adding a sentence to the end of paragraph (1).
■ rrr. In the entry Family Polygonaceae: *Chorizanthe robusta* var. *robusta* (robust spineflower), by adding a sentence to the end of paragraph (1).
■ sss. In the entry Family Polygonaceae: *Eriogonum gypsophilum* (Gypsum Wild Buckwheat), by revising the heading and the note.
■ ttt. In the entry Family Polygonaceae: *Eriogonum kennedyi* var. *austromontanum* (Southern mountain wild-buckwheat), by adding a sentence to the end of paragraph (1).
■ uuu. In the entry Family Polygonaceae: *Eriogonum Ovalifolium* var. *Vineum* (Cushenbury Buckwheat), by revising the heading and paragraph (1).
■ vvv. In the entry Family Polygonaceae: *Eriogonum pelinophilum* (clay-loving wild-buckwheat), by revising the note.
■ www. In the entry Family Polygonaceae: *Oxytheca Parishii* var. *goodmaniana* (Cushenbury Oxytheca), by revising the heading and paragraph (1).
■ xxx. In the entry Family Polygonaceae: *Polygonum hickmanii*

(Scotts Valley polygonum), by adding a sentence to the end of paragraph (1).
■ yyy. In the entry Family Ranunculaceae: *Delphinium bakeri* (Baker's larkspur), by adding a sentence to the end of paragraph (1).
■ zzz. In the entry Family Ranunculaceae: *Delphinium luteum* (Yellow larkspur), by revising the heading and adding a sentence to the end of paragraph (1).
■ aaaa. In the entry Family Rhamnaceae: *Ceanothus ophiochilus* (Vail Lake ceanothus), by removing and reserving paragraph (5)(i).
■ bbbb. In the entry Family Rosaceae: *Invesia kingii var. eremica* (Ash Meadows invesia), by revising the heading and the note.
■ cccc. In the entry Family Rubiaceae: *Catesbaea melanocarpa* (no common name), by:
■ i. Removing paragraph (5)(ii); and
■ ii. Redesignating paragraph (5)(iii) as (5)(ii), and removing the word ''NOTE:''.
■ dddd. In the entry Family Scrophulariaceae: *Castilleja campestris* ssp. *succulenta* (Fleshy owl's-clover), by:
■ i. Revising the heading;
■ ii. Removing the second sentence of paragraph (4);
■ iii. Removing the word ''NOTE:'' from paragraph (5);
■ iv. Removing the second sentence of paragraph (6);
■ v. Removing the word ''NOTE:'' from paragraph (7);
■ vi. Removing and reserving paragraph (8)(i);
■ vii. Removing paragraph (8)(ii);
■ viii. Redesignating paragraph (8)(iii) as (8)(ii), and removing the word ''NOTE:'';
■ ix. Removing paragraphs (9)(i) and (ii);
■ x. Redesignating paragraph (9)(iii) as (9)(i), and removing the word ''NOTE:'';
■ xi. Removing paragraph (9)(iv);
■ xii. Redesignating paragraph (9)(v) as (9)(ii), and removing the word ''NOTE:'';
■ xiii. Removing and reserving paragraph (10)(i);
■ xiv. Removing paragraph (10)(ii);
■ xv. Redesignating paragraph (10)(iii) as (10)(ii), and removing the word ''NOTE:'';
■ xvi. Removing and reserving paragraph (11)(i);
■ xvii. Removing paragraph (11)(ii); and
■ xviii. Redesignating paragraph (11)(iii) as (11)(ii), and removing the word ''NOTE:''.
■ eeee. In the entry Family Scrophulariaceae: *Cordylanthus mollis* ssp. *mollis* (soft bird's-beak), by:
■ i. Removing and reserving paragraph (6)(i);
■ ii. Removing the word ''NOTE:'' from paragraph (6)(ii);
■ iii. Removing and reserving paragraph (7)(i);
■ iv. Removing the word ''NOTE:'' from paragraph (7)(ii);
■ v. Removing and reserving paragraph (8)(i);
■ vi. Removing the word ''NOTE:'' from paragraph (8)(ii);
■ vii. Removing and reserving paragraph (9)(i);
■ viii. Removing the word ''NOTE:'' from paragraph (9)(ii);
■ ix. Removing and reserving paragraph (10)(i); and
■ x. Removing the word ''NOTE:'' from paragraph (10)(ii).
■ ffff. In the entry Family Sterculiaceae: *Fremontodendron mexicanum* (Mexican flannelbush), by:
■ i. Removing and reserving paragraph (5)(i);
■ ii. Removing paragraphs (5)(ii) and (iii); and
■ iii. Redesignating paragraph (5)(iv) as (5)(ii), and revising its introductory text.
■ gggg. In the entry Family Themidaceae: *Brodiaea filifolia* (thread-leaved brodiaea), by:
■ i. Removing and reserving paragraph (6)(i);
■ ii. Removing paragraph (6)(ii);
■ iii. Redesignating paragraph (6)(iii) as (6)(ii), and removing the word ''NOTE:'';
■ iv. Removing and reserving paragraph (7)(i);
■ v. Removing the word ''NOTE:'' from paragraph (7)(ii);
■ vi. Removing and reserving paragraph (8)(i);
■ vii. Removing the word ''NOTE:'' from paragraph (8)(ii);
■ viii. Removing and reserving paragraph (9)(i);
■ ix. Removing paragraphs (9)(ii) and (iii);
■ x. Redesignating paragraph (9)(iv) as (9)(ii), and removing the word ''NOTE:'';
■ xi. Removing and reserving paragraph (10)(i);
■ xii. Removing the word ''NOTE:'' from paragraph (10)(ii);
■ xiii. Removing and reserving paragraph (11)(i);
■ xiv. Removing paragraphs (11)(ii) through (v);
■ xv. Redesignating paragraph (11)(vi) as (11)(ii), and removing the word ''NOTE:'';
■ xvi. Removing and reserving paragraph (12)(i);
■ xvii. Removing paragraphs (12)(ii) and (iii);
■ xviii. Redesignating paragraph (12)(iv) as (12)(ii), and removing the word ''NOTE:'';
■ xix. Removing and reserving paragraph (13)(i);
■ xx. Removing paragraphs (13)(ii) and (iii);
■ xxi. Redesignating paragraph (13)(iv) as (13)(ii), and removing the word ''NOTE:'';
■ xxii. Removing paragraphs (14)(i) through (v);
■ xxiii. Redesignating paragraph (14)(vi) as (14)(i), and removing the word ''NOTE:'';
■ xxiv. Removing paragraph (14)(vii);
■ xxv. Redesignating paragraph (14)(viii) as (14)(ii), and removing the word ''NOTE:'';
■ xxvi. Revising paragraph (15)(i); and
■ xxvii. Removing the word ''NOTE:'' from paragraph (15)(ii).

The revisions and additions read as follows:

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*

* * * * *

Family Apiaceae: *Lilaeopsis schaffneriana* var. *recurva* (Huachuca water umbel)

* * * * *

NOTE: The maps provided are for informational purposes only. Maps for Units 1–7 follow:

* * * * *

Family Apiaceae: *Lomatium cookii* (Cook's lomatium, Cook's desert parsley)

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(14) * * *

(ii) Unit IV5 excludes land bound by 447470, 4673148; 447474, 4673000; 448289, 4673443; 448361, 4673480; 448056, 4673583; 447789, 4673459; 447703, 4673370; 447653, 4673327; 447540, 4673183; 447470, 4673148.

* * * * *

(21) * * *

(ii) Unit IV12 excludes land bound by 447273, 4659208; 447203, 4659076; 446889, 4658443; 446818, 4658110; 446840, 4658012; 446808, 4657965; 446838, 4657883; 446882, 4657863; 447019, 4657935; 447073, 4658033; 447029, 4658069; 446977, 4658167; 447192, 4658493; 447212, 4658784; 447290, 4658824; 447455, 4658678; 447581, 4658749; 447723, 4658749; 447975, 4658749; 447971, 4658840; 447876, 4659346; 447403, 4659604; 447407, 4659962; 447305, 4660216; 447329, 4660591; 447452, 4660569; 447689, 4660530; 447706, 4660555; 447643, 4660838; 447497, 4660883; 447296, 4660866; 447186, 4660643; 447167, 4660448; 447273, 4659208.

* * * * *

Family Asclepiadaceae: *Asclepias welshii* (Welsh's milkweed)

* * * * *

NOTE: The map provided is for informational purposes only. Map follows:

* * * * *

Family Asteraceae: *Ambrosia pumila* (San Diego ambrosia)

* * * * *

(9) * * *

(i) Subunit 5B excludes land bound by 485418, 3656210; 485473, 3656204; 485522, 3656211; 485590, 3656193; 485677, 3656187; 485720, 3656187; 485731, 3656348; 485724, 3656348; 485576, 3656356; 485534, 3656359; 485509, 3656315; 485472, 3656290; 485448, 3656272; 485411, 3656271; 485411, 3656267; 485411, 3656234; returning to 485418, 3656210.

* * * * *

Family Asteraceae: *Cirsium loncholepis* (La Graciosa thistle)

* * * * *

(6) * * *

(i) Subunit 1A excludes land bounded by the following Universal Transverse Mercator (UTM) North American Datum of 1983 (NAD83) coordinates (E,N):

(A) 717937.807, 3880783.475; 717849.041, 3880821.504; 717848.938, 3880817.720; 717849.392, 3880817.650; 717845.549, 3880807.313; 717843.593, 3880800.027; 717841.269, 3880793.548; 717837.501, 3880785.669; 717836.131, 3880783.911; 717828.857, 3880776.863; 717817.989, 3880765.903; 717812.187, 3880758.047; 717776.455, 3880744.115; 717946.560, 3880643.422; 717990.327, 3880695.942; thence returning to 717937.807, 3880783.475.

(B) 717791.575, 3880459.554; 717799.332, 3880445.386; 717793.518, 3880418.908; 717877.719, 3880381.762; 717877.788, 3880381.731; 717878.022, 3880381.614; 717878.247, 3880381.481; 717878.464, 3880381.333; 717878.670, 3880381.172; 717931.589, 3880343.026; 717999.080, 3880459.602; 717946.560, 3880564.642; 717687.919, 3880630.938; 717691.226, 3880626.729; 717694.265, 3880622.551; 717699.251, 3880616.956; 717706.283, 3880606.405; 717710.417, 3880598.353; 717714.342, 3880595.747; 717713.908, 3880594.512; 717712.625, 3880591.920; 717715.053, 3880585.202; 717716.723, 3880581.192; 717718.867, 3880576.150; 717721.160, 3880570.917; 717723.858, 3880566.063; 717724.433, 3880561.206; 717728.941, 3880560.990; 717731.725, 3880540.438; 717732.513, 3880535.099; 717733.828, 3880528.387; 717734.669, 3880522.890; 717736.483, 3880519.997; 717735.778, 3880516.228; 717736.401, 3880511.843; 717741.119, 3880509.748; 717750.271, 3880489.562, thence returning to 717791.575, 3880459.554.

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(7) * * *

(i) Unit 2 excludes land bounded by the following UTM NAD83 coordinates (E,N): 733655.106, 3859548.220; 733713.315, 3859516.470; 733951.440, 3859516.470; 733951.440, 3859418.574; 734594.379, 3859415.928; 734594.379, 3860029.762; 734472.671, 3860021.825; 734462.087, 3860249.367; 734200.149, 3860336.680; 734110.191, 3860336.680; 733932.919, 3860286.409; 733932.919, 3860222.908; 733623.356, 3860209.679; 733615.419, 3860204.388; 733607.481, 3860127.658; 733567.794, 3860053.575; 733541.335, 3859939.804; 733533.398, 3859889.533, thence returning to 733655.106, 3859548.220.

* * * * *

Family Asteraceae: *Deinandra conjugens* (Otay tarplant)

(1) * * * The maps provided are for informational purposes only.

* * * * *

Family Asteraceae: *Deinandra increscens* ssp. *villosa* (Gaviota tarplant)

(1) * * * The maps provided are for informational purposes only.

* * * * *

Family Asteraceae: *Enceliopsis nudicaulis* var. *corrugata* (Ash Meadows sunray)

* * * * *

NOTE: Map provided is for informational purposes only. Map follows:

* * * * *

Family Asteraceae: *Erigeron parishii* (Parish's daisy)

(1) * * * The maps provided are for informational purposes only.

* * * * *

Family Asteraceae: *Grindelia fraxinopratensis* (Ash Meadows gumplant)

* * * * *

NOTE: Map provided is for informational purposes only. Map follows:

* * * * *

Family Asteraceae: *Helianthus paradoxus* (Pecos sunflower)

(1) * * * The maps provided are for informational purposes only.

* * * * *

Family Asteraceae: *Holocarpha macradenia* (Santa Cruz tarplant)

(1) * * * The maps provided are for informational purposes only.

* * * * *

Family Asteraceae: *Lasthenia conjugens* (Contra Costa goldfields)

(1) Critical habitat units are depicted for Alameda, Contra Costa, Mendocino, Napa, and Solano Counties, California, on the maps in this entry. The maps provided are for informational purposes only.

* * * * *

Family Asteraceae: *Pentachaeta lyonii* (Lyon's pentachaeta)

* * * * *

(6) * * *

(ii) Unit 1 for *Pentachaeta lyonii* is depicted on Map 2 in paragraph (7)(ii) of this entry.

* * * * *

(8) * * *

(ii) Unit 3 for *Pentachaeta lyonii* is depicted on Map 3 in paragraph (11)(ii) of this entry.

(9) * * *

(ii) Unit 4 for *Pentachaeta lyonii* is depicted on Map 3 in paragraph (11)(ii) of this entry.

(10) * * *

(ii) Unit 5 for *Pentachaeta lyonii* is depicted on Map 3 in paragraph (11)(ii) of this entry.

* * * * *

Family Asteraceae: *Senecio franciscanus* (San Francisco Peaks groundsel)

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NOTE: Map provided is for informational purposes only. Map follows:

* * * * *

Family Asteraceae: *Stephanomeria malheurensis* (Malheur wire-lettuce)

* * * * *

NOTE: Map provided is for informational purposes only. Map follows:

* * * * *

Family Asteraceae: *Taraxacum californicum* (California taraxacum)

* * * * *

(9) * * *

(ii) Unit 5 for *Taraxacum californicum* is depicted on the map in paragraph (6)(ii) of this entry.

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(12) * * *

(ii) Unit 8 for *Taraxacum californicum* is depicted on the map in paragraph (11)(ii) of this entry.

(13) * * *

(ii) Unit 9 for *Taraxacum californicum* is depicted on the map in paragraph (11)(ii) of this entry.

(14) * * *

(ii) Unit 10 for *Taraxacum californicum* is depicted on the map in paragraph (11)(ii) of this entry.

(15) * * *

(ii) Unit 11 for *Taraxacum californicum* is depicted on the map in paragraph (11)(ii) of this entry.

(16) * * *

(ii) Unit 12 for *Taraxacum californicum* is depicted on the map in paragraph (11)(ii) of this entry.

* * * * *

Family Berberidaceae: *Berberis nevinii* (Nevin's barberry)

(1) Critical habitat is depicted for Riverside County, California, in the text and on the map in this entry. The map

provided is for informational purposes only.

* * * * *

Family Boraginaceae: *Amsinckia grandiflora* (large-flowered fiddleneck)

* * * * *

NOTE: Map provided is for informational purposes only. Map follows:

* * * * *

Family Brassicaceae: *Arabis perstellata* (Braun's rock-cress)

(1) Critical habitat units are depicted for Franklin, Henry, and Owen Counties, Kentucky, and Rutherford and Wilson Counties, Tennessee, on the maps in this entry. The maps provided are for informational purposes only.

* * * * *

Family Brassicaceae: *Erysimum capitatum* var. *angustatum* (Contra Costa wallflower)

* * * * *

NOTE: Map provided is for informational purposes only. Map follows:

* * * * *

Family Brassicaceae: *Lesquerella kingii* ssp. *bernardina* (San Bernardino Mountains bladderpod)

(1) Critical habitat units are depicted for San Bernardino County, California, on the map in this entry. The map provided is for informational purposes only.

* * * * *

Family Brassicaceae: *Thlaspi californicum* (Kneeland Prairie penny-cress)

(1) * * * The map provided is for informational purposes only.

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Family Caryophyllaceae: *Arenaria ursina* (Bear Valley sandwort).

(1) * * * The maps provided are for informational purposes only.

* * * * *

Family Chenopodiaceae: *Nitrophila mohavensis* (Amargosa niterwort)

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NOTE: Map provided is for informational purposes only. Map follows:

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Family Cistaceae: *Hudsonia montana* (mountain golden heather)

* * * * *

NOTE: Map provided is for informational purposes only. Map follows:

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Family Cyperaceae: *Carex lutea* (golden sedge)

* * * * *

Family Cyperaceae: *Carex specuicola* (Navajo sedge)

* * * * *

NOTE: Map provided is for informational purposes only. Map follows:

* * * * *

Family Euphorbiaceae: *Chamaesyce hooveri* (Hoover's spurge)

* * * * *

(9) Unit 4: Stanislaus and Tuolumne Counties. Map of Unit 4 is provided at paragraph (10)(ii) of this entry.

* * * * *

Family Fabaceae: *Astragalus albens* (Cushenbury milk-vetch)

(1) Critical habitat units are depicted for San Bernardino County, California, on the map below. The map provided is for informational purposes only.

* * * * *

Family Fabaceae: *Astragalus ampullarioides* (Shivwits milk-vetch)

* * * * *

(7) Unit 3—Coral Canyon, Washington County, Utah. Map of Unit 3 is provided at paragraph (8)(ii) of this entry.

* * * * *

Family Fabaceae: *Astragalus brauntonii* (Braunton's milk-vetch)

* * * * *

(6) * * *

(ii) Unit 1 for *Astragalus brauntonii* is depicted on Map 2 in paragraph (7)(ii) of this entry.

* * * * *

Family Fabaceae: *Astragalus lentiginosus* var. *piscinensis* (Fish Slough milk-vetch)

(1) * * * The map provided is for informational purposes only.

* * * * *

Family Fabaceae: *Astragalus magdalenae* var. *peirsonii* (Peirson's milk-vetch)

* * * * *

Family Fabaceae: *Astragalus montii* (Heliotrope milk-vetch)

* * * * *

NOTE: Map provided is for informational purposes only. Map follows:

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Family Fabaceae: *Astragalus phoenix* (Ash Meadows milk-vetch)

* * * * *

NOTE: Map provided is for informational purposes only. Map follows:

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Family Fabaceae: *Astragalus pycnostachyus* var. *lanosissimus* (Ventura Marsh milk-vetch)

(1) * * * The maps provided are for informational purposes only.

* * * * *

Family Gentianaceae: *Centaurium namophilum* (spring-loving centaury)

* * * * *

NOTE: Map provided is for informational purposes only. Map follows:

* * * * *

Family Hydrophyllaceae: *Eriodictyon capitatum* (Lompoc yerba santa)

(1) Critical habitat units are depicted for Santa Barbara County, California, on the map in this entry. The map provided is for informational purposes only.

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Family Lamiaceae: *Hedeoma todsenii* (Todsens pennyroyal)

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NOTE: Map provided is for informational purposes only. Map follows:

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Family Liliaceae: *Chlorogalum purpureum* (purple amole)

(1) * * * The maps provided are for informational purposes only.

* * * * *

Family Limnanthaceae: *Limnanthes floccosa* ssp. *californica* (Butte County meadowfoam)

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Family Loasaceae: *Mentzelia leucophylla* (Ash Meadows blazing star)

* * * * *

NOTE: Map provided is for informational purposes only. Map follows:

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Family Malvaceae: *Kokia drynarioides* (koki'o)

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1. * * *

NOTE: Map provided is for informational purposes only. Map follows:

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2. * * *

NOTE: Map provided is for informational purposes only. Map follows:

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3. * * *

NOTE: Map provided is for informational purposes only. Map follows:

* * * * *

Family Malvaceae: *Sidalcea keckii* (Keck's checkermallow)

(1) * * * The maps provided are for informational purposes only.

* * * * *

Family Malvaceae: *Sidalcea oregana* var. *calva* (Wenatchee Mountains checker-mallow)

(1) * * * The map provided is for informational purposes only.

* * * * *

Family Onagraceae: *Oenothera deltoides* ssp. *howellii* (Antioch Dunes evening-primrose)

* * * * *

NOTE: Map provided is for informational purposes only. Map follows:

* * * * *

Family Orchidaceae: *Piperia yadonii* (Yadon's piperia)

* * * * *

(6) * * *

(ii) Unit 1 is depicted on Map 2 in paragraph (9)(ii) of this entry.

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(8) * * *

(ii) Unit 2 is depicted on Map 2 in paragraph (9)(ii) of this entry.

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(10) * * *

(ii) Unit 4 is depicted on Map 3 in paragraph (12)(ii) of this entry.

* * * * *

(11) * * *

(ii) Unit 5 is depicted on Map 3 in paragraph (12)(ii) of this entry.

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(12) * * *

(ii) Map of Units 4, 5, and 6 (Map 3) and detail map of Subunit 6a (Map 4) follow:

* * * * *

Family Orobanchaceae: *Castilleja cinerea* (ash-gray Indian paintbrush)

(1) * * * The maps provided are for informational purposes only.

* * * * *

Family Poaceae: *Neostapfia colusana* (Colusa grass)

(1) Critical habitat units are depicted for Mariposa, Merced, Stanislaus, Tuolumne, and Yolo Counties, California, on the maps below. The maps provided are for informational purposes only.

* * * * *

Family Poaceae: *Orcuttia inaequalis* (San Joaquin Valley Orcutt grass)

* * * * *

(9) Unit 4: Fresno County, California. Map of Unit 4 is provided at paragraph (10)(ii) of this entry.

* * * * *

Family Poaceae: *Orcuttia pilosa* (hairy Orcutt grass)

* * * * *

(9) Unit 5: Madera County, California. Map of Unit 5 is provided at paragraph (11) of this entry.

(10) Unit 6: Madera County, California. Map of Unit 6 is provided at paragraph (11) of this entry.

* * * * *

Family Poaceae: *Orcuttia tenuis* (slender Orcutt grass)

* * * * *

(6) * * *

(i) Unit 3A excludes land bounded by 579328, 4466483; 579344, 4463788; 580057, 4465659; 580132, 4465813; 580184, 4465918; 580313, 4466064; 580839, 4466455; returning to 579328, 4466483.

* * * * *

(9) * * *

(i) Unit 5A excludes land bounded by 519133, 4304515; 519186, 4304513; 519190, 4304580; 519259, 4304536; 519575, 4304594; 519707, 4304515; 519882, 4304203; 519928, 4304160; 519924, 4304114; 519785, 4304012; 519729, 4303886; 519677, 4303975; 519634, 4303917; 519639, 4303693; 519840, 4303690; 519846, 4303903; 519925, 4303879; 519937, 4303781; 519975, 4303782; 519980, 4304504; 519952, 4304510; 519944, 4304600; 519130, 4304611; returning to 519133, 4304515.

* * * * *

Family Poaceae: *Orcuttia viscida* (Sacramento Orcutt grass)

* * * * *

Family Poaceae: *Poa atropurpurea* (San Bernardino bluegrass)

* * * * *

(12) * * *

(i) Unit 14 excludes land bounded by the following UTM NAD27 coordinates (E N): 550869, 3637877; 550892, 3637893; 550915, 3637910; 550939, 3637916; 550959, 3637913; 550973, 3637897; 550986, 3637895; 550983, 3637881; 550976, 3637859; 550982, 3637842; 551000, 3637820; 551017, 3637807; 551029, 3637784; 551025, 3637771; 551012, 3637769; 551011, 3637750; 551008, 3637732; 551000, 3637715; 550976, 3637723; 550955, 3637708; 550940, 3637686; 550937, 3637662; 550939, 3637658; 550948, 3637643; 550967, 3637618; 550989, 3637610; 550998, 3637595; 550987, 3637576; 550953, 3637556; 550924, 3637552; 550899, 3637554; 550882, 3637564; 550861, 3637549; 550854, 3637526; 550832, 3637523; 550793, 3637535; 550754, 3637564; 550724, 3637595; 550709, 3637624; 550686, 3637674; 550683, 3637707; 550710, 3637763; 550760, 3637826; 550800, 3637855; 550816, 3637865; 550845, 3637863; 550869, 3637877; and land bounded by 551248, 3637523; 551267, 3637518; 551283, 3637506; 551295, 3637484; 551295, 3637459; 551300, 3637428; 551303, 3637401; 551304, 3637378; 551291, 3637350; 551276, 3637341; 551265, 3637333; 551250, 3637339; 551231, 3637345; 551222, 3637325; 551208, 3637332; 551181, 3637346; 551166, 3637333; 551148, 3637324; 551131, 3637323; 551098, 3637329; 551080, 3637339; 551070, 3637355; 551074, 3637364; 551089, 3637352; 551111, 3637352; 551130, 3637365; 551148, 3637378; 551142, 3637405; 551144, 3637427; 551148, 3637460; 551158, 3637486; 551172, 3637492; 551194, 3637497; 551198, 3637512; 551215, 3637520; 551248, 3637523.

* * * * *

(13) * * *

(ii) Unit 15 for *Poa atropurpurea* is depicted on the map in paragraph (12)(ii) of this entry.

* * * * *

Family Poaceae: *Tuctoria mucronata* (Solano grass)

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Family Poaceae: *Zizania texana* (Texas wild-rice)

* * * * *

NOTE: The map provided is for informational purposes only. Map follows:

* * * * *

Family Polygonaceae: *Chorizanthe pungens* var. *pungens* (Monterey spineflower)

* * * * *

(9) Unit 4: Asilomar Unit, Monterey County, California. Map of Unit 4 is provided at paragraph (8)(ii) of this entry.

(10) Unit 5: Freedom Boulevard Unit, Monterey County, California. Map of Unit 5 is provided at paragraph (6)(ii) of this entry.

(11) Unit 6: Manresa Unit, Monterey County, California. Map of Unit 6 is provided at paragraph (6)(ii) of this entry.

(12) Unit 7: Prunedale Unit, Monterey County, California. Map of Unit 7 is provided at paragraph (7)(ii) of this entry.

(13) Unit 8: Fort Ord Unit, Monterey County, California.

(i) From USGS 1:24,000 scale quadrangle Marina, Salinas, Seaside, and Spreckles. Unit 8 excludes land bounded by the following UTM zone 10 NAD83 coordinates (E, N):

(A) 609791, 4053559; 609792, 4053420; 609833, 4053395; 609908, 4053357; 610068, 4053380; 610032, 4053598; returning to 609791, 4053559.

(B) 611172, 4052992; 611242, 4052923; 611314, 4052987; 611402, 4052913; 611442, 4052907; 611524, 4052850; 611543, 4052844; 611587, 4052866; 611607, 4052919; 611628, 4053042; 611618, 4053074; 611670, 4053189; 611761, 4053277; 612029, 4053402; 612049, 4053521; 611863, 4053644; 611727, 4053518; 611656, 4053497; 611611, 4053451; 611535, 4053431; 611438, 4053400; 611394, 4053341; 611346, 4053238; 611278, 4053122; 611230, 4053068; returning to 611172, 4052992.

(C) 611476, 4056579; 611418, 4056559; 611437, 4056500; 611496, 4056520; returning to 611476, 4056579.

(ii) Map of Unit 8 is provided at paragraph (8)(ii) of this entry.

* * * * *

Family Polygonaceae: *Chorizanthe robusta* var. *hartwegii* (Scotts Valley spineflower)

(1) * * * The map provided is for informational purposes only.

* * * * *

Family Polygonaceae: *Chorizanthe robusta* var. *robusta* (robust spineflower)

(1) * * * The maps provided are for informational purposes only.

* * * * *

Family Polygonaceae: *Eriogonum gypsophilum* (gypsum wild buckwheat)

* * * * *

NOTE: The map provided is for informational purposes only. Map follows:

* * * * *

Family Polygonaceae: *Eriogonum kennedyi* var. *austromontanum* (Southern mountain wild-buckwheat)

(1) * * * The maps provided are for informational purposes only.

* * * * *

Family Polygonaceae: *Eriogonum ovalifolium* var. *vineum* (Cushenbury buckwheat)

(1) Critical habitat units are depicted for San Bernardino County, California, on the map below. The map provided is for informational purposes only.

* * * * *

Family Polygonaceae: *Eriogonum pelinophilum* (clay-loving wild-buckwheat)

* * * * *

NOTE: The map provided is for informational purposes only. Map follows:

* * * * *

Family Polygonaceae: *Oxytheca parishii* var. *goodmaniana* (Cushenbury oxytheca)

(1) Critical habitat units are depicted for San Bernardino County, California, on the map below. The map provided is for informational purposes only.

* * * * *

Family Polygonaceae: *Polygonum hickmanii* (Scotts Valley polygonum)

(1) * * * The map provided is for informational purposes only.

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Family Ranunculaceae: *Delphinium bakeri* (Baker's larkspur)

(1) * * * The maps provided are for informational purposes only.

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Family Ranunculaceae: *Delphinium luteum* (yellow larkspur)

(1) * * * The maps provided are for informational purposes only.

* * * * *

Family Rosaceae: *Invesia kingii* var. *eremica* (Ash Meadows invesia)

* * * * *

NOTE: The map provided is for informational purposes only. Map follows:

* * * * *

Family Scrophulariaceae: *Castilleja campestris* ssp. *succulenta* (fleshy owl's-clover)

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Family Sterculiaceae: *Fremontodendron mexicanum* (Mexican flannelbush)

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(5) * * *

(ii) Map of Subunits 1A and 1B follows:

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Family Themidaceae: *Brodiaea filifolia* (thread-leaved brodiaea)

* * * * *

(15) * * *

(i) Unit 12 excludes land bounded by the following UTM NAD83 coordinates (E, N):

(A) 485555, 3652857; 485555, 3652822; 485572, 3652827; 485610, 3652827; 485613, 3652829; 485651, 3652882; 485667, 3652882; 485667, 3652899; 485556, 3652899; 485555, 3652857; and

(B) 485629, 3652710; 485749, 3652710; 485749, 3652807; 485746, 3652807; 485745, 3652820; 485744, 3652822; 485723, 3652822; 485717, 3652810; 485708, 3652806; 485690, 3652791; 485679, 3652788; 485671, 3652784; 485670, 3652780; 485665, 3652765; 485663, 3652761; 485649, 3652754; 485648, 3652750; 485635, 3652718; 485629, 3652710.

* * * * *

Martha Williams,

Principal Deputy Director, Exercising the Delegated Authority of the Director, U.S. Fish and Wildlife Service.

[FR Doc. 2021–15045 Filed 7–21–21; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 210716–0148]

RIN 0648–BK59

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Specifications

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

ACTION: Final rule.

SUMMARY: NMFS sets new 2021 and projected specifications for fishing year 2022 butterfish and *Illex* squid, while maintaining the current longfin squid and Atlantic mackerel specifications for 2021 and projected for 2022–2023. This action also adjusts the dealer reporting requirement and adjusts the closure threshold for the *Illex* squid fishery to avoid overages. This action is required to ensure that specifications for these fisheries is based on the best scientific information available. These specifications are intended to promote the sustainable utilization and conservation of the mackerel, squid, and butterfish resources. Additionally, this action reaffirms previously approved Atlantic chub mackerel specifications for 2021–2022.

DATES: Effective July 22, 2021.

ADDRESSES: Copies of supporting documents used by the Mid-Atlantic Fishery Management Council, including the Environmental Assessment (EA), the Regulatory Impact Review (RIR), and the Regulatory Flexibility Act (RFA) analysis are available on the Mid-Atlantic Fishery Management Council's website, or from: Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901, telephone (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Aly Pitts, Fishery Management Specialist, (978) 281–9352.

SUPPLEMENTARY INFORMATION:

Background

The regulations implementing the Mackerel, Squid, and Butterfish Fishery Management Plan (FMP) require the Mid-Atlantic Fishery Management Council's Mackerel, Squid, and Butterfish Monitoring Committee to develop specification recommendations for each species based upon the acceptable biological catch (ABC) advice of the Council's Scientific and Statistical Committee (SSC). The FMP regulations also require the specification of annual catch limits (ACL) and accountability measure (AM) provisions for butterfish. Both squid species are exempt from the ACL/AM requirements because they have a life cycle of less than one year. The regulations for squid require the specification of domestic annual harvest (DAH), the butterfish mortality cap in the longfin squid fishery, and initial optimum yield (IOY) for both squid species.

On May 26, 2021 (86 FR 28323), we published a proposed rule in the **Federal Register** seeking public comment on setting new 2021 and projected specifications for fishing year 2022 butterfish and *Illex* squid, while maintaining the current longfin squid and Atlantic mackerel specifications for 2021 and projected for 2022–2023, in addition to adjusting the dealer reporting requirement and adjusts the closure threshold for the *Illex* squid fishery to avoid overages. The proposed rule for this action included additional background on specifications and the details of how the Council derived its recommended specifications for Atlantic mackerel, *Illex* squid, longfin squid, and butterfish. Those details are not repeated here. For additional information, please refer to the proposed rule for this action.

Following the publication of the proposed rule, the Council requested that we increase the *Illex* squid 2021–2022 ABC from 30,000 mt ABC to 33,000 mt, as recommended by the SSC. At its May 2021 meeting, the SSC recommended this revised ABC based on updated information, including patterns that suggest an increase in abundance, low levels of exploitation, and catches that have been constrained by existing ABCs for the last 4 years. The SSC is confident that the *Illex* stock is at a high level of abundance and experiencing a low exploitation rate. This increase was within the range of alternatives considered and analyzed in the EA for this action, and the public had the opportunity to comment on this increase at the May 2021 Monitoring Committee meeting, the May 2021 SSC meeting, and the June 2021 Council meeting.

2021–2022 Atlantic Mackerel Specifications

The original 2021 Atlantic mackerel ABC recommended by the SSC for Framework 13 (84 FR 58053; October 30, 2019) was based on projections that recognized a strong 2015 year class in the assessment results. At its July 2020 meeting, the SSC considered preliminary results from the 2019 Canadian Atlantic mackerel assessment, which indicated lower than expected recruitment. As a result, the SSC recommended maintaining the more conservative 2020 ABC for 2021. This action maintains the 2020 mackerel specifications outlined in Table 1 for 2021. These specifications also maintain the 129-mt river herring and shad catch cap. There was an Atlantic mackerel management track assessment June 2021 that will inform future ABC specifications once the final report and results are available.

TABLE 1—ATLANTIC MACKEREL FINAL 2021 AND PROJECTED 2022 SPECIFICATIONS

Specification	2021–2022
Overfishing Limit (OFL)	NA
ABC	29,184
Canadian Deduction	10,000
U.S. ABC	19,184
Recreational Allocation	1,270
Commerical Allocation	17,914
Management Uncertainty Buffer (3 percent)	537
Commercial Annual Catch Target	17,377
DAH	17,312

2021–2022 Longfin Squid Specifications

This action maintains the 2020 longfin squid ABC of 23,400 mt for 2021–2022. The background for this ABC is discussed in the proposed rule to implement the 2018–2020 squid and butterfish specifications (82 FR 58583; December 13, 2017) and is not repeated here. The IOY, DAH, and domestic annual processing (DAP) are calculated by deducting an estimated discard rate (2.0 percent) from the ABC (Table 2). This action also maintains the existing allocation of longfin squid DAH among trimesters according to percentages specified in the FMP (Table 3). The Council will review these specifications during its annual specifications process following annual data updates each spring, and may change its recommendation for 2022 if new information is available.

TABLE 2—LONGFIN SQUID FINAL 2021 AND PROJECTED 2022 SPECIFICATIONS

Specification	Metric tons
OFL	Unknown.
ABC	23,400.
IOY	22,932.
DAH/DAP	22,932.

TABLE 3—LONGFIN QUOTA TRIMESTER ALLOCATIONS FINAL 2021 AND PROJECTED 2022 SPECIFICATIONS

Trimester	Percent	Metric tons
I (Jan–Apr)	43	9,861
II (May–Aug)	17	3,898
III (Sep–Dec)	40	9,173

2021–2022 Butterfish Specifications

This action sets the 2021–2022 butterfish specifications as outlined in Table 4, which are a 72-percent reduction from 2020. The 2020 butterfish management track assessment found butterfish to be not overfished with no overfishing occurring in 2019, but if the full ABC had been caught, projections suggest overfishing would have occurred and the stock would have become overfished. While butterfish recruitment is variable, it has been declining since 1999 with historically low recruitment in recent years. The 2021–2022 butterfish specifications use the Council's risk policy at the time and the SSC's assignment of a 100-percent coefficient of variation to the projected OFL. These specifications maintain the existing butterfish mortality cap in the longfin squid fishery of 3,884 mt and the existing allocation of the butterfish mortality cap among longfin squid trimesters (Table 5).

TABLE 4—BUTTERFISH FINAL 2021 AND PROJECTED 2022 SPECIFICATIONS IN METRIC TONS

Specification	2021	2022
OFL	22,053	24, 341
ABC	11,993	17,854
ACT	11,393	16,961
Assumed discards	637	637
Total discards	5,043	5,466
Butterfish cap in longfin fishery	3,884	3,884
DAH	6,350	11,495

TABLE 5—2021 TRIMESTER ALLOCATION OF BUTTERFISH MORTALITY CAP ON THE LONGFIN SQUID FISHERY

Trimester	Percent	Metric tons
I (Jan–Apr)	43	1,670
II (May–Aug)	17	660
III (Sep–Dec)	40	1,554
Total	100	3,844

2021–2022 Illex Squid Specifications

Consistent with the Council's June 2021 recommendation, NMFS adjusts the 2021 *Illex* squid ABC from 30,000 mt to 33,000 mt. Based on the SSC's recommendation, the Council recommended that the ABC be reduced by the discard rate of 4.61 percent, a change from the status quo discard rate of 4.52 percent, due to updated data that will be used in the 2022 *Illex* Squid Research Track Assessment. Using the updated discard rate results in a 2021–2022 IOY, DAH, and DAP of 31,478 mt (Table 6). The Council will review this decision during its annual specifications process following annual data updates each spring, and may change its

recommendations for 2022 if new information is available.

TABLE 6—ILLEX SQUID FINAL 2021 AND PROJECTED 2022 SPECIFICATIONS IN METRIC TON

OFL	Unknown
ABC	33,000
IOY	31,478
DAH/DAP	31,478

Illex Squid In-Season Management Measures

This action modifies the current weekly reporting for commercial dealers after July 15 to a 48-hour reporting requirement for accurate landings monitoring during the fishing season. This action also modifies the closure threshold from 95 percent to 94 percent. Both measures are designed to help avoid quota overages, which occurred in 2018 and 2019.

Reaffirmation of 2021–2022 Atlantic Chub Mackerel Specifications

Amendment 21 to the FMP previously implemented chub mackerel specifications for the 2020–2022 fishing years. The Council reevaluated these specifications at its October 2020 meeting and decided to make no adjustments for the 2021–2022 fishing years. This action reaffirms the previously implemented specifications.

TABLE 7—REAFFIRMED ATLANTIC CHUB MACKEREL FINAL 2021 AND PROJECTED 2022 SPECIFICATIONS SPECIFICATIONS IN METRIC TONS

Specification	2021–2022
ABC	2,300
Annual Catch Limit (ACL)	2,262
Annual Catch Target	2,171
Total Allowable Landings	2,041

Comments

We received four comments on the proposed rule; one comment from the MAFMC, one from a commercial fishing industry member, and two from environmental organizations. The MAFMC and commercial fishing industry member recommended we increase the *Illex* squid ABC. We are increasing the *Illex* squid ABC from 30,000 mt to 33,000 mt in this action based on updated information considered by the Council. The two environmental organizations mentioned the poor stock status of Atlantic mackerel in Canada and the actions Fisheries and Oceans Canada has taken to manage mackerel. The Council will be addressing Atlantic mackerel management at its meeting in August 2021, following the updated management track assessment and the July SSC meeting.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the Atlantic Mackerel, Squid, and Butterfish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

There is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date. The start of the fishing year began on January 1, 2021. This rule increases the *Illex* squid ABC and adjusts the reporting requirements and in-season closure trigger to avoid another overage. A delay in implementing final measures would prevent the economic benefits from this rule from being realized and prevent achieving optimal yield in the summer fishing season. In addition, this rule reduces the butterfish ABC below the current specifications based on a recent butterfish stock assessment. Past performance suggests that this will not limit the fishery as recent landings have been lower than the reduced ABC, but there remains a risk of overages with the fishery operating under the current higher specifications. Therefore, it is in the public interest to implement this final action as soon as possible.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification and no other information has been obtained that suggests any other conclusion. As a result, a regulatory flexibility analysis was not required and none was prepared.

This final rule does not contain a change to a collection of information requirement for purposes of the Paperwork Reduction Act of 1995. The existing collection of information requirements would continue to apply under the following OMB Control Number: 0648–0229.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: July 16, 2021.

Carrie Robinson,

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

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.7, add paragraph (f)(1)(ii) to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

* * * * *

(f) * * *

(1) * * *

(ii) From July 15 through December 31, dealer or processor reports documenting *Illex* squid landings greater than 10,000 pounds (4.5 mt) must be received with 48 hours of landing.

* * * * *

■ 3. In § 648.24, revise paragraph (a)(2) to read as follows:

§ 648.24 Fishery closures and accountability measures.

(a) * * *

(2) *Illex.* NMFS shall close the directed *Illex* fishery in the EEZ when the Regional Administrator projects that 94 percent of the *Illex* DAH is harvested. The closure of the directed fishery shall be in effect for the remainder of that fishing period, with incidental catches allowed as specified at § 648.26.

* * * * *

[FR Doc. 2021–15538 Filed 7–21–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 210217–0022]

RTID 0648–XB064

Fisheries of the Exclusive Economic Zone Off Alaska; Kamchatka Flounder in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Kamchatka flounder in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2021 Kamchatka flounder initial total allowable catch (ITAC) in the BSAI.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), July 19, 2021, through 2400 hours, A.l.t., December 31, 2021.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7228.

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

The 2021 Kamchatka flounder ITAC in the BSAI is 7,635 metric tons (mt) as established by the final 2021 and 2022 harvest specifications for groundfish in the BSAI (86 FR 11449, February 25, 2021). In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2021 Kamchatka flounder ITAC in the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 3,635 mt, and is setting aside the remaining 4,000 mt as incidental catch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Kamchatka flounder in the BSAI.

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

Classification

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

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Kamchatka flounder in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 16, 2021.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

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

Dated: July 19, 2021.

Jennifer M. Wallace,

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

[FR Doc. 2021–15602 Filed 7–19–21; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 86, No. 138
Thursday, July 22, 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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1218

[Document Number AMS–SC–21–0022]

Blueberry Promotion, Research and Information Order; Change in Membership, Nomination Procedures and Term of Office

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal invites comments on changes in membership of the U.S. Highbush Blueberry Council (Council) under the Blueberry Promotion, Research and Information Order (Order), by removing the first-handler member and alternate position and adding two exporter member and alternate positions. Conforming changes would be made to the nomination procedures. In addition, the proposal would allow members and alternates to remain in office until a successor is appointed. The Council administers the Order with oversight by the U.S. Department of Agriculture (USDA).

DATES: Comments must be received by September 20, 2021.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. All 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 proposed rule will be included in the rulemaking record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting comments will be made public on the internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jeanette Palmer, Marketing Specialist, Promotion and Economics Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Room 1406–S, Stop 0244, Washington, DC 20250–0244; telephone: (202) 720–5976; or electronic mail: *Jeanette.Palmer@usda.gov.*

SUPPLEMENTARY INFORMATION: This proposal is issued under the Order (7 CFR part 1218). The Order is authorized under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act) (7 U.S.C. 7411–7425).

Executive Orders 12866 and 13563

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, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules and promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

Executive Order 13175

This action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. AMS has assessed the impact of this proposed rule on Indian tribes and determined that this rule would not have tribal implications that require consultation under Executive Order 13175. AMS hosts a quarterly teleconference with tribal leaders where matters of mutual interest regarding the marketing of agricultural products are discussed. Information about the proposed changes to the regulations will be shared during an upcoming quarterly call, and tribal leaders will be informed about the proposed revisions to the regulation and the opportunity to submit comments. AMS will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided as needed with regards to this change to the Order.

Executive Order 12988

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the 1996 Act (7 U.S.C. 7423) provides that it shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under section 519 of the 1996 Act (7 U.S.C. 7418), a person subject to an order may file a written petition with USDA stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law, and request a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, USDA will issue a ruling on the petition. The 1996 Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of USDA's final ruling.

Background

This proposal invites comments on changes in the Council's membership under the Order. The Council administers the Order with oversight by USDA. Under the program, assessments are collected from domestic producers and importers and used for research and promotion projects designed to increase the demand for highbush blueberries. This proposed action would remove the first-handler member and alternate position and add two exporter member and alternate positions. This would help ensure that the Council reflects the distribution of domestic blueberry production and imports into the United States (U.S.) Conforming changes would be made to the nomination procedures. This proposal would also allow members and alternates to remain in office until a successor is appointed. This change would permit the Council to continue administration of the Order should appointments be delayed beyond the specified term of office. The two actions were unanimously

recommended by the Council at its meetings on November 18, 2020 and June 9, 2021.

Change in Membership

Section 1218.40(a) of the Order currently specifies that the Council be comprised of no more than 20 members and alternates appointed by the Secretary of Agriculture (Secretary). Twelve of the 20 members and alternates are producers. One producer member and alternate are from each of the following regions within the U.S.: Region #1 Western Region; Region #2 Midwest Region; Region #3 Northeast Region; and Region #4 Southern Region. One producer member and alternate are from each of the top eight blueberry producing states, based upon the average of the total tons produced over the previous three years. Currently, these states include California, Florida, Georgia, Michigan, New Jersey, North Carolina, Oregon, and Washington.

Of the remaining eight Council members and alternates, four members and alternates are importers. Two members and alternates must be an exporter, defined in § 1218.40(a)(4) as a blueberry producer currently shipping blueberries into the U.S. from the two largest foreign blueberry production areas, based on a three-year average (currently Chile and Canada). One member and alternate must be a first handler, defined in § 1218.40(a)(5) as a U.S. based independent or cooperative organization which is a producer/shipper of domestic blueberries. Finally, one member and alternate must represent the public. The public member representation on research and promotion boards is optional as provided for in the 1996 Act.

Section 1218.40(b) of the Order specifies that, at least once every five years, the Council will review the geographical distribution of the production of blueberries in the United States and the quantity of imports. The review is conducted through an audit of state crop production figures and Council assessment records. If warranted, the Council will recommend to the Secretary that its membership be altered to reflect changes in the geographical distribution of domestic blueberry production and the quantity of imports.

The Council met on November 18, 2020 and then again on June 9, 2021, to review domestic production data, import data, and assessment data for the past three years (2017–2019). This data is summarized in Table 1 below:

TABLE 1—U.S. AND IMPORT QUANTITIES AND ASSESSMENT DATA

Year	U.S. crop—utilized production [1] (1,000 lbs)	Imports (1,000 lbs) [2]	Domestic (U.S.) assessments [3]	Import assessments [3]
2017	512,740	398,190	$3,968,438	$3,577,559
2018	562,300	473,073	4,263,177	4,229,333
2019	673,050	579,181	5,172,055	5,040,722
3-year average	582,697	483,481	4,467,890	4,282,538

Sources: [1] NASS; [2] U.S. Customs and Border Protection; [3] Council Financial Audit Records 2019–2020.

As shown in Table 1, the quantity of imported blueberries, as well as import assessments collected, has increased in recent years.

In that time, there has been a substantial increase of imported product from both Peru and Mexico, with Peru exports into the U.S. surpassing Canada in 2019, as shown in Table 2.

TABLE 2—QUANTITY OF BLUEBERRIES FROM FOREIGN PRODUCTION AREAS

Foreign blueberry production areas shipping into the United States	Quantity (1,000 lbs)			
	2017	2018	2019	3-year average
Chile	162,932	181,951	164,872	169,918
Canada	111,979	110,755	142,425	121,720
Peru	41,516	82,273	154,288	92,692
Mexico	54,212	72,537	93,840	73,530
Argentina	26,099	23,581	22,130	23,937
All Other Countries	1,451	1,976	1,627	1,685

Source: U.S. Customs and Border Protection.

In 2015, the Council, after reviewing import and domestic production and assessment data, recommended changes to the membership; one such change included adding an additional exporter seat. At that time, data indicated considerable increased imports from Chile. The addition of the second exporter member allowed exporters from both Chile and Canada, the two countries shipping the greatest volume of blueberries into the U.S., to be represented on the Council. The Council took a similar approach when reviewing and recommending this proposed change in membership. It recognized the significant volume of imports from Peru and Mexico, discussing the need to add representatives from those production areas to the Council. Given the decision to try to maintain its current size and based on the data reviewed, it concluded it was important to have foreign producer representation similar to the structure of the state producer representation. Therefore, it recommended the addition of two exporter members. Four exporter member positions would provide the four largest foreign producing areas importing into the U.S., which represents ninety-five percent of the total volume of blueberries imported

into the U.S., a voice on the Council. This would realign the Council's membership to better reflect the distribution of domestic production and the quantity of imports into the U.S.

The Council conducts nominations two out of every three years. The Council is currently conducting nominations for seven member and alternate positions (year-one cycle) whose three-year term of office begins January 1, 2022, ending December 31, 2024. These include the four regional producer members, one exporter member, one importer member, the public member, and respective alternates. The Council will conduct nominations in 2022 for 13 member and alternate positions (year-two cycle) whose three-year term of office begins January 1, 2023, ending December 31, 2025. This would include one member from each of the top eight producing states, three importer members, one exporter member, the first-handler member, and respective alternates. To help ensure a smooth transition, while aligning with the Council's nomination schedule, the term of office for the recommended additional exporter member positions would begin January 1, 2023. Therefore, solicitation for the two additional exporter position nominees would be included in the nominations scheduled to be conducted in 2022. Since the first-handler member position is being replaced by one of the exporter positions, nominations for this position would not be conducted during the 2022 solicitation period. The first-handler member and alternate member positions would terminate December 31, 2022.

USDA has recommended that the initial term of office for the two additional exporter positions would be two years, instead of the prescribed three-year term of office for all Council member and alternate positions. The additional two exporter member and alternate term of office would begin January 1, 2023, ending December 31, 2024. As noted above, the Council conducts nominations two out of every three years, with seven positions to be filled in year one, and thirteen in year two. With including the nominations for the exporter positions in the year-two cycle, total positions to be filled would be 14 of the 21-member Council. Having an initial two-year term would align these two additional exporter positions with the year-one nomination cycle, reestablishing the distribution between the two nomination cycles. Year-one nomination cycle would include solicitation for nine positions: Four regional producer member positions, one importer member position, three exporter member positions, one public member position, and respective alternates. The year-two nomination cycle would include solicitation for 12 positions: One member from each of the top eight producing states, three importer members, one exporter member, and respective alternates.

The 2022, 20-member Council would consist of one producer member from each of the four regions (Western, Midwest, Northeast, Southern), one producer member from each of the top eight producing states, four importer members, two exporter members, first-handler member, public member, and respective alternates.

The 2023 and subsequent 21-member Council would consist of one producer member from each of the four regions (Western, Midwest, Northeast, Southern), one producer member from each of the top eight producing states, four importer members, four exporter members, one public member, and respective alternates. 7 CRF 1218.40 would be revised accordingly.

Nomination Procedures

Section 1218.41 establishes the procedures for nominations to obtain Council nominees for appointment by the Secretary. Section 1218.41(c) provides for the nomination process for importer, exporter, first-handler, and public member and alternate positions. Section 1218.41(d) requires producer, handlers, and importer nominees to be compliant with the order provisions regarding payment of assessments and filing of reports. With the replacement of the first-handler position with two exporter positions, references to first-handler member would be removed from these sections.

Term of Office

Section 1218.42 provides that Council nominations and appointments will take place in two out of every three years, with each term of office ending on December 31, and new terms of office beginning January 1. The Council recommended allowing members and their alternates to remain in office until a successor is appointed. Currently, if successors are not appointed by the January 1 date, those positions remain vacant until the successors are named. The Order requires a minimum of 11 members to hold a Council meeting. For the nomination year with 12 positions expiring, if not appointed by the January 1 start date, the Council would be unable to meet until such appointments were made. This could cause a lapse in the Council's ability to properly administer the provisions of the Order. Allowing members to serve until their successor is appointed would allow the Council to continue administration should appointments be delayed beyond the specified term of office. This change is similar to authority provided for in other research and promotion orders.

Initial Regulatory Flexibility Act Analysis

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS is required to examine the impact of the proposed rule on small entities. Accordingly, AMS has considered the economic impact of this action on such entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. The Small Business Administration defines, in 13 CFR part 121, small agricultural producers as those having annual receipts of no more than $1,000,000 and small agricultural service firms (first handlers and importers) as those having annual receipts of no more than $30 million.

There are approximately 1,547 domestic producers, 71 first handlers and 271 importers of highbush blueberries covered under the program. Dividing the highbush blueberry crop value for 2019, $919 million,[1] by the number of producers (1,547) yields an average annual producer revenue estimate of $594,053. It is estimated that in 2019, about 99 percent of the first handlers shipped under $30 million worth of highbush blueberries. Based on 2019 U.S. Border and Customs (Customs) data, it is estimated that over 99 percent of the importers shipped under $30 million worth of highbush blueberries. Based on the foregoing, the majority of producers, first handlers and importers may be classified as small entities. We do not have information concerning the number of exporters and their size. Comments providing any information or data concerning exporters are requested.

Regarding value of the commodity, as mentioned above, based on 2019 NASS data, the value of the domestic highbush blueberry crop was about $919 million. According to Customs data, the value of 2019 imports was about $1.04 billion.

It is not anticipated that this action would impose additional costs on industry members. Eligible producers, importers and exporters interested in serving on the Council would have to complete a background questionnaire. Those requirements are addressed later in this proposal.

[1] Noncitrus Fruits and Nuts 2019 Summary.

This proposal invites comments on revising §§ 1218.40, 1218.41 and 1218.42 of the Order regarding Council membership, nominations, and term of office, respectively. The Council administers the Order with oversight by USDA. Under the program, assessments are collected from domestic producers and importers and used for research and promotion projects designed to increase the demand for highbush blueberries. The proposed action would remove the first-handler and alternate position and add two exporter member and alternate positions. This would help ensure that the Council reflects the distribution of domestic blueberry production and imports into the U.S. Conforming changes would be made to the nomination procedures. This proposal would also allow members and alternates to remain in office until a successor is appointed. This change would allow the Council to continue administration of the Order should appointments be delayed beyond the specified term of office. Authority for this action is provided in §§ 1218.40(b) and 1218.47(m) of the Order and section 7414 of the 1996 Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements that are imposed by the Order have been approved previously under OMB control number 0581–0093 and 0505–0001. Eligible producers, importers, exporters, first-handler, and public members interested in serving on the Council are required to complete a background questionnaire (Form AD–755) to verify their eligibility. Adding an exporter member and alternate member to the Council would require four additional exporters to submit background forms (AD–755) to USDA, once every three years, in order to be considered for appointment to the Council. The Secretary requires two names to be submitted for each open seat on the Council. The public reporting burden is estimated to increase the total burden hours by less than one hour. This additional burden would be included in the existing information collection approved for use under OMB control number 0581–0093. In addition, serving on the Council is optional, and the burden of submitting the background form would be offset by the benefits of additional representation on the Council.

The previously approved background questionnaire would be revised eliminating the first-handler section. It would impose an increase of the total reporting and recordkeeping burden hours by less than one hour on blueberry producers, importers, or exporters.

As with all Federal promotion programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

Regarding alternatives, the Council has been discussing its membership and potential changes to reflect the distribution of domestic production and imports for the past few years. The Council's Executive Committee met to formulate and consider various options. One option was to replace two of the four regional producer positions, with the exporter positions, reallocating the two regions as East and West, with one position for each region. Another option considered was to eliminate the first-handler and public member positions; reallocate the regions to East and West, with one position for each region; and add two importer positions and two exporter positions. The Council also considered maintaining the status quo. It concluded, upon reviewing the domestic production and import statistics, that it was important to have foreign producer representation from the top four countries importing highbush blueberries into the U.S. represented on the Council. Thus, the Council recommended revising the Order to remove the first-handler and alternate position and add two exporter member and alternate positions.

Regarding outreach efforts, this action was discussed by the Council at meetings in October 2018, as well as by the Council and committees in 2019 and 2020. The Council met in November 2020 and in June 2021 and unanimously made its recommendation. All of the Council's meetings are open to the public and interested persons are invited to participate and express their views.

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

We have performed this initial RFA analysis regarding the impact of the proposed action on small entities and we invite comments concerning the potential effects of this action.

USDA has determined that this proposed rule is consistent with and would effectuate the purpose of the 1996 Act.

A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments received in response to this proposed rule by the date specified will be considered prior to finalizing this action.

List of Subjects in 7 CFR Part 1218

Administrative practice and procedure, Advertising, Blueberry promotion, Consumer information, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 1218 is proposed to be amended as follows:

PART 1218—BLUEBERRY PROMOTION, RESEARCH, AND INFORMATION ORDER

■ 1. The authority citation for 7 CFR part 1218 continues to read as follows:

Authority: 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

■ 2. In § 1218.40, paragraph (a) is revised to read as follows:

§ 1218.40 Establishment and membership.

(a) *Establishment of the U.S. Highbush Blueberry Council.* There is hereby established a U.S. Highbush Blueberry Council, hereinafter called the Council, shall be comprised of no more than 20 members and alternates for the 2022 Council, and comprised of no more than 21 members and alternates for the 2023 Council and each subsequent Council, appointed by the Secretary from nominations as follows:

(1) The 2022 Council shall be comprised of:

(i) One producer member and alternate from each of the following regions:

(A) Region #1 Western Region (all states from the Pacific east to the Rockies): Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

(B) Region #2 Midwest Region (all states east of the Rockies to the Great Lakes and south to the Kansas/Missouri/Kentucky state line): Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin.

(C) Region #3 Northeast Region (all states east of the Great Lakes and North of the North Carolina/Tennessee state line): Connecticut, Delaware, New York, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, Pennsylvania, Rhode Island, Virginia, Vermont, Washington, DC, and West Virginia.

(D) Region #4 Southern Region (all states south of the Virginia/Kentucky/Missouri/Kansas state line and east of the Rockies): Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, Puerto Rico, South Carolina, Tennessee, and Texas.

(ii) One producer member and alternate from each of the top eight blueberry producing states, based on the average of the total tons produced over the previous three years. Average tonnage will be based upon production and assessment figures generated by the Council.

(iii) Four importers and alternates.

(iv) Two exporters and alternates will be filled by foreign blueberry producers currently shipping blueberries into the United States from the two largest foreign blueberry production areas, respectively, based on a three-year average.

(v) One first-handler member and alternate shall be filled by a United States based independent or cooperative organization which is a producer/shipper of domestic blueberries.

(vi) One public member and alternate. The public member and alternate public member may not be a blueberry producer, handler, importer, exporter, or have a financial interest in the production, sales, marketing or distribution of blueberries.

(2) The 2023 and subsequent Council shall be composed of:

(i) One producer member and alternate from each of the following regions:

(A) Region #1 Western Region (all states from the Pacific east to the Rockies): Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

(B) Region #2 Midwest Region (all states east of the Rockies to the Great Lakes and south to the Kansas/Missouri/Kentucky state line): Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin.

(C) Region #3 Northeast Region (all states east of the Great Lakes and North of the North Carolina/Tennessee state line): Connecticut, Delaware, New York, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, Pennsylvania, Rhode Island, Virginia, Vermont, Washington, DC, and West Virginia.

(D) Region #4 Southern Region (all states south of the Virginia/Kentucky/Missouri/Kansas state line and east of the Rockies): Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, Puerto Rico, South Carolina, Tennessee, and Texas.

(ii) One producer member and alternate from each of the top eight blueberry producing states, based on the average of the total tons produced over the previous three years. Average tonnage will be based upon production and assessment figures generated by the Council.

(iii) Four importers and alternates.

(iv) Four exporters and alternates will be filled by foreign blueberry producers currently shipping blueberries into the United States from the four largest foreign blueberry production areas, respectively, based on a three-year average.

(v) One public member and alternate. The public member and alternate public member may not be a blueberry producer, handler, importer, exporter, or have a financial interest in the production, sales, marketing or distribution of blueberries.

* * * * *

■ 3. In § 1218.41, paragraphs (c) and (d) are revised to read as follows:

§ 1218.41 Nominations and appointments.

* * * * *

(c) Nominations for the importer, exporter, and public member positions will be made by the Council. Two nominees for each member and each alternate position will be recommended to the Secretary for consideration. Other qualified persons interested in serving in these positions but not recommended by the Council will be designated by the Council as additional nominees for consideration by the Secretary.

(d) Producer and importer nominees must be in compliance with the Order's provisions regarding payment of assessments and filing of reports. Further, producers and importers must produce or import, respectively, 2,000 pounds or more of highbush blueberries annually.

* * * * *

■ 4. Section 1218.42 is revised to read as follows:

§ 1218.42 Term of office.

Council members and alternates will serve for a term of three years and be able to serve a maximum of two consecutive terms. A Council member may serve as an alternate during the years the member is ineligible for a member position. When the Council is first established, the state representatives, first-handler member, and their respective alternates will be assigned initial terms of three years. Regional representatives, the importer member, the exporter member, public member, and their alternates will serve an initial term of two years. Thereafter, each of these positions will carry a full three-year term. Council nominations and appointments will take place in two out of every three years. Each term of office will end on December 31, with new terms of office beginning on January 1. Council members and alternates shall serve during the term of office for which they have been appointed and qualified, and until their successors are appointed.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2021–15161 Filed 7–21–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2017–BT–STD–0048]

RIN 1904–AE85

Energy Conservation Program: Definition of Showerhead

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

ACTION: Notice of proposed rulemaking and public meeting.

SUMMARY: In this notice of proposed rulemaking (''NOPR''), the U.S. Department of Energy (''DOE'') proposes to revise the current definition of ''showerhead'' adopted in the December 16, 2020 final rule (''December 2020 Final Rule'') by reinstating the prior definition of ''showerhead.'' This reinstatement of the prior definition is consistent with the purposes of the Energy Policy and Conservation Act (''EPCA''). Further, DOE has tentatively determined that, in reinstating the prior definition of ''showerhead,'' all showerheads within a product containing multiple showerheads will be considered part of a single showerhead for determining compliance with the 2.5 gallons per minute (''gpm'') standard. In addition, DOE proposes to remove the current definition of ''body spray'' adopted in the December 2020 Final Rule. Finally, DOE does not propose any changes to the definition of ''safety shower showerhead'' adopted in the December 2020 Final Rule. DOE invites comment on all aspects of this proposal, including data and information to assist in evaluating whether the definition of ''showerhead'' from the October 2013 Final Rule should be reinstated, and announces a webinar to collect comments and data on its proposal.

DATES:

Meeting: DOE will hold a webinar on Tuesday, August 31, 2021, from 1:00 p.m. to 4:00 p.m. See section V., ''Public Participation,'' for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

Comments: DOE will accept comments, data, and information regarding this NOPR no later than September 20, 2021. See section V, ''Public Participation,'' for details.

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: *Showerheads2021STD0016@ee.doe.gov.* Include ''Definition of Showerhead NOPR and docket number EERE–2021–BT–STD–0016 and/or RIN 1904–AE85 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 postal mail, or hand delivery/courier, the Department has found it necessary to make temporary modifications to the comment submission process in light of the ongoing coronavirus disease 2019 (''COVID–19'') pandemic. DOE is currently accepting only electronic submissions at this time. If a commenter finds that this change poses an undue hardship, please contact the 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 deliver/courier.

No telefacsimiles (faxes) will be accepted. For detailed instructions on submitting comments and additional information on the rulemaking process, see section V (Public Participation) 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, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

The docket web page can be found at *https://www.regulations.gov/docket/EERE-2021-BT-STD-0016.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. See Section V. for information on how to submit comments through *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

Mr. John Cymbalsky, 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. 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. Telephone: (202) 586–2588. Email: *Amelia.Whiting@hq.doe.gov.*

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

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I. Introduction

The following section briefly discusses the statutory authority underlying this proposed rule, as well as some of the relevant historical background related to showerheads, the subject of this NOPR.

A. Authority

Title III of EPCA (42 U.S.C. 6291 *et seq.*) sets forth a variety of provisions designed to improve energy efficiency and, for certain products, water efficiency.[1] Part B of Title III[2] establishes the ''Energy Conservation Program for Consumer Products Other Than Automobiles,'' which includes showerheads (with the exception of safety shower showerheads)—the subject of this proposed rulemaking. (42 U.S.C. 6292(a)(15)) Under EPCA, the energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures.

B. Background

EPCA defines a showerhead as ''any showerhead (including a handheld showerhead), except a safety shower showerhead.'' (42 U.S.C. 6291(31)(D)) In addition to defining ''showerhead,'' EPCA established a maximum water use threshold of 2.5 gpm applicable to ''any showerhead.'' (42 U.S.C. 6295(j)(1)). The definition of ''showerhead'' and the water conservation standard for showerheads were added to EPCA by the Energy Policy Act of 1992 (Pub. L. 102–486 (Oct. 24, 1992)) (''EPAct 1992''). Until 2013, DOE regulations did not contain a separate definition for ''showerhead.'' (*See* 78 FR 62970)

On May 19, 2010, DOE published in the **Federal Register** a Notice of Availability of a proposed interpretive rule regarding the definition of

[1] All references to EPCA in this NOPR 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 V was redesignated as Part A.

''showerhead.'' 75 FR 27926 (''2010 Draft Interpretive Rule''). In this 2010 Draft Interpretive Rule, available at *https://www.regulations.gov/document?D=EERE-2010-BT-NOA-0016-0002,* DOE discussed how there was uncertainty about how the EPCA definition of ''showerhead'' applies to the diversified showerhead product offerings. *Id.* at 1. To address this uncertainty, DOE proposed to define a ''showerhead'' as ''any plumbing fitting that is designed to direct water onto a bather.'' *Id.* at 2 (footnote omitted). As such, DOE stated it would ''find a showerhead to be noncompliant with EPCA's maximum water use standard if the showerhead's standard components, operating in their maximum design flow configuration, *taken together* use in excess of 2.5 gpm.'' *Id.* at 3.

On March 4, 2011, DOE formally withdrew the draft interpretive rule and issued showerhead enforcement guidance. (*See https://www.energy.gov/sites/prod/files/gcprod/documents/Showerhead_Guidancel.pdf*) (''2011 Enforcement Guidance'') In the 2011 Enforcement Guidance, DOE explained that it had received several complaints alleging that certain showerhead products exceeded EPCA's 2.5 gpm standard. DOE stated that it had learned that some had come to believe that a showerhead that expels water from multiple nozzles constituted not a single showerhead, but rather multiple showerheads and thus could exceed the maximum permitted water use by a multiple equal to the number of nozzles on the showerhead. *Id.* at 1. Following a review of the record from the 2010 Draft Interpretive Rule, DOE concluded that the term ''any showerhead'' has been and continues to be sufficiently clear such that no interpretive rule was needed. *Id.* at 2. Specifically, DOE stated that ''multiple spraying components sold together as a single unit designed to spray water onto a single bather constitutes a single showerhead for the purpose of the maximum water use standard.'' *Id.* DOE, in its discretion, addressed the misunderstanding of how to measure compliance with the standard by providing a two-year enforcement grace period to allow manufacturers to sell any remaining noncompliant products. *Id.* at 2–3.

DOE proposed revising the test procedure for showerheads and other products and to change the regulatory definition of showerheads. 77 FR 31742 (May 30, 2012) (''May 2012 NOPR''). DOE proposed to adopt definitions for four terms related to showerheads—''fitting'', ''accessory'', ''body spray'', and ''showerhead''—in order to address certain provisions of the revised American Society of Mechanical Engineers/American National Standards Institute (''ASME/ANSI'') test procedures that were not contemplated in the versions referenced by the existing DOE test procedure, and to establish greater clarity with respect to product coverage. 77 FR 31742, 31747.[3] Specifically, DOE proposed to define ''showerhead'' as ''an accessory, or set of accessories, to a supply fitting distributed in commerce for attachment to a single supply fitting, for spraying water onto a bather, typically from an overhead position, including body sprays and hand-held showerheads, but excluding safety shower showerheads.'' 77 FR 31742, 31755. The proposed definition clarified that DOE considered a ''body spray'' to be a showerhead for the purposes of regulatory coverage. 77 FR 31742, 31747.

Responding to comments on the May 2012 NOPR, DOE issued on April 8, 2013 a supplemental notice of proposed rulemaking (''SNOPR'') in which DOE proposed a revised definition of ''showerhead'' and withdrew its proposal to include ''body sprays'' in the definition of ''showerhead'' in light of concerns raised by commenters and DOE's need to further study the issue. 78 FR 20832, 20834–20835, 20841 (''April 2013 SNOPR''). The SNOPR's modified definition of ''showerhead'' removed the term ''accessory'' from the definition based on comments about the use of the term. 78 FR 20832, 20834. Under the proposed modified definition, a ''showerhead'' is ''a component of a supply fitting, or set of components distributed in commerce for attachment to a single supply fitting, for spraying water onto a bather, typically from an overhead position, including hand-held showerheads, but excluding safety shower showerheads.'' 78 FR 20832, 20834. DOE also requested comment on whether to define the term ''safety shower showerhead'' to address which products qualify for exclusion from coverage under EPCA and DOE regulations. 78 FR 20832, 20835, 20840.

On October 23, 2013, DOE issued a final rule amending test procedures for showerheads and other products and adopting definitions for products including showerheads. 78 FR 62970 (''October 2013 Final Rule''). In this final rule, DOE adopted in substance the modified definition of ''showerhead'' proposed in the April 2013 SNOPR. 78 FR 62970, 62986. The October 2013 Final Rule defined ''showerhead'' as ''a component or set of components distributed in commerce for attachment to a single supply fitting, for spraying water onto a bather, typically from an overhead position, excluding safety shower showerheads.'' 78 FR 62970, 62986. DOE did not finalize the definition of ''body spray'' proposed in the May 2012 NOPR. 78 FR 62970, 62973. DOE also declined to adopt a definition of ''safety shower showerhead'' and explained that it was unable to identify a definition that would clearly distinguish these products from the showerheads covered under EPCA. 78 FR 62970, 62974.

On August 13, 2020, DOE proposed revising the definition of a ''showerhead'' to be consistent with the most recent ASME standard. 85 FR 49284 (''August 2020 NOPR''). DOE also proposed to adopt definitions of ''body spray'' and ''safety shower showerhead'' and to clarify whether the current test procedure would apply to the proposed definitional changes. 85 FR 49284, 49285. In addition, DOE proposed to amend the test procedure for showerheads to address the testing of a single showerhead within a multiheaded showerhead. 85 FR 49284, 49292.

Following the consideration of comments received in response to the August 2020 NOPR, DOE issued the December 16, 2020 Final Rule, which amended the definition for ''showerhead'' and adopted definitions for ''body spray'' and ''safety shower showerhead.'' 85 FR 81341. Specifically, the December 2020 Final Rule amended the meaning of ''showerhead'' in a manner that would incorporate the ASME definition for this term by defining it to mean ''an accessory to a supply fitting for spraying onto a bather, typically from an overhead position. 85 FR 81341, 81343, 81359. Under the December 2020 Final Rule's interpretation, each showerhead included in a product with multiple showerheads would separately be required to meet the 2.5 gpm standard established in EPCA. 85 FR 81341, 81342. In addition, DOE established a definition for ''body spray'', citing the need to address ambiguity about whether body sprays were considered showerheads under the October 2013 Final Rule. 85 FR 81341, 81342, 81350. DOE defined the term ''body spray'' as ''a shower device for spraying water onto a bather from other than the overhead position. A body spray is not a showerhead.'' 85 FR 81341, 81359. Lastly, DOE defined the term ''safety shower showerhead'' by incorporating by reference the definition of ''safety

[3] DOE also proposed to adopt a definition for ''hand-held showerhead'' in the 2012 NOPR. 77 FR 31742, 31747. This NOPR does not reference that discussion, as DOE is not proposing any edits to the existing definition of ''hand-held showerhead.''

shower showerhead'' from the ANSI/International Safety Equipment Association (''ISEA'') Z358.1–2014,[4] such that a ''safety shower showerhead'' is ''a showerhead designed to meet the requirements of ISEA Z358.1.'' 85 FR 81341, 81359. The December 2020 Final Rule indicated that leaving the term ''safety shower showerhead'' undefined would cause confusion. 85 FR 81341, 81351. DOE did not finalize the test procedure amendments that had been proposed in the August 2020 NOPR. 85 FR 81341.

On January 20, 2021, the President issued Executive Order 13990, ''Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis.'' 86 FR 7037 (Jan. 25, 2021) (''E.O. 13990''). Section 1 of that Order lists a number of policies related to the protection of public health and the environment, including reducing greenhouse gas (''GHG'') emissions and bolstering the Nation's resilience to the impacts of climate change. 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 directed, as appropriate and consistent with applicable law, to consider suspending, revising, or rescinding these agency actions. *Id.*

While E.O. 13990 triggered the Department's re-evaluation, DOE is relying on the analysis presented below, based upon EPCA, to revise the definition adopted in the December 2020 Final Rule.

II. Synopsis of the Notice of Proposed Rulemaking

In this proposed rule, DOE proposes to withdraw the December 2020 Final Rule's redefinition of ''showerhead,'' and to reinstate the October 2013 Final Rule's definition of ''showerhead.'' DOE therefore proposes that the term ''showerhead'' be defined, as it was defined in DOE's regulations for close to a decade prior to the December 2020 Final Rule, as ''a component or set of components distributed in commerce for attachment to a single supply fitting, for spraying water onto a bather, typically from an overhead position, excluding safety shower showerheads.'' 78 FR 62970, 62986. As such, DOE also proposes to withdraw December 2020 Final Rule's interpretation that each showerhead included in a product with multiple showerheads would separately be required to meet the 2.5 gpm standard established in EPCA. Whereas in the December 2020 Final Rule DOE changed the definition of ''showerhead'' because the Department weighed consistency with ASME more heavily than water conservation, DOE has reconsidered this balance and has come to a different policy conclusion that water conservation is a more important EPCA purpose than consistency with ASME (with which DOE has no statutory obligation to align its definition). DOE believes that the steps it is proposing in this proposed rule better effectuate EPCA's water conservation purposes.

DOE also proposes to withdraw the definition of ''body spray'' adopted in the December 2020 Final Rule. DOE believes that the current definition of ''body spray'' is inconsistent with the express purpose of EPCA to conserve water by improving the water efficiency of certain plumbing products and appliances as the definition may lead to increased water use and does not best address the relationship between body sprays and showerheads. This is because the only difference between a ''body spray'' and a ''showerhead'' is the installation location, as shown by the similar treatment of the two products in the marketplace. DOE does not propose any changes to the definition of ''safety shower showerhead'' as leaving the term undefined may cause confusion about what products are subject to the energy conservation standards.

III. Discussion

A. Withdrawal of DOE's Current Definition of ''Showerhead''

DOE has undertaken a review of the December 2020 Final Rule. DOE proposes to withdraw the December 2020 Final Rule's definition of ''showerhead'' and reinstate the definition of ''showerhead'' from the October 2013 Final Rule. DOE has tentatively determined that EPCA's definition of showerhead is ambiguous and that the December 2020 Final Rule's definition of ''showerhead'' is not consistent with EPCA's purposes: To conserve water by improving water efficiency of certain plumbing products and appliances and to improve energy efficiency of major appliances and consumer products. *See* 42 U.S.C. 6201. DOE has also tentatively determined, upon review and in light of present facts and circumstances, that Congressional intent does not require DOE to adopt the ASME definition for ''showerheads;'' that the October 2013 Final Rule did not effectively ban multi-headed showerheads from the market; and that the December 2020 Final Rule's definition of ''showerhead'' is inconsistent with EPCA's purposes and falls within the National Technology Transfer and Advancement Act of 1995 (''NTTAA'') and OMB Circular A–119 exception to the use of voluntary consensus standards. As such, DOE proposes to reinstate the definition of ''showerhead'' from the October 2013 Final Rule, such that the term would again be defined as ''a component or set of components distributed in commerce for attachment to a single supply fitting, for spraying water onto a bather, typically from an overhead position, excluding safety shower showerheads.'' *See* 78 FR 62970, 62986.

1. EPCA's Definition of ''Showerhead'' Is Ambiguous

EPCA defines the term ''showerhead'' as ''any showerhead (including a handheld showerhead), except a safety shower showerhead.'' (42 U.S.C. 6291(31)(D)). Congress adopted this definition of showerhead in 1992 as part of the Energy Policy Act. Thereafter, however, between 1992 and 2010, the designs of showerhead diversified into a myriad of products including waterfalls, shower towers, rainheads, and shower systems. (See *https://www.regulations.gov/document?D=EERE-2010-BT-NOA-0016-0002*) In the 2010 Draft Interpretive Rule, DOE noted that it had become aware of uncertainty in how the EPCA definition and standard applies to such products. *Id.* As such, DOE issued the draft interpretive rule to ''make clear to all stakeholders'' DOE's interpretation of the definition of ''showerhead'' with respect to the 2.5 gpm maximum water use requirement. *Id.* at 1–2.

Similarly, in the 2011 Enforcement Guidance, DOE explained that it had learned that some had come to believe that a showerhead that expels water from multiple nozzles constituted not a single showerhead, but rather multiple showerheads and thus could exceed the maximum permitted water use. (See *https://www.energy.gov/sites/prod/files/gcprod/documents/Showerhead_Guidancel.pdf*) DOE further acknowledged that absence of enforcement could have contributed to that misunderstanding. *Id.* at 2. While DOE acknowledged such confusion, DOE withdrew the 2010 Draft Interpretive Rule in the enforcement guidance document based on its conclusion that the term ''any showerhead'' has been, and continues to

[4] ANSI/ISEA Z358.1–2014, ''American National Standard for Emergency Eyewash and Shower Equipment.''

be, sufficiently clear such that no interpretive rule is needed. *Id.* In the enforcement guidance, DOE stated that multiple spraying components sold together as a single unit designed to spray water onto a single bather constitute a single showerhead for purposes of the maximum water use standard. *Id.* DOE provided manufacturers a two-year grace period to sell any remaining noncompliant products and to adjust product designs for compliance with EPCA and DOE regulations. *Id.* at 3.

The ambiguity of the word ''showerhead'' in EPCA is underscored by its history. DOE's statements in both the 2010 Draft Interpretive Rule and the 2011 Enforcement Guidance illustrate that confusion existed among manufacturers about what constituted a showerhead under the statutory definition. Since the passing of EPAct 1992 and the establishment of a regulatory definition for ''showerhead'', the market diversified into a myriad of products. The diversification of the marketplace as it pertains to ''showerheads'', and the confusion about what products are considered a showerhead by manufacturers, illustrate that the statutory definition of ''showerhead'' is ambiguous. DOE believes that any ambiguity in the statutory meaning should be explicated by a regulatory definition that is consistent with EPCA's purposes.

2. The December 2020 Final Rule's Definition of Showerhead Is Inconsistent With EPCA's Purposes

EPCA sets forth seven purposes that provide a basis for DOE's actions regarding the Energy Conservation Program. One of the most relevant of these purposes is ''to conserve energy supplies through energy conservation programs, and, where necessary, the regulation of certain energy uses.'' (42 U.S.C. 6201(4); Pub. L. 94–163 ((Dec. 22, 1975)) The EPAct 1992 amended EPCA by adding plumbing products, including showerheads, to the products covered by the Energy Conservation Program. (Pub. L. 102–486 (Oct. 24, 1992)) The EPAct 1992 also added another purpose under EPCA to address plumbing products: ''to conserve water by improving the water efficiency of certain plumbing products and appliances.'' (42 U.S.C. 6201(8))

DOE has considered the relationship between the definition of ''showerhead'', the 2.5 gpm EPCA standard, and EPCA's purposes to conserve water and energy in both the 2010 Draft Interpretive Rule and 2011 Enforcement Guidance. DOE believes that the December 2020 Final Rule is in conflict with EPCA's water-conservation and energy-conservation purposes. That rule allows multiple nozzles each to be subject to a separate standard, and thereby allows water flow at a multiple of that standard and the related increase of energy for water heating.

This belief is consistent with DOE statements before the December 2020 Final Rule. Specifically, in the 2010 Draft Interpretive Rule, DOE explained that all components that are supplied together and function from one inlet form a single showerhead for purposes of the maximum water use standards under EPCA. (*See https://www.regulations.gov/document?D=EERE-2010-BT-NOA-0016-0002*) DOE stated that neither the statutory definition nor the test procedures for showerheads treat a showerhead differently based upon the shape, size, placement, or number of sprays or openings it may have. *Id.* at 2. Further, DOE highlighted that the test procedure contemplates that the regulated showerhead fitting may have additional ''accessory'' water outlets and specifies that all standard accessories must be attached and set at maximum flow during testing. *Id.* DOE clarified that a showerhead is determined to be noncompliant if the standard components, operating in their maximum design flow configuration, taken together use in excess of 2.5 gpm. *Id.* at 3. DOE stated that this approach furthers the goal of EPCA to ''conserve water by improving the water efficiency'' of showerheads. *Id.* In DOE's 2011 Enforcement Guidance, DOE articulated a modified interpretation of the statutory definition of ''showerhead'' from the definition proposed in the 2010 Draft Interpretive Rule. DOE stated that multi spraying units sold together as a single unit designed to spray water onto one bather are considered a single showerhead. (*See https://www.energy.gov/sites/prod/files/gcprod/documents/Showerhead_Guidancel.pdf*) DOE explained that all sprays and nozzles should be turned onto the maximum flow setting to determine water use. *Id.* DOE found this approach is consistent with the industry standard, the statutory language, and Congressional intent to establish a maximum water use requirement. *Id.* These previous statements by DOE illustrate that a definition of ''showerhead'' that includes a multi-headed showerhead is consistent with EPCA's purpose of water conservation.

The 2020 rulemaking did not fully account for how its definition of ''showerhead'' would comport with the purposes of EPCA, but it did acknowledge that water conservation is among EPCA's purposes. 85 FR 81341, 81353. In this proposed rulemaking, DOE reviews the December 2020 Final Rule's definition of ''showerhead'' as it relates to EPCA's express purposes of water and energy conservation. The purposes of EPCA, as amended, include ''to conserve water by improving the water efficiency of certain plumbing products and appliances'' and ''to provide for improved energy efficiency of motor vehicles, major appliances, and certain other consumer products.'' (42 U.S.C. 6201)

DOE received comments in response to the August 2020 NOPR, many of which explained that the then-proposed ''showerhead'' definition was contrary to the purposes of the Energy Conservation Program and Federal laws, which are to reduce water waste and improve energy efficiency. (Davis, No. 0064 at p.1; Public Interest Research Group (''PIRG''), No. 0082 at p.3; Northwest Power and Conservation Council (''NPCC''), No. 0060 at p.2) [5] For example, PIRG explained that the then-proposed new interpretation was contrary to the 2.5 gpm standard and the goals of EPCA as it would permit higher water usage. PIRG further explained that the then-proposed interpretation would eviscerate the 2.5 gpm standard, because the water flow available in a shower would be simply a matter of choice, between manufacturer and consumer, about how many nozzles to use. PIRG stated that Congress could not have intended this conservation standard to be so illusory. (PIRG, No. 0082 at p.3) The NPCC stated that the proposal, if finalized, would undermine the DOE standards program by establishing revised definitions and an agency interpretation that circumvent the associated standard. The NPCC explained also that this proposal would undercut DOE's appliance program and diminish cost-effective energy savings and benefits contrary to the purpose of EPCA. (NPCC, No. 0060 at p.2) Similarly, ASAP [6] stated that the proposal allowed for unlimited flow because there was no limit on the

[5] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to amend the definition of showerhead. (Docket No. EERE–2020–BT–TP–0002, which is maintained at *https://www.regulations.gov/#!docketDetail;D=EERE-2020-BT-TP-0002*). The references are arranged as follows: (Commenter, comment docket ID number, page of that document).

[6] DOE received a joint comment from the Appliance Standards Awareness Project, Alliance for Water Efficiency, consumer Federation of America, the National Consumer Law Center, the Natural Resources Defense Council, the Northwest Energy Efficiency Alliance, and the American Council for an Energy-Efficiency Economy, collectively referred to as ASAP.

number of spray units a single product might have and this interpretation undermined the very purpose of the statute. (ASAP, No. 0086 at p.2) Hare also suggested that the aggregate flow rate would be too high to achieve water savings, thereby subverting the purported reason for the existence of the regulation. (Hare, No. 0012)

Other comments that DOE received on the August 2020 NOPR similarly discuss the impacts of the proposal on water and energy consumption. Numerous commenters stated that the proposal would increase water and energy consumption. (California Investor Owned Utilities (''CA IOUs''), Public Meeting Transcript at p. 13; Consumer Federation of America (''CFA''), No. 0029; CFA, Public Meeting Transcript at p.14; Environment America,[7] No. 0069 at p.1) Commenters specified that the proposal would waste water and energy because more energy would be needed to heat and pump the additional water. (Godwin, No. 0042; Hall, No. 0048; Shaw, No. 0059; Gurley, No. 35) The Green Builder Coalition highlighted that the increased water flow and usage would increase energy usage from the municipal side used to pump and treat the increased water demands. (Green Builder Coalition, Public Meeting Transcript at p.35)

Commenters also addressed the current water shortages the country is facing. Numerous stakeholders commented that 40 of the 50 states are already confronting water shortages and that the proposal would increase consumption of drinking water, causing a severe impact on water supplies across the country. (Walnut Valley Water District (''WVWD''), No. 0051 at p.2; Alliance for Water Efficiency, et al.[8] (''AWE, et al.''), No. 0079 at p.3; Santa Clara Valley Water District (''Valley Water''), No. 0076 at p.1; Bay Area Water Supply & Conservation Agency (''BAWSCA'', No. 0050 at p.3) Lish explained that the Southwest was suffering a drought and that event after event illustrated the importance of reducing energy consumption that produces GHG emissions. (Lish, No. 0057) Cohen also commented that the proposed changes would allow wasteful showers in a wide variety of configurations and increase consumption of drinking water at a time that wide regions of the country are already facing severe shortages. (Cohen, No. 0036)

Regarding water consumption, the CA IOUs projected that a single-shower household shifting to a three-spray component product could increase the overall hot water use for that household by as much as 80%. (CA IOUs, No. 0084 at p.6) Further, the CA IOUs estimated that if 10% of current showerheads were converted to three-spray component products, national residential hot water use, the second largest component of residential site energy consumption, could increase by as much as eight percent. (CA IOUs, No. 0084 at p. 6) Similarly, Gary Klein Associates (''GKA'') stated that switching to a 2-headed showering device increases hot water use by 40%, while switching to a 3-headed device increases it by 80%. (GKA, No. 0063 at p.11) Tucson Water also noted that changing the definition of ''showerhead'' effectively allowed multiple showerheads in the same stall, disregarding the existing federal standard of 2.5 gpm per shower and potentially doubling, or more, the amount of water used per shower. (Tuscan Water, No. 0053 at p. 1) And numerous commenters estimated that increasing the current federal legal standard of 2.5 gpm for the entire shower could result in a national water increase of 161 billion gallons in a single year. (Valley Water, No. 0076 at p. 1; WVWD, No. 0051 at p.2; BAWSCA, No. 0050 at p.3; AWE, et al., No. 0079 at p.2))

Texas Water Development Board (''TWDB'') stated that a change in the definition of ''showerhead'' would most likely lead to a reduction in the anticipated water savings and an increase in the state's future municipal water demands. If these water savings are not achieved through conservation, future water demands will likely require additional, and more expensive, water management strategies and projects. (TWDB, No. 0074 at p.2)

Commenters also discussed the impact of increased water consumption on energy use. Commenters estimated that for each 1 gpm increase in showerhead flow rate, national annual domestic water use would increase by 55 billion gallons and national annual energy use for that added hot water would increase by 25,000 billion Btu. (WVWD, No. 0051 at p.3; BAWSCA, No. 0050 at p.4; AWE, et al., No. 0079 at p.3) This use would, in turn, increase annual water and energy bills for American consumers by an estimated $1.14 billion. (WVWD, No. 0051 at p.3; BAWSCA, No. 0050 at p.4; AWE, et al., No. 0079 at p.3; Davis, No. 0064 at p.1) The Public Service Commission of Wisconsin (''PSC of Wisconsin'') stated that showerheads affect a customer's energy use as showers represent the number one use of hot water inside the home and a reduction in shower water efficiency would require customers to use additional energy to heat water, increasing customers' energy use and resulting energy bills. (PSC of Wisconsin, No. 0061 at p.2)

NPCC estimated that the Northwest currently has about 10 million showerheads and increasing the water use per shower by a factor of two or more would have a significant impact on the consumption of electricity, natural gas, and water, which would result in increased power supply needs. (NPCC, No. 0060 at p.2) NPCC stated the impacts of the proposed rule include increased electricity or natural gas consumption by the consumer, increased water use by the consumer, decreased utility by the consumer, increased burden and cost on the water utility, increased burden and cost on wastewater treatment facilities, possible changes to plumbing, and needs for larger water heater storage tanks. (NPCC, No. 0060 at p.2) Similarly, the Sierra Club and Earthjustice commented that the proposal would result in greater consumption of hot and cold water, increasing fossil fuel and electricity consumption, and the accompanying emissions of air pollutants that harm the health and welfare of its members. (Sierra Club and Earthjustice, No. 0085 at p.1)

The Los Angeles Department of Water and Power (''LADWP'') discussed how the proposed rulemaking would allow for devices that increase consumption of water, resulting in a greater need for energy, which in turn would generate more GHGs that would not be produced with fixtures that use less water. LADWP stated this increase would be due to the embedded energy and GHG impacts in treating, pumping, and moving water hundreds of miles across the state for delivery to LADWP and other suppliers. (LADWP, No. 0066 at pp.2–3) Shaw also noted that an increase in the amount of energy used to heat water would increase the amount of carbon emitted into the atmosphere, exacerbating global warming. (Shaw, No. 0059) The City of Santa Rosa Water Department (''Santa Rosa Water'') commented that loosening low flow standards would likely increase energy consumption and associated GHGs, which are a contributing factor to climate induced drought. (Santa Rosa Water, No. 0037 at p.2) Additional stakeholders commented that adopting the then-proposed ''showerhead'' definition

[7] The Environment America comment received 10,184 signatories.

[8] The AWE stakeholders submitted two versions of their stakeholder letter. The first version is comment No. 0072; the second letter, which includes additional signatures, is the version referenced throughout this document.

would increase energy use from water wasting showerheads and increase GHG emissions because of the need to heat and pump excess water, increasing energy bills. (Hall, No. 0048; Gooch, No. 0043; Shaw, No. 0059)

DOE has fully considered these comments in this rulemaking as they relate to December 2020 Final Rule's definition of ''showerhead.'' During the 2020 rulemaking, DOE discussed these comments and noted the importance of water conservation, but DOE focused solely on the Congressional reliance on ASME for the definitional changes. *See* 85 FR 81341, 81353. DOE believes that EPCA's purposes should also be considered when amending the definition of a covered product. DOE agrees with the commenters that the December 2020 Final Rule's ''showerhead'' definition and interpretation would likely increase water usage, increase associated energy use, and increase GHG emissions. These increases would be contrary to EPCA's purposes of reducing energy and water consumption. As such, DOE has tentatively determined that the December 2020 Final Rule's definition should be withdrawn.

DOE's full consideration of comments received in the response to the August 2020 NOPR and of the purposes of EPCA has also informed this proposed approach of restoring the definition of ''showerhead'' from the October 2013 Final Rule. In response to the August 2020 NOPR, PIRG noted that DOE's past rules on this topic (in 2011 and in 2013) had clearly taken account of the primary EPCA goal of decreased water use. (PIRG, No. 0082 at p.3) ASAP commented that the definition from the 2013 Final Rule carried out the conservation purpose of EPAct 1992. (ASAP, No. 0086 at p.2)

DOE also received comments on the impacts of the then-existing definition of ''showerhead'' and EPAct 1992 generally. Ruff explained that the water efficiency mandates in EPAct 1992 have helped drive down and conserve household water use. (Ruff, No. 0010) Hamilton further commented that the then-current rules save consumers and water treatment jurisdictions money. (Hamilton, No. 0028) Cohen estimated that the then-current rule has saved billions of dollars in water and energy bills. (Cohen, No. 0036) The City of Sacramento Department of Utilities (''City of Sacramento'') stated that, in California, as global temperatures rise, reduced winter snowpack will negatively impact local water availability, and drought frequency may increase. Efficient water use is the most cost-effective way to achieve long-term conservation goals and ensure reliable water supply for future generations. (City of Sacramento, No. 0055 at p.3)

Commenters also estimated the water use reductions of cities and states due to water efficiency measures. BAWSCA estimated that since the 1992 federal adoption of the 2.5 gpm showerhead standard, its service area has saved more than 33.1 billion gallons of water with 2.2 billion gallons of water savings in 2020 alone as a result of savings from installing efficient 2.5gpm showerheads. BAWSCA also explained that there are also additional benefits accumulating from the 2.2 billion gallons in avoided wastewater treatment and hot water savings and cost. (BAWSCA, No. 0050 at p.2) The TWDB explained that the replacement of older showerheads with the current 2.5 gpm showerheads, under the October 2013 Final Rule definition of ''showerhead'', was expected to save a cumulative 40,000 acre-feet of water in 2020 and 176,000 acre-feet in 2020 and reduce future municipal water demands of the state by approximately 6–10%. (TWDB, No. 0074 at p.1) And the City of Sacramento provided estimated savings from the 2.5 gpm flow rate and noted that in 2020 alone the City had saved 860 million gallons of water. (City of Sacramento, No. 0055 at p.2)

Numerous commenters also cited AWE estimates that 2.5 gpm showerheads provide 11 billion gallons per year in water savings and 5 trillion Btu per year in energy savings. (BAWSCA, No. 0050 at p.4; WVWD, No. 0051 at p.3; AWE, et al., No. 0079 at p.4) In ten years, the savings for 2.5 gpm showerheads at the federal standard alone accumulate to the equivalent of supplying 1 million homes with water and 670,000 homes with energy. (BAWSCA, No. 0050 at p.4; WVWD, No. 0051 at p.3; AWE, et al., No. 0079 at p.4; Davis, No. 064 at p.1)

DOE agrees with the commenters that the definition of ''showerhead'' from the October 2013 Final Rule and the associated interpretation resulted in significant water and energy savings, protected the environment, and reduced GHG emissions. As discussed above, while DOE focused on ASME in the 2020 rulemaking, DOE believes that the EPCA's purposes should also be considered when amending the definition of a covered product. As such, the definition of ''showerhead'' from the October 2013 Final Rule is consistent with the purposes of EPCA for water and energy conservation, whereas the December 2020 Final Rule's definition is not. Further, the definition of ''showerhead'' from the October 2013 Final Rule also corresponds with the general concept of the term ''showerhead'' in the 2010 Draft Interpretive Rule and 2011 Enforcement Guidance. While the specific language used by DOE has changed between the three documents, each document's definition considered all components attached to a single supply fitting/inlet to be a single showerhead. As explained previously, the October 2013 Final Rule understanding of showerheads better implements the purposes of EPCA than the December 2020 Final Rule's definition. Accordingly, DOE has tentatively determined that the proposed definition of ''showerhead'' better effectuates the purposes of EPCA. Therefore, DOE proposes that, in withdrawing the definition of ''showerhead'' from the December 2020 Final Rule, the definition of ''showerhead'' from the October 2013 Final Rule be reinstated.

3. Congress Did Not Require Reliance on ASME for the Definition of ''Showerhead''

DOE thus tentatively departs from the view expressed in the December 2020 Final Rule that it would be more consistent with Congressional intent to rely on ASME for the definition of ''showerhead.'' 85 FR 81341, 81342. As discussed, that term is ambiguous, and DOE believes that the definition of ''showerhead'' from the October 2013 Final Rule better comports with the EPCA's purposes.

DOE does not believe Congress required reliance of the ASME definition. Congress adopted the definition of ''showerhead'' in EPAct 1992, along with the provisions related to definitions, standards, test procedures, and labeling requirements for plumbing products. (Pub. L. 102–486; Oct. 24, 1992 Sec. 123) EPAct 1992 and EPCA define the term ''showerhead'' as ''any showerhead (including a handheld showerhead), except a safety shower showerhead.'' (42 U.S.C. 6291(31)(D)) In the same paragraph, Congress provided explicit direction to define the terms ''water closet'' and ''urinal'' in accordance with ASME A112.19.2M, but did not do so with respect to ''showerhead.'' (*Cf.* Sec. 123(b)(5) of Pub. L. 102–486) Instead, for showerheads, Congress adopted the ASME standards only for the water conservation standard, test procedures, and labeling requirements. For those, Congress adopted ASME A112.18.1M–1989 as the applicable standard and required DOE to adopt the revised version of the standard, unless it conflicted with the other requirements of EPCA. (42 U.S.C. 6295(j)(1) and (3); 42 U.S.C. 6293(b)(7); 42 U.S.C. 6294(a)(2)(E)) These Congressional

actions illustrate Congress' intent in regard to how DOE should define the term ''showerhead.'' Notably, Congress did not explicitly require that ''showerhead'' be defined in conformity with the definition in the applicable ASME standard (assuming the definition of showerhead was included in the 1989 standard) as it did with other aspects of the Energy Conservation Program for plumbing products.

In the December 2020 Final Rule, DOE determined that interpreting the term ''showerhead'' consistent with the ASME definition would be more appropriate than DOE's previous interpretation of ''showerhead.'' 85 FR 81341, 81342. DOE noted that EPCA relies on ASME standards for the test method, the standards, and the marking and labeling requirements for showerheads.[9] Because these other provisions relate to the ASME standard, the December 2020 Final Rule stated that Congress clearly intended that the ''showerhead'' definition would also align with the ASME standard. 85 FR 81341, 81345. DOE also highlighted that the definitions immediately preceding showerheads, in the definition section, included definitions of ASME and ANSI. *Id.* (citing 42 U.S.C. 6291(31)(B)–(C)) DOE explained that, while EPCA does not include an explicit direction regarding the definition of showerhead, DOE has found that reliance on the ASME standard for this final rule is consistent with Congress's reliance on ASME. In particular, DOE stated, if the definition developed by DOE deviated significantly from the ASME definition, it would create confusion in how to apply the standards and test methods that Congress directed be consistent with ASME. 85 FR 81341, 81346.

DOE has fully considered the comments that it received in response to the August 2020 NOPR, regarding the NOPR's suggestion that Congress intended that DOE's actions with regard to showerheads be consistent with ASME. PIRG stated that DOE's reasoning for following the ASME definition of ''showerhead'' is not consistent with EPCA or with EPAct 1992. Specifically, PIRG noted that Congress did not refer the ''showerhead'' definition back to the ASME standard even though, in the same paragraph, EPCA provides that certain other terms have ''the meaning given such term in ASME A119.19.2M–1990.'' PIRG also stated that the references to ASME in the definition, energy conservation standard, and labeling requirements do not have anything to do with what constitutes and does not constitute a showerhead.[10] PIRG explained that Congress's use of ASME standards in EPAct 1992 was surgically precise. (PIRG, No. 0082 at pp.6–7)

Upon further consideration, DOE agrees with the commenters that Congress did not intend that the definition of ''showerhead'' be required to conform with the definition of ''showerhead'' in the ASME standard. This interpretation comports with Congress's decision not to align the ''showerhead'' definition with the ASME standard, and it also better reflects the policies embodied in EPCA. As highlighted by PIRG, EPCA provides explicit direction to define the terms ''water closet'' and ''urinal'' in accordance with ASME A112.19.2M, in the same legislation and paragraph, as it adopted the definition of ''showerhead''—which did not include a reference to applicable ASME standard. (*See* Sec. 123(b)(5) of Pub. L. 102–486) Further, the mere fact that the terms immediately preceding showerhead are ''ASME'' and ''ANSI'' does not suggest that Congress intended for DOE to rely on the ASME definition. EPCA directly references ASME A112.18.1M–1989 or a revised version of the standard approved by ANSI for showerhead test procedures, energy conservation standards, and labeling requirements, but noticeably does not provide such a reference for the definition of ''showerhead.'' Congress clearly illustrated in EPAct 1992 that if it had intended for DOE to apply the definition of ''showerheads'' from ASME A112.18.1M–1989 (assuming a definition of ''showerhead'' was include in the 1989 standard), it would have provided the necessary reference. Therefore, DOE believes that Congress intended DOE to have flexibility to define ''showerhead'' without necessarily conforming with the definition in the applicable ASME standard.

4. The Previous Definition of ''Showerhead'' Did Not Effectively Ban Multi-Headed Showerheads

EPCA contains a provision that prevents the Secretary from prescribing an amended or new standard if the Secretary finds that interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States at the time of the Secretary's finding. (42 U.S.C. 6295(o)(4))

In the August 2020 NOPR, DOE proposed to adopt an amended definition of ''showerhead'' that complies with the Congressional directive to preserve performance characteristics and features that were available on the market at the time DOE originally acted to eliminate them. 85 FR 49284, 49291. DOE explained that it cannot regulate or otherwise act to remove products with certain performance characteristics and features from the market given the prohibition in 42 U.S.C. 6295(o)(4). 85 FR 49284, 49290. In the December 2020 Final Rule, DOE further explained that considering two, three or eight showerheads in a given product to be a ''feature'' is consistent with DOE's previous rulemakings and determinations of what constitutes a feature.[11] 85 FR 81341, 81347. DOE stated that following the 2011 Enforcement Guidance, which appeared to effectively ban the vast majority of products with multiple showerheads from the market, DOE codified in DOE regulations its effective ban on products with multiple showerheads from the market. 85 FR 49284, 49291. Further, DOE acknowledged, as is the case with the August 2020 definitional proposed rule, that the 2013 rule was not a standards rulemaking and did not comply with the statutory requirements of a standards rulemaking. DOE stated, however, that the effect was the same in that multi-headed showerhead products, while not entirely eliminated from the market, were significantly reduced in availability as a result of the 2011 Enforcement Guidance. 85 FR 81341, 81347.

As part of DOE's reconsideration of the December 2020 Final Rule, DOE reviewed comments received in response to the August 2020 NOPR's discussion of section 6295(o)(4) of EPCA. The California Energy Commission (''CEC'') explained that, based on the plain language of the statute, section 6295(o)(4) of EPCA applies only to standards and the

[9] (*See* 42 U.S.C. 6295(j)(1) and (3); 42 U.S.C. 6295(b)(7); 42 U.S.C. 6294(a)(2)(E)).

[10] The ASME references in the energy conservation standard discuss design requirements in relation to EPAct 1992's 2.5 gpm maximum flow rate; the references do not purport to define ''showerhead.'' (42 U.S.C. 6295(j)) Although section 6294(a)(2)(e) requires the Federal Trade Commission to prescribe labeling rules for showerheads consistent with ASME A112.18.1M–1989, nothing in that section shines any light on the definition of ''showerhead.'' (PIRG, No. 0082 at p.7)

[11] DOE has previously determined that refrigerator-freezer configurations, oven door windows, and top loading clothes washers configurations are all features. 85 FR 81341, 81347 (citing 84 FR 33869, 33872 (July 16, 2019)).

October 2013 Final Rule did not directly or effectively amend any standards. But CEC also clarified that assuming, arguendo, that section 6295(o)(4) of EPCA is relevant, DOE's own analysis shows that at least 3% of the existing market consists of multi-headed showerheads that meet the current standard. As such, no performance characteristics were eliminated from the market. (CEC, No. 0083 at p.6)

DOE agrees with CEC and DOE's own statement in the December 2020 Final Rule that the October 2013 Final Rule was not a standards rulemaking. Assuming arguendo that DOE did amend the water conservation standard or that the rule had the effect of a water conservation standard, the October 2013 Final Rule did not eliminate multi-headed showerheads from the market. DOE explained in the August 2020 NOPR that 3% of the 7,221 basic models of showerheads are multi-headed showerheads. 85 FR 49284, 49293. DOE has again reviewed its certification database and found that currently there are 7,704 basic models of showerheads, with multi-headed showerheads continuing to account for 3% of all basic models. Therefore, 42 U.S.C. 6295(o)(4) was not applicable in the October 2013 Final Rule as DOE did not amend the standard for showerheads there, nor did the rule eliminate multi-headed showerheads from the market as there are currently over 231 basic models on the market. Further, as multi-headed showerheads have not been eliminated from the market, DOE is not determining whether multi-headed showerheads provide a functionality/performance characteristic. (See 42 U.S.C. 6295(o)(4)) As such, the existing definition complied with the Congressional directive to preserve performance characteristics and features and the directive did not provide a basis for adoption of a new definition.

5. The December 2020 Final Rule's Definition of ''Showerhead'' Falls Within the NTTAA and OMB Circular A–119 Exception to Adherence to Voluntary Consensus Standards Because It Is Inconsistent With EPCA and Impractical

Section 12(d)(1) of NTTAA requires that Federal departments ''use technical standards that are developed or adopted by voluntary consensus standards bodies, except when the use of the technical standards is inconsistent with applicable law or otherwise impractical.'' (Pub. L. 104–113, 110 Stat. 783 (Mar. 7, 1996), as amended by Pub. L. 107–107, Div. A, Title XI, section 115, 115 Stat. 1241 ((Dec. 28, 2001) (codified at 15 U.S.C. 272 note)). Similarly, OMB Circular A–119 directs Federal agencies to use voluntary consensus standards unless inconsistent with applicable law or otherwise impractical. (Section 1 of OMB Circular A–119; *https://www.whitehouse.gov/wp-content/uploads/2020/07/revised_circular_a-119_as_of_1_22.pdf.*)

In the December 2020 Final Rule, DOE stated that the new definition of ''showerhead'' is consistent with the requirements of the NTTAA and the associated OMB Circular A–1119. 85 FR 81341, 81342. DOE explained that EPCA does not preclude DOE from using industry standards and that the statutory text of EPCA does not make compliance with OMB Circular A–119 inconsistent with applicable law or otherwise impracticable. DOE further stated that it disagrees that the ASME definition frustrates and is inconsistent with the requirements of EPCA. 85 FR 81341, 81348.

As part of DOE's reconsideration of the December 2020 Final Rule, DOE tentatively determined, in light of the comments provided during the August 2020 NOPR, that it is not appropriate to rely on the consensus industry standards as they relate to showerheads in accordance with the NTAA and OMB Circular A–119 because the current ''showerhead'' definition based on ASME consensus industry standards is inconsistent with EPCA and is impractical.

DOE received comments on the August 2020 NOPR regarding the appropriateness of DOE relying on the voluntary consensus standard developed by ASME in accordance with the NTAA and OMB Circular A–119. NRDC noted that the reference to A–119 and DOE's explanation of it clearly points out the inappropriateness of the proposed change in the definition, because the ASME definition frustrates and is inconsistent with the statutory requirement to establish and maintain an upper bound on the flowrate of showerheads and that adopting the proposed definition would allow multi-nozzle arrays without any upper bound of the combined flowrate of this kind of shower device. (NRDC, Public Meeting Transcript at pp.21–22) Similarly, PIRG commented that the 2.5 gpm standard was not a policy objective determined by DOE; it was a water conservation standard determined by Congress. PIRG further stated that the NTTAA does not instruct DOE to base its interpretation of Congressional policy by referring to industry standards and that even if it did, NTTAA itself states that an agency should not follow an industry standard where that is inconsistent with applicable law. PIRG explained that DOE's proposal is inconsistent with EPAct 1992, and thus NTTAA provides no safe harbor. As discussed, EPAct 1992 described in detail how the showerheads program should interact with ASME standards—NTTAA does not repeal or amend those directives. In regard to OMB Circular A–119, PIRG commented that DOE's reliance on OMB Circular A–119 is misplaced for the same reasons. In particular, as PIRG commented, Congress specified the policy goals that DOE must consider when it makes rules under EPCA; Circular A–119 could not supplant those policy goals with an extra-statutory mandate. (PIRG, No. 0082, pg.8) Sierra Club and Earth Justice highlighted that even if OMB Circular A–119 ordinarily requires agencies to use voluntary consensus standards as described by NTTAA, the Circular contains an expansive exception based on the impracticality of compliance. Sierra Club and Earth Justice cited to Circular A–119's definition of ''impractical'' as including ''circumstances in which such use would fail to serve the agency's program needs; would be infeasible; would be inadequate, ineffectual, inefficient, or inconsistent with agency mission; or would impose more burdens, or would be less useful, than the use of another standard.'' [12] Sierra Club and Earth Justice commented also that to the extent adhering to the ASME standard would result in increased showerhead consumption, DOE was within its rights in elevating the fulfillment of EPCA's purpose above the encouragement of consensus industry standards. (Sierra Club and Earthjustice, No. 0085, pp.3–4)

DOE agrees with the commentators that DOE should not adopt an industry standard here, where it would conflict with EPCA's requirements and be impractical. (*See* 15 U.S.C. 272 note; OMB Circular A–119 s6.a.2) DOE's determination in the December 2020 Final Rule did not properly weigh the ASME definition of ''showerhead'' as compared to the purposes of EPCA, as it pertains to the NTTAA and OMB Circular A–119. Upon reconsideration, DOE now believes that adopting the ASME industry standards for the definition of ''showerhead'' here conflicts with EPCA and is impractical because it would not serve the purposes of water and energy conservation. The ''showerhead'' definition and interpretation in the December 2020 Final Rule is inconsistent with EPCA and is impractical because it would likely increase water usage, increase

[12] *See* OMB Circular A–119 s 6.a.2.

associated energy use, and increase GHG emissions, directly contrary to EPCA's purposes. As discussed in section III.A.2 of this document, DOE has tentatively determined that the December 2020 Final Rule's definition of ''showerhead'' is inconsistent with EPCA's purposes of water and energy conservation. Therefore, the NTTAA and OMB Circular A–119 authorize and comprehend DOE's departure from the use of the voluntary consensus standard developed by ASME in ASME/ANSI A112.18–1–2018 for the definition of ''showerhead'' because it would be inconsistent with EPCA and impractical.

B. Withdrawal of DOE's Current Definition of ''Body Spray''

DOE adopted a definition for ''body spray'' in the December 2020 Final Rule. DOE defined the term ''body spray'' as ''a shower device for spraying water onto a bather from other than the overhead position. A body spray is not a showerhead.'' 85 FR 81341, 81359. After a reconsideration of this definition, DOE proposes to withdraw the definition of ''body spray.''

In the December 2020 Final Rule, DOE concluded that the definition of ''showerhead'' in the October 2013 Final Rule did not specifically include or exclude body sprays and that this omission may have introduced uncertainty for regulated parties and therefore it is appropriate to clarify that body sprays are not showerheads. 85 FR 81341, 81350. DOE also stated that leaving the scope of products not subject to EPCA's energy conservation standard undefined, and potentially subjecting manufacturers of body sprays to DOE standards, causes more confusion than establishing a regulatory definition. As such, DOE determined that it was appropriate to clarify the existing ambiguity following the October 2013 Final Rule that did not include body sprays within the definition of ''showerhead,'' and also did not define what constituted a ''body spray.'' 85 FR 81341, 81350.

As part of its review of the definition of ''body spray'', DOE has reconsidered comments received in response to the August 2020 NOPR. Several commenters expressed concern that the proposal, to define the term ''body spray'' to clarify that these products are not subject to the current energy conservation standards, would result in wasteful and unnecessary ''deluge'' showers, which would also consume much more hot water. (WVWD, No. 0051 at p.2; BAWSCA, No. 0050 at p.3; AWE, et al., No. 0079 at p.2) Further, Valley Water explained that redefining body sprays signals that these products are not subject to the current energy conservation standards and thus can flow at any rate, resulting in an increase in water and energy use and a financial strain for American households. (Valley Water, No. 0076 at p.1)

Other commentators highlighted that the then-proposed definition of ''body spray'' was unnecessary because there was no technical difference between a showerhead and a body spray to warrant a separate definition. (CEC, No. 0083 at p.3; CA IOUs, Public Meeting Transcript at p.22; CA IOUs, No. 0084 at pp.3–5) CEC noted their concern that the then-proposed definition of ''body spray'' relied on manufacturer intent and consumer installation decisions, rather than discernable technical differences between products. (CEC, No. 0083 at p.3) The CA IOUs commented that, in their research, they have been unable to identify a technical difference between body sprays and showerheads other than the orientation of installation. (CA IOUs, Public Meeting Transcript at p.22) The CA IOUs conducted a review of retailer websites that indicated that shower units with body spray capability are generally marketed or sold as combination shower systems or shower panels with an overhead showerhead component. The CA IOUs stated that industry considers body sprays a form of showerhead. The CA IOUs further explained that the marketplace does not clearly distinguish stand-alone body sprays from conventional showerheads and that the market tends to include body spray capability in all-in-one shower systems. The CA IOUs found that all stand-alone body sprays and all-in-one shower systems identified in their research complied with the current water conservation standards. (CA IOUs, No. 0084 at pp.3–5)

The CA IOUs also discussed the treatment of body sprays and showerheads in the 2018 ASME Standard. Specifically, the CA IOUs stated that the definitions of ''showerhead'' and ''body spray'' in the 2018 ASME Standard suggests that body sprays designed and marketed as a stand-alone product and other showerhead devices differ only based on installation position in the end-use application. As such, the standard treats showerheads and body sprays similarly. (CA IOUs, No. 0084 at p.3) Further, the CA IOUs highlighted a comment made in response to the April 2013 SNOPR by Maximum Performance Testing. In the comment referenced by the CA IOUs, Maximum Performance stated that to create a distinction between showerheads and body sprays fails the reality test. In shower applications where body sprays and an overhead showerhead are present, there is no reason to classify one component as different than the other component. ((CA IOUs, No. 0084 at p.4 citing (Maximum Performance, EERE–2011–BT–TP–0061–0029 at p.1))

After further consideration, DOE agrees with commenters that the current definition of ''body spray'' and the interpretation that body sprays are not a showerhead does not effectively address the relationship between these two products. As highlighted by the CA IOUs, the 2018 ASME standard, as well as the 2012 ASME standard, treat the products similarly and the only difference between the definitions of ''showerhead'' and ''body spray'' is the installation location. Further, the market review conducted by the CA IOUs suggests that these two products are not treated differently in the marketplace. Given the similar treatment by the industry standard and the market, as well as the lack of discernable differences between the products, DOE believes that the current definition does not best address the relationship between these two products.

In addition, DOE agrees that the current definition of ''body spray'' may result in excessive water use that is inconsistent with EPCA's purposes. While DOE explained in the December 2020 Final Rule that leaving the term ''body sprays'' undefined introduced uncertainty into the market about whether those products needed to comply with the 2.5 gpm standard, the research done by CA IOUs shows that products with body sprays complied with the energy conservation standard. As such, DOE has tentatively determined that the current definition of ''body spray'' should be withdrawn.

C. Safety Shower Showerhead

In the December 2020 Final Rule, DOE established a definition for the term ''safety shower showerhead.'' 85 FR 81341. Specifically, DOE defined ''safety shower showerhead'' to mean ''a showerhead designed to meet the requirements of ANSI/ISEA Z358.1 (incorporated by reference, see § 430.3)'' 10 CFR 430.2. In this proposed rule, DOE does not propose to amend the definition of ''safety shower showerhead.'' DOE continues to agree with several of the findings in the December 2020 Definition Final Rule: That leaving undefined the scope of products not subject to EPCA's energy conservation standard causes confusion and is inappropriate; that what is meant by a ''safety shower showerhead'' or emergency shower is understood in the regulated industry; that it is unlikely

that manufacturers of showerheads intended for use by residential consumers would design a showerhead to meet the specifications of the ANSI standard in order to avoid compliance with DOE standards; and that the definition and performance criteria in the definition of ''safety shower showerhead'' addressed concerns noted by the commenters in the 2020 rulemaking and distinguish a showerhead from a safety shower showerhead. *See* 85 FR 81341, 81350–81351. Accordingly, DOE believes that retaining the definition of ''safety shower showerhead'' is necessary and appropriate.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Information and Regulatory Affairs (''OIRA'') in the Office of Management and Budget (''OMB'') waived Executive Order 12866 (''E.O.'') 12866, ''Regulatory Planning and Review'' review of this proposed rule.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (''IRFA'') for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by E.O. 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website (*https://energy.gov/gc/office-general-counsel*).

DOE reviewed this proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. DOE certifies that the proposed rule, if adopted, would not have significant economic impact on a substantial number of small entities. The factual basis for this certification is set forth in the following paragraphs.

The Small Business Administration (SBA) considers a business entity to be a small business, if, together with its affiliates, it employs less than a threshold number of workers or earns less than the average annual receipts specified in 13 CFR part 121. The threshold values set forth in these regulation use size standards codes established by the North American Industry Classification System (NAICS) that are available at: *https://www.sba.gov/document/support-table-size-standards.* Plumbing equipment manufacturers are classified under NAICS 332913 ''Plumbing Fixture Fitting and Trim Manufacturing,'' and NAICS 327110 ''Pottery, Ceramics, and Plumbing Fixture Manufacturing.'' The SBA sets a threshold of 1,000 employees or fewer for an entity to be considered a small business within these categories.

This proposed rule would withdraw the current definition of showerhead and reinstate the prior definition of showerhead. This proposal would also withdraw the definition of body sprays. Finally, this proposal would retain the definition of safety shower showerhead. DOE has not found any showerheads that have been introduced into the market since the December 2020 Final Rule became effective that would meet the revised definitions in the December 2020 Final Rule. As such, DOE has not found any evidence of a reliance interest on the December 2020 Final Rule. Based on the foregoing, DOE certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities.

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of showerheads must certify to DOE that their products comply with any applicable energy conservation standards. To certify compliance, manufacturers must first obtain test data for their products according to the DOE test procedures, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including showerheads. (See generally 10 CFR part 429.) The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (''PRA''). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 30 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

DOE is analyzing this proposed regulation in accordance with the National Environmental Policy Act (NEPA) and DOE's NEPA implementing regulations (10 CFR part 1021). DOE's regulations include a categorical exclusion for rulemakings interpreting or amending an existing rule or regulation that does not change the environmental effect of the rule or regulation being amended. 10 CFR part 1021, subpart D, appendix A5. DOE anticipates that this rulemaking, which focuses on the narrow question of how to define a particular product and does not otherwise impose any requirements, will qualify for categorical exclusion A5. This interpretive rulemaking would revise the definition of ''showerhead'' from the December 2020 Rule by reinstating the previous definition and otherwise meets the requirements for application of a categorical exclusion. See 10 CFR 1021.410. DOE has not found any showerheads that have been introduced into the market since the December 2020 Final Rule became effective that would meet the revised definitions in the December 2020 Final Rule. DOE will complete its NEPA review before issuing the final rule.

E. Review Under Executive Order 13132

E.O. 13132, ''Federalism,'' 64 FR 43255 (Aug. 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has tentatively determined that it would not

have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, ''Civil Justice Reform,'' imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of E.O. 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any, (2) clearly specifies any effect on existing Federal law or regulation, (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction, (4) specifies the retroactive effect, if any, (5) adequately defines key terms, and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of E.O. 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, section 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE's policy statement is also available at *https://energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf.*

This proposed rule contains neither an intergovernmental mandate nor a mandate that may result in the expenditures of $100 million or more in any one year, so these requirements under the Unfunded Mandates Reform Act do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

Pursuant to E.O. 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (Mar. 15, 1988), DOE has determined that this proposed rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at *https://www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf.* DOE has reviewed this proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

E.O. 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This proposed rule—which would amend the definition of showerhead, withdraw the definition of body spray, and retain the definition of safety shower showerhead—would not have a significant adverse effect on the supply, distribution, or use of energy and, therefore, is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects on this proposed rule.

V. Public Participation

A. Participation in the Webinar

The time and date of the webinar are listed in the **DATES** section at the beginning of this document. Webinar registration information, participant

instructions, and information about the capabilities available to webinar participants will be published on DOE's website: *https://www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=2&action=viewlive.* Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedure for Submitting Prepared General Statements for Distribution

Any person who has an interest in the topics addressed in this proposed rulemaking, or who is representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation at the webinar. Such persons may submit requests to speak by email to: *Showerheads2021STD0016@ee.doe.gov.* Persons who wish to speak should include with their request a computer file in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format that briefly describes the nature of their interest in this rulemaking and the topics they wish to discuss. Such persons should also provide a daytime telephone number where they can be reached.

Persons requesting to speak should briefly describe the nature of their interest in this proposed rulemaking and provide a telephone number for contact. DOE requests persons selected to make an oral presentation to submit an advance copy of their statements at least two weeks before the webinar. At its discretion, DOE may permit persons who cannot supply an advance copy of their statement to participate, if those persons have made advance alternative arrangements with the Building Technologies Office. As necessary, requests to give an oral presentation should ask for such alternative arrangements.

C. Conduct of the Webinar

DOE will designate a DOE official to preside at the webinar and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the webinar. There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. After the webinar and until the end of the comment period, interested parties may submit further comments on the proceedings and any aspect of the rulemaking.

The webinar will be conducted in an informal, conference style. DOE will present summaries of comments received before the webinar, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this proposed rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will permit, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the webinar will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the webinar.

A transcript of the webinar will be included in the docket, which can be viewed as described in the Docket section at the beginning of this NOPR. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule before or after the public meeting, but no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this document.

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 itself 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. 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 in 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 telefacsimiles (''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, that are written in English, and that are 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).

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of proposed rulemaking.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Signing Authority

This document of the Department of Energy was signed on July 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 July 16, 2021.

Treena V. Garrett,

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

For the reasons set forth in the preamble, DOE proposes to amend part 430 of chapter II, subchapter D, of title 10 of the Code of Federal Regulations, as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. Section 430.2 is amended by removing the definition of ''Body spray'', and revising the definition of ''Showerhead'', to read as follows:

§ 430.2 Definitions.

* * * * *

Showerhead means a component or set of components distributed in commerce for attachment to a single supply fitting, for spraying water onto a bather, typically from an overhead position, excluding safety shower showerheads.

* * * * *

[FR Doc. 2021–15528 Filed 7–21–21; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 43

[Docket No. OCC–2019–0012]

FEDERAL RESERVE SYSTEM

12 CFR Part 244

[Docket No. OP–1688]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 373

RIN 3064–ZA07

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1234

[Notice No. 2019–N–7]

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 246

[Release No. 34–92326]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 267

[FR–6172–N–03]

Credit Risk Retention—Notification of Extension of Review Period

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); U.S. Securities and Exchange Commission (Commission); Federal Housing Finance Agency (FHFA); and Department of Housing and Urban Development (HUD).

ACTION: Notification of extension of review period.

SUMMARY: The OCC, Board, FDIC, Commission, FHFA, and HUD (the agencies) are providing notice of the extension of the period for the review, and publication of determination of the review, of the definition of qualified residential mortgage; the community-focused residential mortgage exemption; and the exemption for qualifying three-to-four unit residential mortgage loans, in each case as currently set forth in the Credit Risk Retention Regulations (as defined below) as adopted by the agencies.

DATES: The period for completion of the review of the subject residential mortgage provisions and publication of notice disclosing the determination of this review is extended until December 20, 2021. Notice of the commencement of the review was published on December 20, 2019 (84 FR 70073), and notice of the extension of the review and of publication of the determination was published on June 30, 2020 (85 FR 39099).

FOR FURTHER INFORMATION CONTACT:

OCC: Daniel Borman, Counsel, or Kevin Korzeniewski, Counsel, Chief Counsel's Office, (202) 649–5490; Maria Gloria Cobas, (202) 649–5495, Senior Financial Economist, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

Board: Flora H. Ahn, Special Counsel, (202) 452–2317, David W. Alexander, Senior Counsel, (202) 452–287, or Matthew D. Suntag, Senior Counsel, (202) 452–3694, Legal Division; Sean Healey, Lead Financial Institution Policy Analyst, (202) 912–4611, Division of Supervision and Regulation; Karen Pence, Deputy Associate Director, Division of Research & Statistics, (202) 452–2342; Nikita Pastor, Senior Counsel, Division of Consumer & Community Affairs (202) 452–3692; Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551.

FDIC: Rae-Ann Miller, Senior Deputy Director, (202) 898–3898; Kathleen M. Russo, Counsel, (703) 562–2071, *krusso@fdic.gov;* Phillip E. Sloan, Counsel, (202) 898–8517, *psloan@fdic.gov,* Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

Commission: Arthur Sandel, Special Counsel; Kayla Roberts, Special Counsel; Katherine Hsu, Chief, (202) 551–3850, in the Office of Structured Finance, Division of Corporation Finance; or Chandler Lutz, Economist, (202) 551–6600, in the Office of Risk Analysis, Division of Economic and Risk Analysis, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

FHFA: Ron Sugarman, Principal Policy Analyst, Office of Capital Policy, (202) 649–3208, *Ron.Sugarman@fhfa.gov,* or Peggy K. Balsawer, Associate General Counsel, Office of General Counsel, (202) 649–3060, *Peggy.Balsawer@fhfa.gov,* Federal Housing Finance Agency, Constitution Center, 400 7th Street SW, Washington, DC 20219. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

HUD: Kurt G. Usowski, Deputy Assistant Secretary for Economic Affairs, U.S. Department of Housing & Urban Development, 451 7th Street SW, Washington, DC 20410; telephone number 202–402–5899 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay at 800–877–8339.

SUPPLEMENTARY INFORMATION: The credit risk retention regulations are codified at 12 CFR part 43; 12 CFR part 244; 12 CFR part 373; 17 CFR part 246; 12 CFR part 1234; and 24 CFR part 267 (the Credit Risk Retention Regulations). The Credit Risk Retention Regulations require the OCC, Board, FDIC and Commission, in consultation with FHFA and HUD, to commence, and give notice of commencement of, a review of the following provisions of the Credit Risk Retention Regulations no later than December 24, 2019: (1) The definition of qualified residential mortgage (QRM) in section __.13 of the Credit Risk Retention Regulations; (2) the community-focused residential mortgage exemption in section __.19(f) of the Credit Risk Retention Regulations; and (3) the exemption for qualifying three-to-four unit residential mortgage loans in section __.19(g) of the Credit Risk Retention Regulations (collectively, the ''subject residential mortgage provisions''). The Credit Risk Retention Regulations also require that, after completion of this review, but no later than six months after publication of the notice announcing the review, unless extended by the agencies, the agencies publish a notice disclosing the determination of their review.

The agencies published a notification announcing the commencement of the review in the **Federal Register** on December 20, 2019 (84 FR 70073). The agencies published a notification announcing their decision to extend to June 20, 2021, the period for completion of the review and publication of notification disclosing the determination of the review, in the **Federal Register** on June 30, 2020 (85 FR 39099).

The agencies are providing notification that the agencies have extended the period for completion of their review of the subject residential mortgage provisions and publication of the notice disclosing a determination of this review until December 20, 2021.

Michael J. Hsu,

Acting Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System acting through the Secretary of the Board under delegated authority.

Ann E. Misback,

Secretary of the Board.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on July 6, 2021.

James P. Sheesley,

Assistant Executive Secretary.

Dated: July 6, 2021.

By the Securities and Exchange Commission.

J. Matthew DeLesDernier,

Assistant Secretary.

Sandra L. Thompson,

Acting Director, Federal Housing Finance Agency.

By the Department of Housing and Urban Development.

Lopa P. Kolluri,

Principal Deputy Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 2021–15424 Filed 7–21–21; 8:45 am]

BILLING CODE 4810–33–P; I210–01–P; 6714–01–P; 8070–01–P; 8011–01–P; 4210–67–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0197; Project Identifier 2018–SW–107–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus 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 Airbus Helicopters Model EC 155B and EC155B1 helicopters. This proposed AD would require replacing the main gearbox (MGB), or as an alternative, replacing the epicyclic reduction gear module for certain serial numbered planet gear assemblies installed on the MGB. This proposed AD would also require inspecting the MGB magnetic plugs, MGB filter, and oil sump for particles. Depending on the outcome of these inspections, this proposed AD would require further inspections and replacing certain parts. This proposed AD would also prohibit installing certain parts. This proposed AD was prompted by the failure of an MGB second stage planet gear. The actions of this proposed AD are intended to correct an unsafe condition on these helicopters.

DATES: The FAA must receive comments on this proposed AD by September 7, 2021.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Docket:* Go to *https://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* (202) 493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0197; 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: Rao Edupuganti, Aerospace Engineer, Dynamic Systems Section, Technical Innovation Policy Branch, Policy & Innovation Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *rao.edupuganti@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–2021–0197; Project Identifier 2018–SW–107–AD'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this 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 Rao Edupuganti, Aerospace Engineer, Dynamic Systems Section, Technical Innovation Policy Branch, Policy & Innovation Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *rao.edupuganti@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 2018–0263, dated December 7, 2018 (EASA AD 2018–0263), to correct an unsafe condition for Airbus Helicopters Model EC 155 B and EC 155 B1 helicopters. EASA advises that after an accident on a Model EC225 helicopter, an investigation revealed the failure of an MGB second stage planet gear. EASA states that one of the two types of planet gear used in the MGB epicyclic module is subject to higher outer race contact pressures and therefore is more susceptible to spalling and cracking. EASA AD 2018–0263 consequently requires repetitive inspections of the MGB magnetic plugs, the MGB filer, and the oil sump for particles, and depending on the results of those inspections, removing or replacing certain parts. EASA AD 2018–0263 also requires reducing the life limit of Type Z planet gear assemblies. EASA AD 2018–0263 also requires, if certain gear assemblies are installed, either replacing the MGB or replacing the epicyclic reduction gear. Finally EASA AD 2018–0263 prohibits installing a Type Y planet gear assembly or an MGB with a Type Y planet gear assembly 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 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 products of the same type designs.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Airbus Helicopters Alert Service Bulletin ASB No. EC155–05A034, Revision 5, dated December 4, 2018 (ASB EC155–05A34 Rev 5) for Model EC 155 helicopters, which specifies periodic inspections of the MGB magnetic plugs, the MGB filter, and the oil sump for particles. ASB EC155–05A34 Rev 5 also specifies identifying the type of gear assembly installed in the MGB and replacing any Type Y planet gear assembly within 50 hours time-in-service (TIS). For Type Z gear assemblies that have logged less than 1,800 hours TIS since new, this service information specifies replacing the gear assembly before exceeding 1,800 total hours TIS, and for Type Z gear assemblies that have logged 1,800 or more total hours TIS, replacing the gear assembly within 600 hours TIS.

The FAA also reviewed Airbus Helicopters Service Bulletin SB No. EC155–63–016, Revision 4, dated July 26, 2018, for Model EC 155 helicopters. This service information specifies procedures for replacing the MGB epicyclic reduction gear without removing the MGB.

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 for helicopters with at least one Type Y planet gear assembly with a certain serial number (S/N) installed, or at least one Type Z planet gear assembly with a certain S/N installed, within 10 hours TIS after the effective date of this AD and thereafter at intervals not to exceed 10 hours TIS, inspecting the MGB magnetic plugs for particles. If there are particles, the proposed AD would require further inspections and analyses, and replacing the MGB, depending on the type and the size of the particles.

This proposed AD would also require for helicopters with a Type Y planet gear assembly with a certain S/N installed, within 25 hours TIS after the effective date of this AD, inspecting the MGB filter for particles. If there are particles, this proposed AD would require further inspections and analyses, and replacing the MGB, depending on the type and the size of the particles. This proposed AD would require for helicopters with at least one Type Y planet gear assembly with a certain S/N installed, within 50 hours TIS after the effective date of this AD, replacing the MGB. As an alternative to replacing the MGB, this proposed AD would allow replacing the epicyclic reduction gear in the affected MGB.

Additionally, this proposed AD would require, for helicopters without any Type Y planet gear assembly but at least one Type Z planet gear assembly with a certain S/N installed, replacing the MGB within 50 hours TIS after the effective date of this AD or before any planet gear assembly accumulates 1,800 total hours TIS, whichever occurs later. As an alternative to replacing the MGB, this proposed AD would allow replacing the epicyclic reduction gear in the affected MGB.

This proposed AD would require, for helicopters with at least one Type Z planet gear with a certain S/N installed, within certain compliance times specified in the figures in this AD, inspecting the MGB filter and inspecting the oil sump for particles. If there are particles this proposed AD would require further inspections and analyses, and replacing the MGB, depending on the type and the size of the particles.

This proposed AD would prohibit installing an MGB with a certain serial numbered Type Y planet gear assembly and this proposed AD would also prohibit installing a Type Y planet gear assembly with a certain S/N on any helicopter.

This proposed AD would also prohibit installing certain serial numbered Type Z planet gear assemblies that have accumulated 1,800 or more total hours TIS and prohibit installing an MGB with certain serial numbered Type Z planet gear assemblies that have accumulated 1,800 or more total hours TIS.

Finally, this proposed AD would prohibit installing an MGB if the type of the planet gear assembly cannot be determined and would also prohibit installing any planet gear assembly if the type cannot be determined.

Differences Between This Proposed AD and the EASA AD

EASA AD 2018–0263 specifies compliance times based on flight hours and calendar dates. This proposed AD would set compliance times based on hours TIS or before further flight. EASA AD 2018–0263 allows a pilot to inspect the MGB magnetic plugs for particles, while this proposed AD would not. For helicopters with at least one affected Type Z planet gear assembly that has accumulated 1,800 or more total hours TIS installed, EASA AD 2018–0263 requires replacing the MGB or epicyclic reduction gear within 600 flight hours after March 16, 2018, whereas this proposed AD would require either of those replacements within 50 hours TIS after the effective date of this proposed AD instead. If 16NCD13 particles are present, EASA AD 2018–0263 requires taking a 1 liter sample of oil and returning it to Airbus Helicopters and removing the MGB for depot-level inspection, whereas this proposed AD would require replacing the MGB instead.

Interim Action

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

Costs of Compliance

The FAA estimates that this proposed AD would affect 14 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.

Inspecting the magnetic plugs for particle deposits would take about 1 work-hour for an estimated cost of $85 per helicopter per inspection cycle.

Inspecting the MGB filter and oil sump for particle deposits would take about 1 work-hour for an estimated cost of $85 per helicopter per inspection cycle.

Replacing an MGB would take about 42 work-hours, and parts would cost about $295,000 (overhauled) for an estimated total cost of $298,570 per helicopter.

Replacing the epicyclic reduction gear would take about 56 work-hours and parts would cost about $11,404 for an estimated total cost of $16,164 per helicopter.

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:

Airbus Helicopters: Docket No. FAA–2021–0197; Project Identifier 2018–SW–107–AD.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by September 7, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Helicopters Model EC 155B and EC155B1 helicopters, certificated in any category.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 6300, Main Rotor Drive System.

(e) Unsafe Condition

This AD defines the unsafe condition as failure of a main gearbox (MGB) planet gear assembly. This condition could result in failure of the MGB and subsequent loss of helicopter control.

(f) Compliance

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

(g) Required Actions

(1) For helicopters with at least one Type Y planet gear assembly with a serial number (S/N) listed in Appendix 4.A. of Airbus Helicopters Alert Service Bulletin ASB No. EC155–05A034, Revision 5, dated December 4, 2018 (ASB EC–155–05A034 Rev 5) or with at least one Type Z planet gear assembly with an S/N listed in Appendix 4.B. of ASB EC155–05A034 Rev 5 installed, within 10 hours time-in-service (TIS) after the effective date of this AD, and thereafter at intervals not to exceed 10 hours TIS, inspect the MGB magnetic plugs for particles. If there are any particles that consist of any scale, flake, splinter, or other particle other than cotter pin fragments, pieces of lock wire, swarf, abrasion, or miscellaneous non-metallic waste, and any of the planet gears have accumulated less than 50 total hours TIS, before further flight, inspect the MGB filter and oil sump for particles. Thereafter, for 25 hours TIS, continue to inspect the MGB plugs for particles before each flight, inspect the MGB filter and oil sump for particles at intervals not to exceed 25 hours TIS, and inspect the cumulative surface area of the particles collected from the magnetic plugs, the MGB filter, and the oil sump, since last MGB overhaul, or since new if no overhaul has been performed.

Note to paragraph (g)(1): Airbus Helicopters service information refers to an MGB filter as an oil filter.

(i) If the total surface area of the particles is less than 3 mm^2, examine the particles with the largest surface area (S), greatest length (L), and greatest thickness (e).

(A) If any (S) of all of the particles is less than or equal to 1 mm^2, the (L) is less than or equal to 1.5 mm, and the (e) is less than or equal to 0.2 mm, inspect the MGB plugs for particles before further flight, and inspect the MGB filter and oil sump for particles within 25 hours TIS. Thereafter:

(*1*) For 25 hours TIS, continue to inspect the MGB plugs for particles before each flight and perform the actions required by paragraphs (g)(1)(i) and (ii) of this AD.

(*2*) Inspect the MGB filter and oil sump for particles at intervals not to exceed 25 hours TIS and perform the actions required by paragraphs (g)(1)(i) and (ii) of this AD.

(B) If any (S) is greater than 1 mm^2, (L) is greater than 1.5 mm, or (e) is greater than 0.2 mm, perform a metallurgical analysis for any 16NCD13 particles, using a method in accordance with FAA-approved procedures.

(C) If there are any 16NCD13 particles, before further flight, replace the MGB with an airworthy MGB.

(D) If there are no 16NCD13 particles, inspect the MGB plugs for particles before further flight and inspect the MGB filter and oil sump for particles within 25 hours TIS. Thereafter:

(*1*) For 25 hours TIS, continue to inspect the MGB plugs for particles before each flight and perform the actions required by paragraphs (g)(1)(i) and (ii) of this AD.

(*2*) Inspect the MGB filter and oil sump for particles at intervals not to exceed 25 hours TIS and perform the actions required by paragraphs (g)(1)(i) and (ii) of this AD.

(ii) If the total surface area of collected particles is greater than or equal to 3 mm^2, before further flight, perform a metallurgical analysis for any 16NCD13 particles using a method in accordance with FAA-approved procedures.

(A) If there are any 16NCD13 particles, before further flight, replace the MGB with an airworthy MGB.

(B) If there are no 16NCD13 particles, inspect the MGB plugs for particles before further flight and inspect the MGB filter and oil sump for particles within 25 hours TIS. Thereafter:

(*1*) For 25 hours TIS, continue to inspect the MGB plugs for particles before each flight and perform the actions required by paragraphs (g)(1)(i) and (ii) of this AD.

(*2*) Inspect the MGB filter and oil sump for particles at intervals not to exceed 25 hours TIS and perform the actions required by paragraphs (g)(1)(i) and (ii) of this AD.

(2) For helicopters with at least one Type Y planet gear assembly with an S/N listed in Appendix 4.A. of ASB EC–155–05A034 Rev 5 installed, within 25 hours TIS after the effective date of this AD, inspect the MGB filter for particles. If there are any particles that consist of any scale, flake, splinter, or particle other than cotter pin fragments, pieces of lock wire, swarf, abrasion, or miscellaneous non-metallic waste, and any of the planet gears have accumulated more than 50 total hours TIS, before further flight, perform the actions required by paragraphs (g)(1)(i) and (ii) of this AD.

(3) For helicopters with at least one Type Y planet gear assembly with an S/N listed in Appendix 4.A. of ASB EC–155–05A034 Rev 5 installed, within 50 hours TIS after the effective date of this AD, replace the MGB or as an alternative to replacing an affected MGB, replace the epicyclic reduction gear module in the affected MGB in accordance with paragraph 3.B.2. of the Accomplishment Instructions of Airbus Helicopters Service Bulletin SB No. EC155–63–016, Revision 4, dated July 26, 2018 (SB EC155–63–016 Rev 4), except you are not required to contact Airbus Helicopters.

(4) For helicopters without any Type Y planet gear assembly installed but with at least one Type Z planet gear assembly with an S/N listed in Appendix 4.B. of ASB EC155–05A034 Rev 5 installed, within 50 hours TIS after the effective date of this AD, or before any gear accumulates 1,800 total hours TIS, whichever occurs later, replace the MGB or as an alternative to replacing an affected MGB, replace the epicyclic reduction gear module in the affected MGB in accordance with paragraph 3.B.2. of the Accomplishment Instructions of SB EC155–63–016 Rev 4, except you are not required to contact Airbus Helicopters.

(5) For helicopters with at least one Type Z planet gear assembly with an S/N listed in Appendix 4.B. of ASB EC155–05A034 Rev 5 installed, inspect the MGB filter for particles within the compliance times specified in Figure 1 to paragraph (g)(5) of this AD and inspect the oil sump for particles within the compliance times specified in Figure 2 to paragraph (g)(5) of this AD, based on the total hours TIS accumulated by the Type Z planet gear with the most total hours TIS accumulated since first installation in an MGB. If there are particles, before further flight, perform the actions required by paragraphs (g)(1)(i) and (ii) of this AD.

Total Hours TIS Accumulated	Compliance Time for Initial Inspection	Compliance Time for Repetitive Inspections
Less than 400 total hours TIS	Within 55 hours TIS after the effective date of this AD	Within 55 hours TIS
400 or more total hours TIS	Within 25 hours TIS after the effective date of this AD	Within 25 hours TIS

Figure 1 to Paragraph (g)(5)

Total Hours TIS Accumulated	Compliance Time for Initial Inspection	Compliance Time for Repetitive Inspections
Less than 400 total hours TIS	Before exceeding 400 hours TIS after the effective date of this AD	Within 55 hours TIS
400 or more total hours TIS	Within 55 hours TIS after the effective date of this AD	Within 55 hours TIS

Figure 2 to Paragraph (g)(5)

(6) As of the effective date of this AD, do not install a type Y planet gear assembly with an S/N listed in Appendix 4.A. of ASB EC155–05A034 Rev 5 on any helicopter, and do not install an MGB with a Type Y planet gear assembly with an S/N listed in Appendix 4.A. of ASB EC155–05A034 Rev 5 on any helicopter.

(7) As of the effective date of this AD, do not install a Type Z planet gear assembly with an S/N listed in Appendix 4.B. of ASB EC155–05A034 Rev 5 that has accumulated 1,800 or more total hours TIS on any helicopter, and do not install an MGB with at least one Type Z planet gear assembly with an S/N listed in Appendix 4.B. of ASB EC155–05A034 Rev 5 that has accumulated 1,800 or more total hours TIS on any helicopter.

(8) As of the effective date of this AD, do not install any planet gear on any helicopter if the planet gear assembly type cannot be determined, and do not install any MGB on any helicopter if any of the planet gear assembly types cannot be determined.

(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 Rao Edupuganti, Aerospace Engineer, Dynamic Systems Section, Technical Innovation Policy Branch, Policy & Innovation Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *rao.edupuganti@faa.gov.*

(2) For service information identified in this AD, contact Airbus Helicopters, 2701 North Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.* You may view the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177.

(3) The subject of this AD is addressed in European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD 2018–0263, dated December 7, 2018. You may view the EASA AD on the internet at *https://www.regulations.gov* in the AD Docket.

Issued on July 14, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–15477 Filed 7–21–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0573; Project Identifier 2018–CE–046–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for Pilatus Aircraft Ltd. (Pilatus) Models PC–12/45, PC–12/47, and PC–12/47E airplanes with Supplemental Type Certificate (STC) SA00634DE installed. This proposed AD was prompted by a report of strake attachment brackets and the fuselage frame failing at the upper most bracket attachment location. This proposed AD would require inspecting the strake, attachment brackets, surrounding structure, and bolts and replacing components and repairing damage if necessary. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by September 7, 2021.

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

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

For service information identified in this NPRM, contact Pilatus Business Aircraft Ltd., Customer Support Department, 12300 Pilatus Way, Broomfield, CO 80021; phone: (866) 721–2435; fax: (303) 465–9099; email: *productsupport@pilbal.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0573; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Richard R. Thomas, Aviation Safety Engineer, Denver ACO Branch, FAA, 26805 E 68th Avenue, Denver, CO 80249; phone: (303) 342–1080; fax: (303) 342–1088; email: *9-Denver-Aircraft-Cert@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–2021–0573; Project Identifier 2018–CE–046–AD'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this 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 Richard R. Thomas, Aviation Safety Engineer, Denver ACO Branch, FAA, 26805 E 68th Avenue, Denver, CO 80249. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA received a report that an operator found that one of the fuselage strakes was ''loose having excess play'' on two different Pilatus Model PC–12/47E airplanes. Further inspection found the fuselage main frame at frame station 40 and the strake attachment brackets had cracks extending from the attachment bolt hole at the upper most attachment location. Both airplanes had a SPECTRE Lift Platform System, STC SA00634DE, installed. The deployment of the lift platform causes buffeting of the strakes. This condition, if not addressed, could result in airplane flutter and reduced lateral stability, which may lead to loss of control of the airplane.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Pilatus Service Bulletin PC–12 Series, Report Number 12–1700–64–0000, Revision B, dated August 10, 2018 (Pilatus Report 12–1700–64–0000B), which contains procedures for inspection of all fuselage strake attachment bolts and the surrounding structure. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Proposed AD Requirements in This NPRM

This proposed AD would require inspecting the strake, attachment brackets, and bolts for movement and damage, both internal and external, and replacing or repairing any damaged parts.

Differences Between This Proposed AD and the Service Information

Pilatus Report 12–1700–64–0000B specifies a one-time inspection within 10 flight hours of issuance of the SB and recommends repeat inspections without specifying an inspection interval. This

proposed AD would require repeating the inspection every 150 flight hours. Pilatus Report 12–1700–64–0000B specifies contacting Pilatus for further instructions. This proposed AD would require using an FAA-approved repair method. Pilatus Report 12–1700–64–0000B applies to Pilatus PC–12 aircraft serial numbers 190 to 1575. This proposed AD would apply to all Pilatus Aircraft Ltd. Models PC–12/45, PC–12/47, and PC–12/47E airplanes, regardless of serial number, if STC SA00634DE is installed.

Interim Action

The FAA considers this AD an interim action. Pilatus is working on a modification with the intent of minimizing, if not eliminating, the buffeting of the strakes. Once this action is developed, approved, and available, the FAA may consider additional rulemaking.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 30 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection of the strake assemblies.	1 work-hour × $85 per hour = $85 per inspection cycle.	Not applicable	$85 per inspection cycle	$2,550 per inspection cycle.

The extent of damage found during the proposed inspections may vary considerably from airplane to airplane. The FAA has no way of knowing how many airplanes may have damage or the extent of damage each airplane may have.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Pilatus Aircraft Ltd.: Docket No. FAA–2021–0573; Project Identifier 2018–CE–046–AD.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by September 7, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Pilatus Aircraft Ltd. (Pilatus) Models PC–12/45, PC–12/47, and PC–12/47E airplanes, all serial numbers, certificated in any category, with a Spectre Lift Platform System installed in accordance with Supplemental Type Certificate No. SA00634DE.

(d) Subject

Joint Aircraft System Component (JASC) Code 5350, Aerodynamic Faring.

(e) Unsafe Condition

This AD was prompted by a report of the strake attachment brackets and surrounding structure failing at the upper most bracket bolt hole. The FAA is issuing this AD to detect and address any looseness or damage to the strake, attachment brackets or surrounding structure, and missing fasteners or loose bolts, which could result in airplane flutter and reduced lateral stability, which may lead to loss of control of the airplane.

(f) Compliance

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

(g) Inspection and Corrective Actions

Within 10 hours time-in-service (TIS) after the effective date of this AD and thereafter at intervals not to exceed 150 hours TIS, inspect the outside and inside fuselage strakes for movement, the strakes and their attachment brackets for loose and missing bolts and screws, and the strake attachment brackets and surrounding structure for discoloration, deformation, cracks, and other structural damage by following the Accomplishment Instructions—Aircraft, steps A through B.(3) and C.(1) through C.(5), in Pilatus Service Bulletin PC–12 Series, Report Number 12–1700–64–0000, Revision B, dated August 10, 2018.

(1) You must accomplish the inside fuselage inspection regardless of the results of the outside fuselage inspection.

(2) If any movement of the strakes, a loose or missing bolt or screw, discoloration, deformation, a crack, or other structural damage is found during any of the inspections, before further flight, repair using FAA-approved procedures.

(h) Special Flight Permit

A special flight permit may be issued to allow flying the airplane to a maintenance facility where repair of the strake assembly will be performed with the following operating limitations:

(1) Flight must be conducted under visual flight rules, daytime only; and

(2) The Spectre Lift Platform System, STC SA00634DE, must be retracted (not deployed) during the flight.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Denver ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in Related Information.

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

(j) Related Information

(1) For more information about this AD, contact Richard R. Thomas, Aviation Safety Engineer, Denver ACO Branch, FAA, 26805 E 68th Avenue, Denver, CO 80249; phone: (303) 342–1080; fax: (303) 342–1088; email: *9-Denver-Aircraft-Cert@faa.gov.*

(2) For service information identified in this AD, contact Pilatus Business Aircraft Ltd., Customer Support Department, 12300 Pilatus Way, Broomfield, CO 80021; phone: (866) 721–2435; fax: (303) 465–9099; email: *productsupport@pilbal.com.* You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued on July 14, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–15469 Filed 7–21–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0576; Project Identifier 2019–CE–008–AD]

RIN 2120–AA64

Airworthiness Directives; Pacific Aerospace Limited Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Pacific Aerospace Limited Model 750XL airplanes. This proposed AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as installation of the wing leading edge tank fuel pickup assembly in a pre-stressed condition, which could cause cracks in the wing spar web or the fuel pickup assembly pipe. This proposed AD would require inspecting the angle of the support bracket on the wing leading edge tank fuel pickup assembly and taking any necessary corrective actions. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by September 7, 2021.

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

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. For service information identified in this AD, contact the Civil Aviation Authority of New Zealand, Level 15, Asteron Centre, 55 Featherston Street, Wellington 6011; phone: +64 4 560 9400; fax: +64 4 569 202; email: *info@caa.govt.nz.*

You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0576; 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 MCAI, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Mike Kiesov, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 901 Locust, Room 301, Kansas City, MO 64106; phone: (816) 329–4144; fax: (816) 329–4090; email: *mike.kiesov@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–2021–0576; Project Identifier 2019–CE–008–AD'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this 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 Mike Kiesov, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 901 Locust, Room 301, Kansas City, MO 64106. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The Civil Aviation Authority (CAA), which is the aviation authority for New Zealand, has issued AD No. DCA/

750XL/36, effective date February 7, 2019 (referred to after this as ''the MCAI''), to correct an unsafe condition for certain Pacific Aerospace Limited Model 750XL airplanes. The MCAI states:

> DCA/750XL/36 is prompted by a review of the installation of the wing leading edge fuel pickup assemblies. It was found that the fuel pickup assemblies could have been installed in a pre-stressed condition, which could result in cracks in the wing spar web, or cracks in the fuel pickup pipe. The [CAA] AD is issued to introduce the instructions in Pacific Aerospace Mandatory Service Bulletin (MSB) PACSB/XL/109 issue 1, dated 16 January 2019.

The MCAI requires inspecting the installation of the fuel pickup assembly and the wing spar web on both wings and, if any defects are found, taking all necessary corrective actions. You may examine the MCAI in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0576.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Pacific Aerospace Mandatory Service Bulletin PACSB/XL/109, Issue 1, dated January 16, 2019. The service information contains procedures for inspecting the wing leading edge tank fuel pickup assembly to determine if the assembly is under stress and for additional inspections and corrective actions if necessary. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

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

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 23 airplanes of U.S. registry. The FAA also estimates that it would take about 1 work-hour per airplane to comply with the inspection that would be required by this proposed AD. The average labor rate is $85 per work-hour.

Based on these figures, the FAA estimates the inspection cost of this proposed AD on U.S. operators to be $1,955, or $85 per airplane.

In addition, the FAA estimates that any necessary follow-on actions would take 4 work-hours and require parts costing $500, for a cost of $840 per airplane. The FAA has no way of determining the number of airplanes that may need these actions.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Pacific Aerospace Limited: Docket No. FAA–2021–0576; Project Identifier 2019–CE–008–AD.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by September 7, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Pacific Aerospace Limited Model 750XL airplanes, serial numbers 177, 186 through 213, 220, 8001, and 8002, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 3600, Pneumatic System.

(e) Unsafe Condition

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and address an unsafe condition on an aviation product. The MCAI describes the unsafe condition as installation of the wing leading edge tank fuel pickup assembly in a pre-stressed condition, which could cause cracks in the wing spar web or the fuel pickup assembly pipe. The FAA is issuing this AD to prevent cracks in the wing spar web and the fuel pickup pipe. This condition could result in reduced structural integrity of the wing spar or cause a fuel leak, which could result in an engine fire.

(f) Compliance

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

(g) Required Actions

Within 165 hours time-in-service after the effective date of this AD, inspect the angle of the support bracket on the wing leading edge

tank fuel pickup assembly and, before further flight, take any necessary additional actions and corrective actions by following the Accomplishment Instructions in Pacific Aerospace Mandatory Service Bulletin PACSB/XL/109, Issue 1, dated January 16, 2019.

(h) Alternative Methods of Compliance (AMOCs)

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

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

(i) Related Information

(1) For more information about this AD contact Mike Kiesov, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 901 Locust, Room 301, Kansas City, MO 64106; phone: (816) 329–4144; fax: (816) 329–4090; email: *mike.kiesov@faa.gov.*

(2) Refer to Civil Aviation Authority (CAA) of New Zealand AD No. DCA/750XL/36, dated February 7, 2019, for more information. You may examine the CAA AD in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0578.

(3) For service information identified in this AD, contact the Civil Aviation Authority of New Zealand, Level 15, Asteron Centre, 55 Featherston Street, Wellington 6011; phone: +64 4 560 9400; fax: +64 4 569 202; email: *info@caa.govt.nz.* You may review this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued on July 15, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–15474 Filed 7–21–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0532; Airspace Docket No. 21–ASO–19]

RIN 2120–AA66

Proposed Amendment of Class E Airspace; Chester, SC, Lancaster, SC, Waxhaw, NC, and Lincolnton, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace extending upward from 700 feet above the surface for Chester Catawba Regional Airport, Chester, SC; Lancaster County-McWhirter Field Airport, Lancaster, SC; JAARS-Townsend Airport, Waxhaw, NC; and Lincolnton-Lincoln County Regional Airport, Lincolnton, NC. The FAA is proposing this action as a result of the Charlotte Class B Biennial Review. This action would also update the airport's names of Chester Catawba Regional Airport, (previously Chester Municipal Airport); JAARS-Townsend Airport, (previously Waxhaw, JAARS-Townsend Airport); and Lincolnton-Lincoln County Regional Airport, (previously Lincolnton, Lincoln County Airport). In addition, this action would also update the geographic coordinates of Lancaster County-McWhirter Field Airport and Lincolnton-Lincoln County Regional Airport to coincide with the FAA's database. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

DATES: Comments must be received on or before September 7, 2021.

ADDRESSES: Send comments on this proposal to: The U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; Telephone: (800) 647–5527, or (202) 366–9826. You must identify the Docket No. FAA–2021–0532; Airspace Docket No. 21–ASO–19, at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

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

FOR FURTHER INFORMATION, CONTACT: John Goodson, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone (404) 305–5966.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority, as it would amend Class E airspace in Chester, SC; Lancaster, SC; Waxhaw, NC; and Lincolnton, NC, to support IFR operations in the area.

Comments Invited

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

Communications should identify both docket numbers (Docket No. FAA–2021–0532 and Airspace Docket No. 21–ASO–19) and be submitted in triplicate to DOT Docket Operations (see **ADDRESSES** section for the address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those

comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2021–0532; Airspace Docket No. 21–ASO–19.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays, at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, GA 30337.

Availability and Summary of Documents for Incorporation by Reference

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

The Proposal

The FAA proposes an amendment to 14 CFR part 71 to amend Class E airspace extending upward from 700 feet above the surface at:

The Chester Catawba Regional Airport, Chester, SC radius would increase to 9.0 miles, (previously 7.0 miles). In addition, this action would update the airport's name to Chester Catawba Regional Airport, (previously Chester Municipal Airport).

The radius of the Lancaster County-McWhirter Field Airport, Lancaster, SC, would increase to 8.3 miles, (previously 7.0 miles) and within 4.0 miles each side of the 059° bearing from the airport extending from the 8.3-mile radius to 10.9 miles northeast of the airport. This action would also update the geographical coordinates of the Lancaster County-McWhirter Field Airport to coincide with the FAA's database.

The radius of the JAARS-Townsend Airport, Waxhaw, NC, would increase to 9.3 miles, (previously 7 miles). In addition, this action would update the name to JAARS-Townsend Airport, (previously Waxhaw, JAARS-Townsend Airport).

The radius of the Lincolnton-Lincoln County Regional Airport, Lincolnton, NC would increase to 8.5 miles, (previously 6.4 miles). In addition, this action would update the airport name to Lincolnton-Lincoln County Regional Airport, (previously Lincolnton, Lincoln County Airport). This action would also update the geographical coordinates of the Lincolnton-Lincoln County Regional Airport to coincide with the FAA's database.

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

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

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASO SC E5 Chester, SC [Amended]

Chester Catawba Regional Airport, SC
(Lat. 34°47′22″ N, long. 81°11′45″ W)

That airspace extending upward from 700 feet or more above the surface of the earth within a 9.0-mile radius of Chester Catawba Regional Airport.

* * * * *

ASO SC E5 Lancaster, SC [Amended]

Lancaster County-McWhirter Field Airport, SC
(Lat. 34°43′22″ N, long. 80°51′17″ W)

That airspace extending upward from 700 feet above the surface within a 8.3-mile radius of Lancaster County-McWhirter Field Airport, within 4 miles each side of the 059° bearing from the airport extending from the 8.3-mile radius to 10.9 miles northeast of the airport.

* * * * *

ASO NC E5 Waxhaw, NC [Amended]

JAARS-Townsend Airport, NC
(Lat. 34°51′50″ N, long. 80°44′53″ W)

That airspace extending upward from 700 feet above the surface within a 9.3-mile radius of JAARS-Townsend Airport.

* * * * *

ASO NC E5 Lincolnton, NC [Amended]

Lincolnton-Lincoln County Regional, NC
(Lat. 35°28′59″ N, long. 81°09′41″ W)

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of Lincolnton-Lincoln County Regional Airport.

Issued in College Park, Georgia, on July 15, 2021.

Andreese C. Davis,

Manager, Airspace & Procedures Team South, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2021–15452 Filed 7–21–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–371]

Schedules of Controlled Substances: Placement of Amineptine in Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Drug Enforcement Administration proposes placing the substance amineptine (chemical name: 7-[(10,11-dihydro-5*H*-dibenzo[*a,d*]cyclohepten-5-yl)amino]heptanoic acid), including its salts, isomers, and salts of isomers, in schedule I of the Controlled Substances Act. This action is being taken to enable the United States to meet its obligations under the 1971 United Nations Convention on Psychotropic Substances. If finalized, this action would impose the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances on persons who handle (manufacture, distribute, reverse distribute, import, export, engage in research, conduct instructional activities or chemical analysis with, or possess), or propose to handle, amineptine.

DATES: Comments must be submitted electronically or postmarked, on or before September 20, 2021.

Interested persons may file a request for hearing or waiver of hearing pursuant to 21 CFR 1308.44 and in accordance with 21 CFR 1316.45 and/or 1316.47, as applicable. Requests for hearing and waivers of an opportunity for a hearing or to participate in a hearing, together with a written statement of position on the matters of fact and law asserted in the hearing, must be received on or before August 23, 2021.

ADDRESSES: Interested persons may file written comments on this proposal in accordance with 21 CFR 1308.43(g). The electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period. To ensure proper handling of comments, please reference ''Docket No. DEA–371'' on all electronic and written correspondence, including any attachments.

- *Electronic comments:* DEA encourages commenters to submit all comments electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *http://www.regulations.gov* and follow the on-line instructions at that site for submitting comments. Upon completion of your submission, you will receive a Comment Tracking Number. Submitted comments are not instantaneously available for public view on *http://www.regulations.gov.* If you have received a Comment Tracking Number, you have submitted your comment successfully, and there is no need to resubmit the same comment.
- *Paper comments:* Paper comments that duplicate electronic submissions are not necessary and are discouraged. Should you wish to mail a paper comment in lieu of an electronic comment, send via regular or express mail to: Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.
- *Hearing requests:* All requests for a hearing and waivers of participation, together with a written statement of position on the matters of fact and law asserted in the hearing, must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing and waivers of participation should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

FOR FURTHER INFORMATION CONTACT: Terrence L. Boos, Drug & Chemical Evaluation Section, Diversion Control Division, Drug Enforcement Administration; Telephone: (571) 362–3249.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

All comments received in response to this docket are considered part of the public record. The Drug Enforcement Administration (DEA) will make comments available, unless reasonable cause is given, for public inspection online at *http://www.regulations.gov.* Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter. The Freedom of Information Act applies to all comments received. If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want DEA to make it publicly available, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all of the personal identifying information you do not want made publicly available in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want DEA to make it publicly available, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify the confidential business information to be redacted within the comment.

DEA will generally make available in publicly redacted form comments containing personal identifying information and confidential business information identified as directed above. If a comment has so much confidential business information that DEA cannot effectively redact it, DEA may not make available publicly all or part of that comment. Comments posted to *http://www.regulations.gov* may include any personal identifying information (such as name, address, and phone number) included in the text of your electronic submission that is not identified as confidential as directed above.

An electronic copy of this document and supplemental information to this proposed rule are available at *http://www.regulations.gov* for easy reference.

Request for Hearing or Appearance; Waiver

Pursuant to 21 U.S.C. 811(a), this action is a formal rulemaking ''on the record after opportunity for a hearing.'' Such proceedings are conducted pursuant to the provisions of the Administrative Procedure Act, 5 U.S.C. 551–559. 21 CFR 1308.41–1308.45; 21 CFR part 1316, subpart D. Interested persons may file requests for a hearing or notices of intent to participate in a hearing in conformity with the requirements of 21 CFR 1308.44(a) or (b), and they shall include a statement of interest in the proceeding and the objections or issues, if any, concerning which the person desires to be heard. 21 CFR 1316.47(a). Any interested person may file a waiver of an opportunity for a hearing or to participate in a hearing together with a written statement regarding the interested person's position on the matters of fact and law involved in any hearing as set forth in 21 CFR 1308.44(c).

All requests for hearing and waivers of participation, together with a written statement of position on the matters of fact and law involved in such hearing, must be sent to DEA using the address information provided above.

Legal Authority

The United States is a party to the 1971 United Nations Convention on Psychotropic Substances (1971 Convention), February 21, 1971, 32 U.S.T. 543, 1019 U.N.T.S. 175, as amended. Procedures respecting changes in drug schedules under the 1971 Convention are governed domestically by 21 U.S.C. 811(d)(2–4). When the United States receives notification of a scheduling decision pursuant to Article 2 of the 1971 Convention indicating that a drug or other substance has been added to a schedule specified in the notification, the Secretary of the Department of Health and Human Services (HHS),[1] after consultation with the Attorney General, shall first determine whether existing legal controls under subchapter I of the Controlled Substances Act (CSA) and the Federal Food, Drug, and Cosmetic Act meet the requirements of the schedule specified in the notification with respect to the specific drug or substance. 21 U.S.C. 811(d)(3). In the event that the Secretary of HHS (Secretary) did not consult with the Attorney General, and the Attorney General did not issue a temporary order, as provided under 21 U.S.C. 811(d)(4), the procedures for permanent scheduling set forth in 21 U.S.C. 811(a) and (b) control. Pursuant to 21 U.S.C. 811(a)(1), the Attorney General may add to such a schedule any drug or other substance, if he finds that such drug or other substance has a potential for abuse, and makes the findings prescribed by 21 U.S.C. 812(b) for the schedule in which such drug is to be placed. The Attorney General has delegated this scheduling authority to the Administrator of DEA. 28 CFR 0.100.

Background

Amineptine is a synthetic tricyclic antidepressant with central nervous system (CNS) stimulating properties that, according to HHS, has no approved medical use and no known therapeutic application in the United States. Pharmacological studies indicate that amineptine's primary mode of action is to increase extracellular levels of dopamine and norepinephrine as well as inhibit re-uptake of dopamine and norepinephrine within the striatum and limbic areas of the brain.

In 1978, amineptine was approved for use in France as an antidepressant and subsequently marketed in 66 countries throughout Africa, Asia, Europe, and South America. As documented by the World Health Organization's (WHO) Expert Committee on Drug Dependence in its 33rd report (2003) (WHO 2003 report), amineptine has been withdrawn from the market in 49 of the 66 countries. The status of current production of amineptine in other countries is not known, although a small quantity is most likely produced for research purposes.

In April 2003, the United Nations Commission on Narcotic Drugs, on the advice of the Director-General of the WHO, added amineptine to Schedule II of the 1971 Convention, thus notifying all parties to the 1971 Convention.[2] Because the procedures in 21 U.S.C. 811(d)(3) and (4) for consultation and issuance of a temporary order for amineptine, discussed in the above legal authority section, were not followed, DEA is utilizing the procedures for permanent scheduling set forth in 21 U.S.C. 811(a) and (b) to control amineptine. Such scheduling would satisfy the United States' international obligations.

Article 2, paragraph 7(b), of the 1971 Convention sets forth the minimum requirements that the United States must meet when a substance has been added to Schedule II of the 1971 Convention. Pursuant to the 1971 Convention, the United States must require licenses for the manufacture, export and import, and distribution of amineptine. This license requirement is accomplished by the CSA's registration requirement as set forth in 21 U.S.C. 822, 823, 957, 958 and in accordance with 21 CFR parts 1301 and 1312. In addition, the United States must adhere to specific export and import provisions set forth in the 1971 Convention. This requirement is accomplished by the CSA's export and import provisions established in 21 U.S.C. 952, 953, 957, 958 and in accordance with 21 CFR part 1312. Likewise, under Article 13, paragraphs 1 and 2, of the 1971 Convention, a party to the 1971 Convention may notify through the UN Secretary-General another party that it prohibits the importation of a substance in Schedule II, III, or IV of the 1971 Convention. If such notice is presented to the United States, the United States shall take measures to ensure that the named substance is not exported to the notifying country. This requirement is also accomplished by the CSA's export provisions mentioned above. Under Article 16, paragraph 4, of the 1971 Convention, the United States is required to provide annual statistical reports to the International Narcotics Control Board (INCB). Using INCB Form P, the United States shall provide the following information: (1) In regard to each substance in Schedule I and II of the 1971 Convention, quantities manufactured in, exported to, and imported from each country or region as well as stocks held by manufacturers; (2) in regard to each substance in Schedule II and III of the 1971 Convention, quantities used in the manufacture of exempt preparations; and (3) in regard to each substance in Schedule II—IV of the 1971 Convention, quantities used for the manufacture of non-psychotropic substances or products. Lastly, under Article 2 of the 1971 Convention, the United States must adopt measures in accordance with Article 22 to address violations of any statutes or regulations that are adopted pursuant to its obligations under the 1971 Convention. Persons acting outside the legal framework established by the CSA are subject to administrative, civil, and/or criminal

[1] As discussed in a memorandum of understanding entered into by the Food and Drug Administration (FDA) and the National Institute on Drug Abuse (NIDA), FDA acts as the lead agency within HHS in carrying out the Secretary's scheduling responsibilities under the Controlled Substances Act, with the concurrence of NIDA. 50 FR 9518 (March 8, 1985). The Secretary of HHS has delegated to the Assistant Secretary for Health of HHS the authority to make domestic drug scheduling recommendations. 58 FR 35460 (July 1, 1993).

[2] *https://www.unodc.org/unodc/en/Resolutions/resolution_2003-04-08_1.html.*

action; therefore, the United States complies with this provision.

DEA notes that there are differences between the schedules of substances in the 1971 Convention and the CSA. The CSA has five schedules (schedules I–V) with specific criteria set forth for each schedule. Schedule I is the only possible schedule in which a drug or other substance may be placed if it has high potential for abuse and no currently accepted medical use in treatment in the United States. See 21 U.S.C. 812(b). In contrast, the 1971 Convention has four schedules (Schedules I–IV) but does not have specific criteria for each schedule. The 1971 Convention simply defines its four schedules, in Article 1, to mean the correspondingly numbered lists of psychotropic substances annexed to the Convention, and altered in accordance with Article 2.

Proposed Determination to Schedule Amineptine

Pursuant to 21 U.S.C. 811(b), DEA gathered the necessary data on amineptine and, on August 12, 2008, submitted it to the Assistant Secretary for Health of HHS with a request for a scientific and medical evaluation of available information and a scheduling recommendation for amineptine. On November 8, 2011, HHS provided to DEA a written scientific and medical evaluation and scheduling recommendation entitled ''Basis for the Recommendation for Control of Amineptine in Schedule I of the Controlled Substances Act.'' In this recommendation, HHS presented its eight-factor analysis as required under 21 U.S.C. 811(b) and recommended that amineptine be added to schedule I of the CSA.

In response, DEA reviewed the scientific and medical evaluation and scheduling recommendation provided by HHS and all other relevant data and conducted its own eight-factor analysis pursuant to 21 U.S.C. 811(c). Included below is a brief summary of each factor as analyzed by HHS and DEA, and as considered by DEA in the scheduling decision. Both DEA and HHS analyses are available in their entirety under ''Supporting and Related Material'' of the public docket for this rule at *http://www.regulations.gov* under docket number DEA–371.

1. The Drug's Actual or Relative Potential for Abuse: As reported by HHS, the WHO 2003 report showed strong evidence of abuse in Europe and Asia, where amineptine was approved for use as an antidepressant. Additional HHS findings showed that due to reports of hepatotoxicity and abuse in Europe, Servier (a French pharmaceutical company) voluntarily discontinued the French marketing authorization in France and Spain for amineptine in 1999 (HHS, 2011; [3] WHO, 2002 [4]). However, as documented by the WHO 2003 report, the medical use of amineptine and its abuse in developing countries still existed during 1990 to 2003. Clinical studies used between 100—200 mg of amineptine (Lachatre et al., 1989; [5] Sbarra et al., 1981 [6]); however, case reports from various countries (none in the United States due to its lack of approved medical use or known therapeutic application in the United States) have reported hospitalizations due to amineptine abuse and overdose following the ingestion of 2,000–4,300 mg and even up to 12 g daily. However, adverse effects at prescribed doses of amineptine were still observed (see Factor 6).

Evidence shows that amineptine produces behavioral effects in humans and animals that are similar to amphetamine and cocaine (both in schedule II). Pharmacological studies have demonstrated that amineptine has reinforcing effects as shown by the self-administration test and has locomotor stimulant effects. Studies also have shown that amineptine increases extracellular concentrations of dopamine in the brain, particularly in the striatum and nucleus accumbens, which are structures constituting the reward pathway and are known to be involved in the abuse of drugs, including amphetamine and cocaine. The above data indicate that amineptine has the potential for abuse similar to other CNS stimulants controlled under the CSA, such as cocaine and amphetamine.

2. Scientific Evidence of the Drug's Pharmacological Effects, if Known: As stated by HHS, amineptine increases dopamine levels by inducing the synaptosomal release and inhibition of dopamine re-uptake and, to a lesser extent, increasing norepinephrine levels, a mode of action mechanistically similar to the known schedule II CNS stimulants amphetamine and cocaine. Animal behavioral studies have shown that amineptine, in addition to its CNS stimulant properties, has anti-depressant, locomotor, and anti-narcoleptic activities. Human behavioral studies have demonstrated that amineptine works similarly to other antidepressants, often with an earlier onset of therapeutic effects. Studies have shown that amineptine administration lowers depression rating scales in patients and results in a positive subjective quality of sleep and subsequent increase in attention and concentration upon waking.

3. The State of Current Scientific Knowledge Regarding the Drug or Other Substance: The chemical name of amineptine is 7-[(10,11-dihydro-5*H*-dibenzo[*a,d*]cyclohepten-5-yl)amino]heptanoic acid. It is a white, crystalline powder and is soluble in water and in methanol. Humans rapidly absorb amineptine after oral administration, with mean peak plasma concentrations of amineptine and its main metabolite occurring at 1 hour and 1.5 hours, respectively. Amineptine is metabolized in the liver and rapidly excreted and eliminated through the kidneys with mean half-lives of 0.8 hours for amineptine and 2.5 hours for its metabolite. In humans, 70–75 percent of the administered dose of amineptine was excreted in the urine within 48 hours, with most of the elimination occurring within the first 12 hours.

Distribution of ^{14}C-amineptine was also evaluated in the *Macaca fascicularis* monkey using whole body autoradiography. Results demonstrated high levels of radio-labeled amineptine in the liver and kidneys, with lower levels of activity in the blood, gastrointestinal tract and spleen. In the brain, radioactivity was observed in the cortex, putamen, caudate nucleus, globus pallidus, pulvinar, and geniculate bodies, with lower levels noted in the hippocampus, substantia nigra, and medulla.

4. Its History and Current Pattern of Abuse: As mentioned by HHS, there are numerous published reports of amineptine abuse, including 186 cases of abuse between 1978 and 1988 reported to the Regional Centers of Pharmacovigilance and the Laboratory Eutherapie in France, and 65 cases of abuse between 1990 and 1998 appearing in the Observation of Illegal Drugs and Misuse of Psychotropic Medications database. Notably, amineptine has not been approved for medical use in the United States nor is there any

[3] Health and Human Services (HHS) (2011). Basis for the Recommendation for Control of Amineptine in Schedule I of the Controlled Substances Act.

[4] WHO's Critical Review of Psychoactive Substances prepared for evaluation by the 33rd Meeting of the WHO Expert Committee on Drug Dependence held in September, in Annex, 2002.1–14.

[5] Lachatre, G., Piva, C., Riche, C., Dumont, D., Defrance, R., Mocaer, E., Nicot, G. (1989). Single-dose pharmacokinetics of amineptine and of its main metabolite in healthy young adults. Fundamental and Clinical Pharmacology, 3(1):19–26.

[6] Sbarra, C., Castelli, M. G., Noseda, A., Fanelli, R. (1981). Pharmacokinetics of amineptine in man. European Journal of Drug Metabolism and Pharmacokinetics, 6(2), 123–126.

documented abuse in the United States of amineptine.

At the 16th French Pharmacovigilance meeting in November 1994, the Fernand Widal Pharmacovigilance Centre reviewed 565 cases of amineptine ''overconsumption'' from 1978 to 1993, and reported multiple characteristics of amineptine abuse including: (1) Amineptine abusers typically had a history of alcoholism, drug abuse, and/or eating disorders; (2) 28 percent of the cases of amineptine abuse resulted in neuropsychiatric disorders; (3) 11 percent of patients developed acne-like lesions from amineptine use; (4) withdrawal from amineptine abuse was described as extremely difficult; (5) only 30 percent were abstinent after one month of withdrawal and long-term abstinence was uncommon; and (6) most patients obtained amineptine from pharmacists by prescription theft or by fraudulent prescriptions. Collectively, these three reports show that there has been a continued pattern of abuse from 1978 to 1998.

DEA noted that in the WHO 2003 report, the WHO's Expert Committee on Drug Dependence stated that the degree of risk to public health associated with the abuse liability of amineptine is substantial, while noting several adverse effects including hepatotoxicity, severe acne, and anxiety. The committee also noted the limited therapeutic usefulness of amineptine due to the availability of safer antidepressants.

Queries of DEA's System to Retrieve Information from Drug Evidence (STRIDE)/STARLiMS [7] and the National Forensic Laboratory Information System (NFLIS) [8] databases on November 17, 2020, did not generate any reports of amineptine, suggesting that it is not trafficked in the United States.

5. The Scope, Duration, and Significance of Abuse: According to the published case reports from 1984 to 2001 in France, Italy, Pakistan, Singapore, and Spain, the majority of the reported cases of amineptine abuse involved patients who were prescribed amineptine for an affective disorder. In these cases, abuse normally began one year after amineptine was prescribed for the treatment of depression by patients independently increasing their dosage, especially in those with a history of alcoholism, intravenous drug abuse, and eating disorders.

Amineptine abuse appears to be due to its psychostimulant effect. Indeed, reasons cited for its abuse were increased energy, joy, work output, alertness, and psychomotor performance. Presently, although internet searches result in websites with purported amineptine for sale, these sites do not list the formulation, purity, price, and quantity for this purported amineptine. In addition, the 1971 Convention currently controls amineptine internationally as a Schedule II substance. Amineptine is also controlled in Belgium, Canada, the Czech Republic, Denmark, Estonia, Germany, Greece, Hungary, Italy, Latvia, Lithuania, the Netherlands, Norway, Poland, Slovenia, and Sweden.

6. What, if Any, Risk There is to the Public Health: As reported by HHS, there are no known fatalities resulting from amineptine use or abuse. Some of the main public health risks of amineptine are related to its serious adverse effects, such as hepatotoxicity, severe acne, and gastrointestinal (acute pancreatitis) effects. In addition, neuropsychiatric symptoms including anxiety, insomnia, nervousness, irritability, dysarthria, acute psychosis, delusions, hallucinations, anorexia, agitation, psychotic disorders, and confusion have resulted from abuse of amineptine.

7. Its Psychic or Physiological Dependence Liability: HHS stated that amineptine has been shown to produce physical and psychological dependence as supported by clinical evidence. While amineptine has no clearly defined withdrawal syndrome, reports of withdrawal symptoms include anxiety, dysphoria, nausea, brief psychotic episodes, tremor, psychomotor agitation, somatic symptoms, and sleep disturbances. In addition, a strong desire to take amineptine was noted in individuals upon withdrawal of the drug, a typical characteristic of psychological dependence.

8. Whether the Substance is an Immediate Precursor of a Substance Already Controlled under the CSA: DEA and HHS find that amineptine is not an immediate precursor of a substance already controlled under the CSA.

Conclusion: Based on consideration of the scientific and medical evaluation and accompanying recommendation of HHS, and based on DEA's consideration of its own eight-factor analysis, DEA finds that these facts and all relevant data constitute substantial evidence of potential for abuse of amineptine. As such, DEA hereby proposes to schedule amineptine as a controlled substance under the CSA.

Proposed Determination of Appropriate Schedule

The CSA establishes five schedules of controlled substances known as schedules I, II, III, IV, and V. The CSA outlines the findings required to place a drug or other substance in any particular schedule. 21 U.S.C. 812(b). After consideration of the analysis and recommendation of the Assistant Secretary for Health of HHS and review of all available data, the Administrator of DEA, pursuant to 21 U.S.C. 812(b)(1), finds that:

(1) Amineptine has a high potential for abuse. Amineptine has stimulant and euphoric effects similar to cocaine and amphetamine, which are both schedule II drugs. Amineptine has a high potential for abuse that is equivalent to cocaine and amphetamine and has been abused throughout Europe and Asia.

(2) Amineptine has no currently accepted medical use in treatment in the United States. There are no approved New Drug Applications for amineptine and no known therapeutic application for amineptine in the United States. Therefore, amineptine has no currently accepted medical use in treatment in the United States.[9]

(3) There is a lack of accepted safety for use of amineptine under medical supervision. Clinical experience showed that patients taking amineptine under medical supervision for depression misused and abused the drug by stealing or falsifying prescriptions and taking doses that were 10 to 20 times higher than prescribed. As a result of taking higher doses, many patients developed hepatic, gastrointestinal, cardiovascular, and psychiatric side effects. Amineptine was once marketed in 66 countries throughout Europe, Africa, Asia, and

[7] STRIDE is a database of drug exhibits sent to DEA laboratories for analysis. Exhibits from the database are from DEA, other federal agencies, and law enforcement agencies. On October 1, 2014, STARLiMS replaced STRIDE as DEA laboratory drug evidence data system of record.

[8] NFLIS is a national drug forensic laboratory reporting system that systematically collects results from drug chemistry analyses conducted by state and local forensic laboratories across the country. The NFLIS participation rate, defined as the percentage of the national drug caseload represented by laboratories that have joined NFLIS, is over 97%. NFLIS includes drug chemistry results from completed analyses only.

[9] Although there is no evidence suggesting that amineptine has a currently accepted medical use in treatment in the United States, it bears noting that a drug cannot be found to have such medical use unless DEA concludes that it satisfies a five-part test. Specifically, with respect to a drug that has not been approved by FDA, to have a currently accepted medical use in treatment in the United States, all of the following must be demonstrated: i. the drug's chemistry must be known and reproducible; ii. there must be adequate safety studies; iii. there must be adequate and well-controlled studies proving efficacy; iv. the drug must be accepted by qualified experts; and v. the scientific evidence must be widely available. 57 FR 10499 (1992), *pet. for rev. denied, Alliance for Cannabis Therapeutics* v. *DEA,* 15 F.3d 1131, 1135 (D.C. Cir. 1994).

South America. However, amineptine was later withdrawn from the majority of countries due to its abuse potential and lack of safety. Therefore, there is a lack of accepted safety for the use of amineptine under medical supervision.

Although the first finding shows amineptine to have similar effects to schedule II substances such as cocaine and amphetamine, it bears reiterating that there is only one possible schedule in the CSA—schedule I—to place amineptine since it has no currently accepted medical use in treatment in the United States. See the background section for additional discussion.

Based on these findings, the Administrator of DEA concludes that amineptine warrants control in schedule I of the CSA. 21 U.S.C. 812(b)(1). More precisely, because of its stimulant effects, DEA proposes placing substance amineptine, including its salts, isomers, and salts of isomers, in 21 CFR 1308.11(f) (the stimulants category of schedule I).

Requirements for Handling Amineptine

If this rule is finalized as proposed, amineptine would be subject to the CSA's schedule I regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, reverse distribution, import, export, engagement in research, conduct of instructional activities or chemical analysis with, and possession of schedule I controlled substances, including the following:

1. *Registration.* Any person who handles (manufactures, distributes, reverse distributes, imports, exports, engages in research, or conducts instructional activities or chemical analysis with, or possesses) amineptine, or who desires to handle amineptine, would need to be registered with DEA to conduct such activities pursuant to 21 U.S.C. 822, 823, 957, 958 and in accordance with 21 CFR parts 1301 and 1312 as of the effective date of a final scheduling action. Any person who currently handles amineptine and is not registered with DEA would need to submit an application for registration and may not continue to handle amineptine as of the effective date of a final scheduling action, unless DEA has approved that application for registration pursuant to 21 U.S.C. 822, 823, 957, 958 and in accordance with 21 CFR parts 1301 and 1312.

2. *Disposal of stocks.* Any person who does not desire or is not able to obtain a schedule I registration would be required to surrender or to transfer all quantities of currently held amineptine to a person registered with DEA before the effective date of a final scheduling action in accordance with all applicable Federal, State, local, and tribal laws. As of the effective date of a final scheduling action, amineptine would be required to be disposed of in accordance with 21 CFR part 1317, in addition to all other applicable Federal, State, local, and tribal laws.

3. *Security.* Amineptine would be subject to schedule I security requirements and would need to be handled and stored pursuant to 21 U.S.C. 821 and 823 and in accordance with 21 CFR 1301.71–1301.93, as of the effective date of a final scheduling action. Non-practitioners handling amineptine would also need to comply with the employee screening requirements of 21 CFR 1301.90 –1301.93.

4. *Labeling and Packaging.* All labels, labeling, and packaging for commercial containers of amineptine would need to be in compliance with 21 U.S.C. 825 and 958(e) and in accordance with 21 CFR part 1302, as of the effective date of a final scheduling action.

5. *Quota.* Only registered manufacturers would be permitted to manufacture amineptine in accordance with a quota assigned pursuant to 21 U.S.C. 826 and in accordance with 21 CFR part 1303, as of the effective date of a final scheduling action.

6. *Inventory.* Every DEA registrant who possesses any quantity of amineptine on the effective date of a final scheduling action would be required to take an inventory of amineptine on hand at that time, pursuant to 21 U.S.C. 827 and 958 and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11(a) and (d).

Any person who becomes registered with DEA on or after the effective date of the final scheduling action would be required to take an initial inventory of all stocks of controlled substances (including amineptine) on hand on the date the registrant first engages in the handling of controlled substances, pursuant to 21 U.S.C. 827 and 958 and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11(a) and (b).

After the initial inventory, every DEA registrant would be required to take a new inventory of all controlled substances (including amineptine) on hand every two years, pursuant to 21 U.S.C. 827 and 958 and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

7. *Records and Reports.* Every DEA registrant would be required to maintain records and submit reports for amineptine, or products containing amineptine, pursuant to 21 U.S.C. 827 and 958 and in accordance with 21 CFR parts 1304, 1312, and 1317, as of the effective date of a final scheduling action. Manufacturers and distributors would be required to submit reports regarding amineptine to the Automation of Reports and Consolidated Order System pursuant to 21 U.S.C. 827 and in accordance with 21 CFR parts 1304 and 1312, as of the effective date of a final scheduling action.

8. *Order Forms.* Every DEA registrant who distributes amineptine would be required to comply with order form requirements, pursuant to 21 U.S.C. 828 and in accordance with 21 CFR part 1305, as of the effective date of a final scheduling action.

9. *Importation and Exportation.* All importation and exportation of amineptine would need to be in compliance with 21 U.S.C. 952, 953, 957, and 958 and in accordance with 21 CFR part 1312 as of the effective date of a final scheduling action.

10. *Liability.* Any activity involving amineptine not authorized by, or in violation of, the CSA or its implementing regulations, would be unlawful and may subject the person to administrative, civil, and/or criminal sanctions.

Regulatory Analyses

Executive Orders 12866 and 13563, Regulatory Planning and Review, and Improving Regulation and Regulatory Review.

In accordance with 21 U.S.C. 811(a), this proposed scheduling action is subject to formal rulemaking procedures performed ''on the record after opportunity for a hearing,'' which are conducted pursuant to the provisions of 5 U.S.C. 556 and 557. The CSA sets forth procedures and criteria for scheduling a drug or other substance. Such actions are exempt from review by the Office of Management and Budget pursuant to Section 3(d)(1) of Executive Order (E.O.) 12866 and the principles reaffirmed in E.O. 13563.

Executive Order 12988, Civil Justice Reform

This proposed regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13132, Federalism

This proposed rulemaking does not have federalism implications warranting the application of E.O. 13132. The proposed rule does not have substantial direct effects on the States, on the

relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This proposed rule does not have tribal implications warranting the application of E.O. 13175. It does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

Paperwork Reduction Act of 1995

This action does not impose a new collection of information requirement under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Administrator of DEA, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601–612, has reviewed this proposed rule and, by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities.

DEA proposes placing the substance amineptine, including its isomers, salts, and salts of isomers, in schedule I of the CSA. This action is being taken to enable the United States to meet its obligations under the 1971 Convention. If finalized, this action would impose the regulatory controls and administrative, civil, and/or criminal sanctions applicable to schedule I controlled substances on persons who handle (manufacture, distribute, reverse distribute, import, export, engage in research, conduct instructional activities or chemical analysis with, or possess), or propose to handle, amineptine.

According to HHS, amineptine has a high potential for abuse, has no currently accepted medical use in treatment in the United States, and lacks accepted safety for use under medical supervision. DEA's research confirms that there is no commercial market for amineptine in the United States. Additionally, queries of DEA's STRIDE/STARLiMS and the NFLIS databases on November 17, 2020, did not generate any reports of amineptine, suggesting that it is not trafficked in the United States. Therefore, DEA estimates that no United States entity currently handles amineptine and does not expect any United States entity to handle amineptine in the foreseeable future. DEA concludes that no United States entity would be affected by this rule, if finalized. As such, the proposed rule will not have a significant effect on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

On the basis of information contained in the ''Regulatory Flexibility Act'' section above, DEA has determined pursuant to the Unfunded Mandates Reform Act (UMRA) of 1995 (2 U.S.C. 1501 *et seq.*) that this action would not result in any Federal mandate that may result ''in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year * * *.'' Therefore, neither a Small Government Agency Plan nor any other action is required under provisions of the UMRA of 1995.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, 21 CFR part 1308 is proposed to be amended to read as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), 956(b), unless otherwise noted.

■ 2. Amend § 1308.11 by re-designating paragraphs (f)(1) through (f)(9) as paragraphs (f)(2) through (f)(10), and adding a new paragraph (f)(1) to read as follows:

§ 1308.11 Schedule I.

* * * * *

(f) * * *

(1) Amineptine (7-[(10,11-dihydro-5*H*-dibenzo[*a,d*]cyclohepten-5-yl)amino]heptanoic acid) 1219

* * * * *

Anne Milgram,

Administrator.

[FR Doc. 2021–15331 Filed 7–21–21; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

28 CFR Part 16

[CPCLO Order No. 003–2021]

Privacy Act of 1974; Implementation

AGENCY: United States Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: On July 14, 2021 in the publication of the **Federal Register** at 86 FR 37188, the Department of Justice (Department or DOJ), has published a notice of a modified system of records that was retitled as, ''Department of Justice Information Technology, Information System, and Network Activity and Access Records,'' JUSTICE/DOJ–002. In this notice of proposed rulemaking, DOJ proposes to exempt this system of records from certain provisions of the Privacy Act in order to avoid interference with the efforts of DOJ and others to prevent the unauthorized access, use, disclosure, disruption, modification, or destruction of DOJ information and information systems, and to protect information on DOJ classified networks. For the reasons provided below, the Department proposes to amend its Privacy Act regulations by establishing an exemption for records in this system from certain provisions of the Privacy Act. Public comment is invited.

DATES: Comments must be received by August 23, 2021.

ADDRESSES: You may send comments by any of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* When submitting comments electronically, you must include the CPCLO Order No. in the subject box. Please note that the Department is requesting that electronic comments be submitted before midnight Eastern Standard Time on the day the comment period closes because *http://www.regulations.gov* terminates the public's ability to submit comments at that time. Commenters in time zones other than Eastern Standard Time may want to consider this so that their electronic comments are received.

• *Mail:* United States Department of Justice, Office of Privacy and Civil Liberties, ATTN: Privacy Analyst, Office of Privacy and Civil Liberties, 145 N St. NE, Suite 8W.300, Washington, DC 20530. All comments sent via regular or express mail will be considered timely if postmarked on the day the comment period closes. To ensure proper handling, please reference the CPCLO Order No. in your correspondence.

Posting of Public Comments: Interested persons are invited to

participate in this rulemaking by submitting written data, views, or arguments on all aspects of this rule by one of the methods and by the deadline stated above. All comments must be submitted in English, or accompanied by an English translation. The Department also invites comments that relate to the economic, environmental, or federalism effects that might result from this rule. Comments that will provide the most assistance to the Department in developing these procedures will reference a specific portion of the rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Please note that all comments received are considered part of the public record and made available for public inspection at *www.regulations.gov.* Such information includes personally identifying information (PII) (such as your name, address, etc.). Interested persons are not required to submit their PII in order to comment on this rule. However, any PII that is submitted is subject to being posted to the publicly-accessible *www.regulations.gov* site without redaction.

Confidential business information clearly identified in the first paragraph of the comment as such will not be placed in the public docket file.

The Department may withhold from public viewing information provided in comments that they determine may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.* To inspect the agency's public docket file in person, you must make an appointment with the agency. Please see the **FOR FURTHER INFORMATION CONTACT** paragraph, below, for agency contact information.

FOR FURTHER INFORMATION CONTACT: Nickolous Ward, DOJ Chief Information Security Officer, (202) 514–3101, 145 N Street NE, Washington, DC 20530.

SUPPLEMENTARY INFORMATION: In accordance with the Federal Information Security Modernization Act of 2014, among other authorities, DOJ is responsible for complying with information security policies and procedures requiring information security protections commensurate with the risk and magnitude of harm resulting from the unauthorized access, use, disclosure, disruption, modification, or destruction of DOJ information and information systems. *See, e.g.,* 44 U.S.C. 3554 (2018). Consistent with these requirements, DOJ must ensure that it maintains accurate audit and activity records of the observable occurrences on its information systems and networks (also referred to as ''events'') that are significant and relevant to the security of DOJ information and information systems. These audit and activity records may include, but are not limited to, information that establishes what type of event occurred, when the event occurred, where the event occurred, the source of the event, the outcome of the event, and the identity of any individuals or subjects associated with the event. Additionally, monitored events—whether detected utilizing information systems maintaining audit and activity records, reported to the Department by information system users, or reported to the Department by the cybersecurity research community and members of the general public conducting good faith vulnerability discovery activities—may constitute occurrences that (1) actually or imminently jeopardize, without lawful authority, the integrity, confidentiality, or availability of information or an information system; or (2) constitute a violation or imminent threat of violation of law, security policies, security procedures, or acceptable use policies. The Department has developed a formal process to track and document these reported ''incidents,'' which may, in limited circumstances, include records of individuals reporting, or otherwise associated with, an actual or suspected event or incident.

The DOJ notice that published in the July 14, 2021 issue of the **Federal Register**, at 86 FR 37188 has proposed modifications to a Department-wide system of records retitled, ''Department of Justice Information Technology, Information System, and Network Activity and Access Records,'' JUSTICE/DOJ–002. This system covers the Department's tracking of all DOJ information technology, DOJ information system, and DOJ network activity and access by users. These records assist Department information security professionals in protecting DOJ information, ensuring the secure operation of DOJ information systems, and tracking and documenting incidents reported to the agency. The revisions to this notice reflect changes in technology, including the increased ability of the Department to link individuals to information technology, information system, or network activity, and to better describe the Department's records linking individuals to reported cybersecurity incidents or their access to certain information technologies, information systems, and networks through the internet or other authorized connections.

In this rulemaking, the Department proposes to exempt JUSTICE/DOJ–002 from certain provisions of the Privacy Act in order to avoid interference with the responsibilities of the Department to prevent the unauthorized access, use, disclosure, disruption, modification, or destruction of DOJ information and information systems. Additionally, the Department proposes to exempt JUSTICE/DOJ–002 from certain provisions of the Privacy Act to protect activity and audit log records on DOJ classified networks.

Executive Orders 12866 and 13563—Regulatory Review

In accordance with 552a(k), this proposed action is subject to formal rulemaking procedures by giving interested persons an opportunity to participate in the rulemaking process ''through submission of written data, views, or arguments,'' pursuant to 5 U.S.C. 553. This proposed rule will promulgate certain Privacy Act exemptions for a DOJ system of records titled, ''Department of Justice Information Technology, Information System, and Network Activity and Access Records,'' JUSTICE/DOJ–002. This proposed rule does not raise novel legal or policy issues, nor does it adversely affect the economy, the budgetary impact of entitlements, grants, user fees, loan programs, or the rights and obligations of recipients thereof in a material way. The Department of Justice has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, section 3(f), and accordingly this rule has not been reviewed by the Office of Information and Regulatory Affairs within the Office of Management and Budget pursuant to Executive Order 12866.

Regulatory Flexibility Act

This proposed rule will only impact Privacy Act-protected records, which are personal and generally do not apply to an individual's entrepreneurial capacity, subject to limited exceptions. Accordingly, the Chief Privacy and Civil Liberties Officer, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act of 1996 (Subtitle E—Congressional Review Act)

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, 5 U.S.C. 801 *et seq.,* requires the Department to comply with small entity requests for information and advice about compliance with statutes and regulations within the Department's jurisdiction. Any small entity that has a question regarding this document may contact the person listed in **FOR FURTHER INFORMATION CONTACT** paragraph, above. Persons can obtain further information regarding SBREFA on the Small Business Administration's web page at *https://www.sba.gov/advocacy.* This proposed rule is not a major rule as defined by 5 U.S.C. 804 of the Congressional Review Act.

Executive Order 13132—Federalism

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988—Civil Justice Reform

This proposed regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

This proposed rule will have no implications for Indian Tribal governments. More specifically, it does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Therefore, the consultation requirements of Executive Order 13175 do not apply.

Unfunded Mandates Reform Act of 1995

This proposed rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000, as adjusted for inflation, or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), requires the Department to consider the impact of paperwork and other information collection burdens imposed on the public. There are no current or new information collection requirements associated with this proposed rule.

List of Subjects in 28 CFR Part 16

Administrative Practices and Procedures, Courts, Freedom of Information, and the Privacy Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order 2940–2008, the Department of Justice proposes to amend 28 CFR part 16 as follows:

PART 16—PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

■ 1. The authority citation for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 553; 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717.

Subpart E—Exemption of Records Systems Under the Privacy Act

■ 2. Add § 16.138 to subpart E to read as follows:

§ 16.138 Exemption of the Department of Justice, Computer Systems Activity and Access Records, JUSTICE/DOJ–002.

(a) The Department of Justice Information Technology, Information System, and Network Activity and Access Records (JUSTICE/DOJ–002) system of records is exempted from subsections (c)(3); (d); (e)(1), (e)(4)(G), (H), and (I); and (f) of the Privacy Act of 1974, as amended. These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(k)(1) or (k)(2). The applicable exemption may be waived by the DOJ in its sole discretion where DOJ determines compliance with the exempted provisions of the Act would not interfere with or adversely affect the purpose of this system to ensure that the Department can track information system access and implement information security protections commensurate with the risk and magnitude of harm that could result from the unauthorized access, use, disclosure, disruption, modification, or destruction of DOJ information and DOJ information systems.

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3), the requirement that an accounting be made available to the named subject of a record, because this system is exempt from the access provisions of subsection (d). Also, because making available to a record subject the accounting of disclosures of records concerning the subject would specifically reveal investigative interests in the records by the DOJ or other entities that are recipients of the disclosures. Revealing this information could compromise sensitive information classified in the interest of national security, or interfere with the overall law enforcement process by revealing a pending sensitive cybersecurity investigation. Revealing this information could also permit the record subject to obtain valuable insight concerning the information obtained during any investigation and to take measures to impede the investigation, *e.g.,* destroy evidence or alter techniques to evade discovery.

(2) From subsection (d)(1), (2), (3) and (4), (e)(4)(G) and (H), and (f) because these provisions concern individual access to and amendment of certain law enforcement and classified records, compliance of which could alert the subject of an authorized law enforcement activity about that particular activity and the interest of the DOJ and/or other law enforcement or intelligence agencies. Providing access could compromise information classified to protect national security, or reveal sensitive cybersecurity investigative techniques; provide information that would allow a subject to avoid detection; or constitute a potential danger to the health or safety of law enforcement personnel or confidential sources.

(3) From subsection (e)(1) because it is not always possible to know in advance what information is relevant and necessary for law enforcement and intelligence purposes. The relevance and utility of certain information that may have a nexus to cybersecurity threats may not always be fully evident until and unless it is vetted and matched with other information necessarily and lawfully maintained by the DOJ or other entities.

(4) From subsection (e)(4)(I), to the extent that this subsection is interpreted to require more detail regarding the record sources in this system than has

been published in the **Federal Register**. Should the subsection be so interpreted, exemption from this provision is necessary to protect the sources of law enforcement and intelligence information. Further, greater specificity of sources of properly classified records could compromise national security.

Dated: July 1, 2021.

Peter A. Winn,

Acting Chief Privacy and Civil Liberties Officer, United States Department of Justice.

[FR Doc. 2021–14987 Filed 7–21–21; 8:45 am]

BILLING CODE 4410–NW–P

FEDERAL MEDIATION AND CONCILIATION SERVICE

29 CFR 1402

RIN 3076–AA16

Notice to Mediation Agency

AGENCY: Federal Mediation and Conciliation Service (FMCS).

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: The Federal Mediation and Conciliation Service (FMCS), hereby publishes notice of proposed rulemaking to solicit comments on the following modification to the submission method of information collection request, Notice to Mediation Agency, (Agency Form F–7). FMCS proposes to change its method of submission from mail-in to electronic submission. In addition, FMCS proposes to remove the language from the Form F–7.

DATES: Comments must be submitted on or before August 23, 2021.

ADDRESSES: You may submit comments through one of the following methods:

- *Email:* Arthur Pearlstein, *apearlstein@fmcs.gov.*
- *Mail:* Arthur Pearlstein, HQ Office of Arbitration, One Independence Square, 250 E St. SW, Washington, DC 20427. Please note that as of September 11, 2020, the FMCS office is not open for visitors and mail is not checked daily. Therefore, we encourage emailed inquiries.

FOR FURTHER INFORMATION CONTACT: Arthur Pearlstein, Director, Arbitration, Notice Processing, Shared Neutrals, *apearlstein@fmcs.gov,* 202–606–8103.

SUPPLEMENTARY INFORMATION:

I. Background

This modification will change the submission process of information collection request, Notice to Mediation Agency, (Agency Form F–7) from mail-in to electronic submission. This revision is necessary to increase efficiency of FMCS both by allowing FMCS to receive Agency Form F–7's more quickly, but also to reduce processing time. This will allow the Service to provide its services to the parties more quickly. This revision will also remove the language which includes the verbiage of the Form-F7, to allow for FMCS to modify the form, if necessary, without necessitating additional rule change.

II. Authority for This Rulemaking

FMCS' authority to issue rules is found in 29 U.S.C. 172 of Taft Harley Act of 1947. This regulation is within the scope of that authority.

III. Comments Invited

FMCS solicits comments to

(i) Evaluate whether the proposed change of submission from mail-in to electronic is necessary, including whether the change will have practical utility.

(ii) Enhance the quality, utility, and clarity of the information collection submission process.

(iii) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic collection technologies or other forms of information technology.

IV. Discussion of Proposed Amendments Section by Section

The following describes the specific changes proposed by this rulemaking:

- FMCS revises the language ''shall be in writing.'' to ''electronically via a platform provided by FMCS. If electronic submission creates an undue hardship, the filer may contact the FMCS Notice Processing office to explain the circumstances and receive assistance.''
- FMCS revises the language ''The following Form F–7, for use by the parties in filing a notice of dispute, has been prepared by the Service:'' to ''The Form F–7, for use by the parties in filing a notice of dispute, has been prepared by the Service.''
- FMCS removes the form titled ''Notice to Mediation Agencies''.

List of Subjects in 29 CFR Part 1402

Information Collection Requests.

In consideration of the foregoing, FMCS proposed to amend 29 CFR 1402.1 as follows:

■ 1. The authority citation for part 1402 continues to read as follows:

Authority: Sec. 202, 61 Stat. 153, sec. 3, 80 Stat. 250, sec. 203, 61 Stat. 153; 5 U.S.C. 552, 29 U.S.C. 172, 173.

■ 2. Revise § 1402.1 to read as follows:

§ 1402.1 Notice of Dispute.

The notice of dispute filed with the Federal Mediation and Conciliation Service pursuant to the provisions of section 8(d)(3), of the Labor-Management Relations Act, 1947, as amended, shall be submitted electronically via a platform provided by FMCS. If electronic submission creates an undue hardship, the filer may contact the FMCS Notice Processing office to explain the circumstances and receive assistance. The Form F–7, for use by the parties in filing a notice of dispute, has been prepared by the Service.

Sarah Cudahy,

General Counsel.

[FR Doc. 2021–14929 Filed 7–21–21; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2020–0437; FRL–8698–01–R6]

Air Plan Approval; Oklahoma; Volatile Organic Compound Emissions in Nonattainment Areas and Former Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to approve revisions to the State Implementation Plan (SIP) for Oklahoma submitted by the State of Oklahoma designee with a letter dated May 7, 2020. The submittal covers updates to the Oklahoma SIP, as contained in the state's 2019 annual SIP update. Specifically, this action addresses revisions to Oklahoma Administrative Code (OAC), Emission of Volatile Organic Compounds (VOCs) in Nonattainment Areas and Former Nonattainment Areas. There are two Oklahoma counties affected by this action: Tulsa County and Oklahoma County.

DATES: Written comments must be received on or before August 23, 2021.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R6–OAR–2020–0437, at *https://www.regulations.gov* or via email to *fuerst.sherry@epa.gov.* Follow the online instructions for submitting comments. Once submitted, comments

cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact Ms. Sherry Fuerst, 214–665–6454, *fuerst.sherry@epa.gov.* For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

Docket: The index to the docket for this action is available electronically at *www.regulations.gov.* While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (*e.g.,* CBI).

FOR FURTHER INFORMATION CONTACT: Sherry Fuerst, EPA Region 6 Office, Infrastructure and Ozone Section, 214–665–6454, *fuerst.sherry@epa.gov.* Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office will be closed to the public to reduce the risk of transmitting COVID–19. We encourage the public to submit comments via *https://www.regulations.gov,* as there will be a delay in processing mail and no courier or hand deliveries will be accepted. Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

I. Background

On May 7, 2020, the Secretary of Energy and Environment for the State of Oklahoma submitted for EPA review and approval under section 110 of the CAA and 40 CFR part 51, revisions to the Oklahoma Air Quality SIP. The revisions were included in the state's annual SIP update for 2019 and consisted of revisions to Subchapters 2 and 39 and Appendix Q in the OAC Title 252 Chapter 100, which became effective on September 15, 2019. In this action, we note that we are only proposing to approve revisions to OAC Title 252 Chapter 100 Subchapter 39 (OAC 252:100–39) Sections 4, 16, 40, and 41. We are not taking action on Subchapter 2 and Appendix Q at this time. The EPA plans to propose action on these provisions in a future rulemaking action.

The criteria used to evaluate these SIP revisions are found primarily in section 110 of the Act. Section 110(l) requires that a SIP revision submitted to the EPA be adopted after reasonable notice and public hearing and also requires that the EPA not approve a SIP revision if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Act.

These rules were promulgated in compliance with the Oklahoma Administrative Procedures Act and published in the *Oklahoma Register,* the official state publication for rulemaking actions.

II. The EPA's Evaluation

In this action, we are proposing to approve revisions to OAC Title 252 Chapter 100 Subchapter 39 (OAC 252:100–39). Submittal documents for Subchapter 39 are available in the docket for this action. ODEQ's May 7, 2020 submittal is amending the following sections:

1. 252:100–39–4 to remove an incorrect citation to a revoked state rule;
2. 252:100–39–16 to update the timeframe listed as the non-oxidant season, this revision is intended to ensure that the proper controls are used during scheduled refinery unit turnarounds during Oklahoma's current ozone season;
3. 252:100–39–40 to correct the dates of Oklahoma's non-oxidant season, this revision is intended to ensure that cutback asphalt cannot be used during Oklahoma's ozone season; and,
4. 252:100–39–41 to allow for the use of alternative testing methods for leak inspections, to update references used for pressure and vapor testing to incorporate the most recent EPA regulations, and to update tank truck tag (OAC 252:100–39–41(e)(4)(A)(iv) and (v)) requirements to reflect current practices in Tulsa County.

More information on the proposed changes is available in the Technical Support Document prepared in conjunction with this rulemaking action. This is a is a revision by revision discussion:

OAC 252:100, Subchapter 39, Section 4 revision removes an incorrect cross reference. The revision removes ''252:100–48'' from a list of rules from which facilities are exempted because 252:100–48 has been revoked. ODEQ provided notice of the proposed change, announced the comment period from December 3, 2018 through January 9, 2019 and posted a notice of public hearing in Volume 36, Number 6, page 44 of the Oklahoma Register on December 3, 2018. The public hearing was held on January 16, 2019, and no comments were received. The revision is ministerial in nature. Examination of the record indicates that the submitted revision to Subchapter 39, Section 4 is proper and provides additional clarity. Thus, we find that the requirements of section 110(l) of the Act have been satisfied. Therefore, we are proposing to approve the submitted revision to Subchapter 39, Section 4.

OAC 252:100, Subchapter 39, Section 16 revisions update the non-oxidant season from November 1 through March 31 to December 1 through the last day of February. This update is consistent 40 CFR part 58, Appendix D, Table D–3 titled ''Ozone Monitoring Season by State''. Scheduled refinery unit turnarounds may only be accomplished without the controls specified in OAC 252:100–39–16(b)(1) and OAC 252:100–39–16(b)(2) during non-oxidant seasons. ODEQ provided notice of the proposed change, announced the comment period from December 3, 2018 through January 9, 2019 and notice of a public hearing in Volume 36, Number 6, page 44 of the Oklahoma Register on December 3, 2018. The public hearing was held on January 16, 2019, and no comments were received. The environment will likely benefit from shortening the duration of non-oxidant season from 5 months to 3 months (changing from November 1 through March 31 to December 1 through the last day of February). Examination of the record indicates that the submitted revision to Subchapter 39, Section 16 is proper and the revisions will strengthen the SIP by requiring control of emissions during turnarounds during a time period consistent with the ozone season in Oklahoma. Thus, we find that the Oklahoma SIP that the requirements of section 110(l) of the Act have been satisfied. Therefore, we are proposing to approve the submitted revision to Subchapter 39, Section 16.

OAC 252:100, Subchapter 39, Section 40 revisions are to amend rules regulating the use of cutback asphalt to correct the dates of Oklahoma's non-oxidant season, which should be December 1 through the last day of February. This purpose of this proposed

rule is to ensure that cutback asphalt cannot be used during Oklahoma's ozone season. This revision is consistent with 40 CFR part 58, Appendix D, Table D–3 titled ''Ozone Monitoring Season by State''. ODEQ provided notice of the proposed change, announced the comment period from September 4, 2018 through October 5, 2018, and notice of a public hearing in Volume 35, Number 24, page 705 of the Oklahoma Register on September 4, 2018. The public hearing was held on October 10, 2018, and no comments were received. The environment will benefit by restricting the time of year cutback asphalt can be used. Examination of the record indicates that the submitted revision to Subchapter 39, Section 40 is proper, the revisions will strengthen the SIP preventing emissions from the application of cutback asphalt during the time of year when ozone formation is most likely. Thus, we find that the Oklahoma SIP that the requirements of section 110(l) of the Act have been satisfied. Therefore, we are proposing to approve the submitted revision to Subchapter 39, Section 40.

Several changes were made to OAC 252:100, Subchapter 39, Section 41. A typographical error was corrected in subsection 41(c)(5). In subsection 41(d)(3), reference was made to a test method in an EPA Control Technique Guideline (CTG) from 1978. This reference was changed to reference the EPA Test Method 27 contained in 40 CFR part 60 as the applicable procedure for the testing requirement for tank leak tightness. Several modifications were made to subsection 41(e). Subsection 41(e) applies to Tulsa County only. Subsections 41(e)(2)(B) and (E) were modified by removing a thirty-year-old effective date that is no longer necessary. Also, an alternative work practice for monitoring equipment for leaks that is consistent with 40 CFR 60.18(g) through 60.18(i) was added. The revision also states that leaks detected by EPA Test Method 21 or by an alternative work practice shall be repaired within 15 days. Revisions to subsection 41(e)(4)(A)(iv) update the reference to the portion of the rule that specifies the proper pressure testing which changed as a result of reorganizing the section. As part of reorganizing the section, subsection 41(e)(4)(A)(vi) was moved to subsection 41(e)(4)(B)(i), and other references in subsection 41(e)(4) were changed to align the references with the reorganization. Subsection 41(e)(4)(B)(ii) was updated to state that the vapor tightness test must be consistent with EPA Test Method 27 and updated what is considered a passing test as defined by EPA Test Method 27.

ODEQ provided notice of the proposed changes, announced the comment period from September 4, 2018 through October 5, 2018, and hearing schedule in Volume 35, Number 24, page 705 of the Oklahoma Register on September 4, 2018. The public hearing was held on October 10, 2018, and no comments were received. The revisions are ministerial in nature, update references consistent with federal regulations or adopt use of EPA Test Methods. Examination of the record indicates that the submitted revision to Subchapter 39, Section 41 is proper and do not relax the SIP. Thus, we find that the requirements of section 110(l) of the Act have been satisfied. Therefore, we are proposing to approve the submitted revision to Subchapter 39, Section 41.

III. Impact on Areas of Indian Country

Following the U.S. Supreme Court decision in *McGirt* v. *Oklahoma*, 140 S. Ct. 2452 (2020), the Governor of the State of Oklahoma requested approval under Section 10211(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005: A Legacy for Users, Public Law 109–59, 109 Stat. 1144, 1937 (August 10, 2005) (''SAFETEA''), to administer in certain areas of Indian country (as defined at 18 U.S.C. 1151) the State's environmental regulatory programs that were previously approved by the EPA for areas outside of Indian country. The State's request excluded certain areas of Indian country further described below. In addition, the State only sought approval to the extent that such approval is necessary for the State to administer a program in light of *Oklahoma Dept. of Environmental Quality* v. *EPA,* 740 F.3d 185 (D.C. Cir. 2014).[1]

On October 1, 2020, the EPA approved Oklahoma's SAFETEA request to administer all the State's EPA-approved environmental regulatory programs, including the Oklahoma SIP, in the requested areas of Indian country. As requested by Oklahoma, the EPA's approval under SAFETEA does not include Indian country lands, including rights-of-way running through the same, that: (1) Qualify as Indian allotments, the Indian titles to which have not been extinguished, under 18 U.S.C. 1151(c); (2) are held in trust by the United States on behalf of an individual Indian or Tribe; or (3) are owned in fee by a Tribe, if the Tribe (a) acquired that fee title to such land, or an area that included such land, in accordance with a treaty with the United States to which such Tribe was a party, and (b) never allotted the land to a member or citizen of the Tribe (collectively ''excluded Indian country lands'').

EPA's approval under SAFETEA expressly provided that to the extent EPA's prior approvals of Oklahoma's environmental programs excluded Indian country, any such exclusions are superseded for the geographic areas of Indian country covered by the EPA's approval of Oklahoma's SAFETEA request.[2] The approval also provided that future revisions or amendments to Oklahoma's approved environmental regulatory programs would extend to the covered areas of Indian country (without any further need for additional requests under SAFETEA).

As explained above, the EPA is proposing to approve revisions to the Oklahoma SIP that include revisions to OAC Title 252 Chapter 100 Subchapter 39 (OAC 252:100–39) Sections 4, 16, 40, and 41, which will apply in Tulsa and Oklahoma Counties. Consistent with the D.C. Circuit's decision in *ODEQ* v. *EPA* and with EPA's October 1, 2020 SAFETEA approval, if this approval is finalized as proposed, these SIP revisions will apply to all Indian country within Tulsa and Oklahoma Counties, other than the excluded Indian country lands, as described above. Because—per the State's request under SAFETEA—EPA's October 1, 2020 approval does not displace any SIP authority previously exercised by the State under the CAA as interpreted in *ODEQ* v. *EPA,* the SIP will also apply to any Indian allotments or dependent Indian communities located outside of an Indian reservation over which there has been no demonstration of tribal authority.[3]

[1] In *ODEQ* v. *EPA,* the D.C. Circuit held that under the CAA, a state has the authority to implement a SIP in non-reservation areas of Indian country in the state, where there has been no demonstration of tribal jurisdiction. Under the D.C. Circuit's decision, the CAA does not provide authority to states to implement SIPs in Indian reservations. *ODEQ* did not, however, substantively address the separate authority in Indian country provided specifically to Oklahoma under SAFETEA. That separate authority was not invoked until the State submitted its request under SAFETEA, and was not approved until EPA's decision, described in this section, on October 1, 2020.

[2] EPA's prior approvals relating to Oklahoma's SIP frequently noted that the SIP was not approved to apply in areas of Indian country (consistent with the D.C. Circuit's decision in *ODEQ* v. *EPA*) located in the state. *See, e.g.,* 85 FR 20178, 20180 (April 10, 2020). Such prior expressed limitations are superseded by the EPA's approval of Oklahoma's SAFETEA request.

[3] In accordance with Executive Order 13990, EPA is currently reviewing our October 1, 2020 SAFETEA approval and is engaging in further

Continued

IV. Proposed Action

In this action, we are proposing to approve revisions to OAC 252:100–39, Emission of VOCs in Nonattainment Areas and Former Nonattainment Areas, in Section 4 (Exemptions), Section 16 (Petroleum refinery process unit turnaround), Section 40 (Cutback asphalt), and Section 41 (Storage, loading and transport/delivery of VOCs) as submitted to us by a letter dated May 20, 2020 (Submittal). The submittal covers Oklahoma's 2019 regulatory update. We are proposing to approve these revisions in accordance with section 110 of the Act.

V. Incorporation by Reference

In this action, we are proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are proposing to incorporate by reference revisions to the Oklahoma regulations, as described in the Proposed Action section above. We have made, and will continue to make, these documents generally available electronically through *www.regulations.gov* (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 Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

This proposal to approve revisions to the Oklahoma SIP that include amendments to OAC Title 252 Chapter 100 Subchapter 39 (OAC 252:100–39) Sections 4, 16, 40, and 41 will apply, if finalized as proposed, to certain areas of Indian country in Tulsa and Oklahoma counties as discussed in the preamble, and therefore has tribal implications as specified in E.O. 13175 (65 FR 67249, November 9, 2000). However, this action will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. This action will not impose substantial direct compliance costs on federally recognized tribal governments because no actions will be required of tribal governments. This action will also not preempt tribal law as no Oklahoma tribe implements a regulatory program under the CAA, and thus does not have applicable or related tribal laws. Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes (May 4, 2011), the EPA has offered consultation to tribal governments that may be affected by this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: July 15, 2021.

David Gray,

Acting Regional Administrator, Region 6.

[FR Doc. 2021–15396 Filed 7–21–21; 8:45 am]

BILLING CODE 6560–50–P

consultation with tribal governments and discussions with the state of Oklahoma as part of this review. EPA also notes that the October 1, 2020 approval is the subject of a pending challenge in federal court. (*Pawnee* v. *Regan*, No. 20–9635 (10th Cir.)). Pending completion of EPA's review, EPA is proceeding with this proposed action in accordance with the October 1, 2020 approval. EPA's final action on the approved revisions to the Oklahoma SIP that include revisions to OAC Title 252 Chapter 100 Subchapter 39 (OAC 252:100–39) Sections 4, 16, 40, and 41 will address the scope of the state's program with respect to Indian country, and may make any appropriate adjustments, based on the status of our review at that time. If EPA's final action on Oklahoma's SIP is taken before our review of the SAFETEA approval is complete, EPA may make further changes to the approval of Oklahoma's program to reflect the outcome of the SAFETEA review.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2021–0032; FRL–8688–01–R6]

Air Plan Approval; Oklahoma; Interstate Visibility Transport

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to approve elements of a State Implementation Plan (SIP) submission from the State of Oklahoma for the 2015 Ozone National Ambient Air Quality Standard (NAAQS), and proposing to disapprove elements of two SIP submissions for the 2010 sulfur dioxide (SO_2) and the 2012 fine particulate matter ($PM_{2.5}$) NAAQS. These infrastructure SIP (i-SIP) submissions address how the existing SIP provides for implementation, maintenance, and enforcement of these NAAQS. The i-SIP requirements are to ensure that the Oklahoma SIP is adequate to meet the state's responsibilities under the CAA for these NAAQS. Specifically, this proposed rule addresses the interstate visibility transport requirements of the i-SIP for the 2010 SO_2, 2012 $PM_{2.5}$, and 2015 Ozone NAAQS under CAA section 110(a)(2)(D)(i)(II). We are also proposing to find that the deficiencies in the Oklahoma SIP that form the basis of our proposed disapproval of the interstate visibility transport portions of the Oklahoma i-SIP submissions for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS are

remedied by the existing Federal Implementation Plan (FIP) in place for the Oklahoma Regional Haze program, and that no further federal action is required to address the proposed disapproval.

DATES: Comments must be received on or before August 23, 2021.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2021–0032, at *https://www.regulations.gov* or via email to *medina.dayana@epa.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact Dayana Medina, 214–665–7341, *medina.dayana@epa.gov.* For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

Docket: The index to the docket for this action is available electronically at *www.regulations.gov.* While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (*e.g.,* CBI).

FOR FURTHER INFORMATION CONTACT: Dayana Medina, EPA Region 6 Office, Regional Haze and SO_2 Section, 214–665–7341, *medina.dayana@epa.gov.* Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office will be closed to the public to reduce the risk of transmitting COVID–19. We encourage the public to submit comments via *https://www.regulations.gov,* as there will be a delay in processing mail and no courier or hand deliveries will be accepted. Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

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

I. Background

Whenever a new or revised NAAQS is promulgated, the Clean Air Act (CAA) requires states to submit a plan for the implementation, maintenance, and enforcement of the standard, commonly referred to as infrastructure requirements. Section 110(a)(2) lists specific requirements that infrastructure SIPs, or i-SIPs, must include to adequately address such new or revised NAAQS, as applicable. Section 110(a)(2)(D)(i) includes four distinct elements related to interstate transport of air pollution, commonly referred to as prongs, that must be addressed in i-SIP submissions. The first two prongs are codified in section 110(a)(2)(D)(i)(I) and the third and fourth prongs are codified in section 110(a)(2)(D)(i)(II). These four prongs prohibit any source or type of emission activities in one state from:

- Contributing significantly to nonattainment of the NAAQS in another state (prong 1);
- Interfering with maintenance of the NAAQS in another state (prong 2);
- Interfering with measures that prevent significant deterioration of air quality in another state (prong 3); and
- Interfering with measures that protect visibility in another state (prong 4 or ''visibility transport'').

We are only addressing the prong 4 element in this proposal. In an effort to assist states in complying with the i-SIP requirements, EPA issued guidance in 2013.[1] In the 2013 i-SIP guidance, EPA discussed its interpretation of prong 4 and its relationship to the Regional Haze program under CAA sections 169A and 169B, which require each state to address its share of emission reductions needed to meet reasonable progress goals (RPGs) for surrounding Class I areas. EPA suggested two options states may have to demonstrate that the requirements of prong 4 are met. One way in which prong 4 may be satisfied for any relevant NAAQS is through confirmation in the state's i-SIP submission that it has an approved regional haze SIP that fully meets the requirements of 40 CFR 51.308 or 51.309. Alternatively, a state may demonstrate in its i-SIP submission that emissions within its jurisdiction do not interfere with other states' plans to protect visibility. The demonstration should show that the state has sufficient measures that have been approved into its SIP to prevent emissions within its jurisdiction from interfering with the visibility protection plans of other states.

A. Oklahoma's Infrastructure SIP Submittals for 2010 SO_2, 2012 $PM_{2.5}$, and 2015 Ozone NAAQS

EPA has regulated particulate matter (PM) since the first NAAQS for PM were published in 1971. (36 FR 8186 (April 30, 1971)). Most recently, by notice dated January 15, 2013, following a periodic review of the NAAQS for $PM_{2.5}$, EPA revised the primary annual $PM_{2.5}$ NAAQS to 12.0 μg/m³ and retained the secondary annual $PM_{2.5}$ standard of 15 μg/m³ as well as the primary and secondary 24-hour $PM_{2.5}$ standards of 35 μg/m³ (2012 $PM_{2.5}$ NAAQS).[2] The primary NAAQS is designed to protect human health, and the secondary NAAQS is designed to protect the public welfare. On June 16, 2016, the Oklahoma Secretary of Energy and Environment submitted a SIP revision to address most of the i-SIP elements for this revised 2012 $PM_{2.5}$ NAAQS. On November 21, 2016, we proposed to approve all elements included in the 2012 $PM_{2.5}$ i-SIP submission except for the 110(a)(2)(D)(i)(II) prong 4 portion, which we proposed to disapprove.[3] On June 14, 2017, we took final action to approve all elements included in this i-SIP submission, but deferred taking final action on the 110(a)(2)(D)(i)(II) prong 4 portion.[4] In this notice, we are once again proposing to disapprove the prong 4 visibility transport portion of the June 16, 2016 i-SIP submission for the 2012 $PM_{2.5}$ NAAQS.

On June 22, 2010, we revised the primary NAAQS for SO_2 to establish a new 1-hour standard at a level of 75 parts per billion (ppb), based on the 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations.[5] On January 28, 2015, the Oklahoma Secretary of Energy and Environment submitted a SIP revision to address i-SIP elements for this revised NAAQS. On November 21, 2016, we proposed to disapprove the 110(a)(2)(D)(i)(II) prong 4 portion of the 2010 SO_2 i-SIP submission, but we did not finalize this disapproval.[6] In this notice, we are once again proposing to disapprove the prong 4 visibility

[1] Stephen D. Page, Director, Office of Air Quality Planning and Standards. ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Section 110(a)(1) and 110(a)(2).'' Memorandum to EPA Air Division Directors, Regions 1 through 10, September 13, 2013 (hereinafter ''2013 i-SIP Guidance'').

[2] 78 FR 3085 (Jan. 15, 2013).

[3] 81 FR 83184 (November 21, 2016).

[4] 82 FR 27121 (June 14, 2017).

[5] 75 FR 35520 (June 22, 2010).

[6] 81 FR 83184.

transport portion of the January 28, 2015 i-SIP submission for the 2010 SO_2 NAAQS.

EPA has regulated ozone since 1971, when we published the first NAAQS for Photochemical Oxidants (36 FR 8186 (April 30, 1971)). Most recently, following a periodic review of the 2008 NAAQS for ozone, the EPA promulgated a revision to the ozone NAAQS in 2015 lowering the level of both the primary and secondary standards to 0.070 parts per million.[7] On October 25, 2018, the Oklahoma Secretary of Energy and Environment submitted a SIP revision to address i-SIP elements for this revised NAAQS. On March 30, 2020, we approved most infrastructure elements of the 2015 ozone i-SIP submission but deferred taking final action on the 110(a)(2)(D)(i)(II) prong 4 portion.[8]

In this notice, we refer to each of these NAAQS by the year promulgated, *e.g.,* ''the 2008 ozone standard.'' For more information on these standards, please visit *https://www.epa.gov/criteria-air-pollutants.*

B. Regional Haze and Visibility Transport in Oklahoma

On February 17, 2010, Oklahoma submitted a regional haze SIP (the 2010 Regional Haze SIP) to the EPA that included best available retrofit technology (BART) requirements for SO_2, NO_X, and PM for Oklahoma sources. On December 28, 2011, we took final action to partially approve and partially disapprove the 2010 Regional Haze SIP.[9] In this final action, we disapproved Oklahoma's SO_2 BART determinations for the Oklahoma Gas and Electric (OG&E) Sooner Units 1 and 2, the OG&E Muskogee Units 4 and 5, and the American Electric Power/Public Service Company of Oklahoma (AEP/PSO) Northeastern Units 3 and 4 because they do not comply with our regional haze regulations under 40 CFR 51.308(e). We approved Oklahoma's remaining SO_2 BART determinations as well as all nitrogen oxide (NO_X) and PM BART determinations. Additionally, we approved all remaining portions of the 2010 Regional Haze SIP, with the exception of (1) the long-term strategy to the extent it relied on the BART emission limits that we disapproved and (2) Oklahoma's 2018 RPGs on the 20% least impaired and 20% most impaired days for the Wichita Mountains Class I area.[10]

In the December 28, 2011 final rule, we also evaluated whether Oklahoma's SIP ensures that emissions from sources within Oklahoma do not interfere with the visibility programs of other states with respect to the 1997 8-hour Ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS. In developing their respective regional haze SIPs and reasonable progress goals (RPGs), the Central Regional Air Planning Association (CENRAP) states consulted with each other through CENRAP's work groups. As a result of this process, the understanding was that each CENRAP state would take action to achieve the emissions reductions relied upon by other states in their reasonable progress demonstrations. CENRAP states consulted in the development of RPGs, using the products of the technical consultation process to co-develop their RPGs. In developing their visibility projections using photochemical grid modeling, CENRAP states assumed a certain level of emissions from sources within Oklahoma. The CENRAP modeling assumed SO_2 reductions from the OG&E Sooner Units 1 and 2, the OG&E Muskogee Units 4 and 5, and the AEP/PSO Northeastern Units 3 and 4, which Oklahoma did not secure when making its BART determinations for these sources and were thus not required by the 2010 Oklahoma Regional Haze SIP. Since this modeling was used by other states and Oklahoma in establishing their RPGs, we made the finding that the Oklahoma SIP does not ensure that emissions from sources within Oklahoma do not interfere with measures required in the SIP of any other state under Part C of the CAA to protect visibility.[11] In the December 28, 2011 final rule, we finalized a FIP (Oklahoma SO_2 BART FIP) that controls SO_2 emissions from the six units to address the deficiencies identified in our disapproval of these SO_2 BART determinations and the disapproval of the SIP submission addressing its prong 4 visibility transport obligations for the 1997 8-hour Ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS.[12]

On June 20, 2013, Oklahoma submitted a regional haze SIP revision to replace the FIP's SO_2 BART requirements for the AEP/PSO Northeastern Units 3 and 4 and a related revision to the SIP addressing interstate visibility transport requirements (the 2013 Oklahoma Regional Haze SIP Revision). On March 7, 2014, we approved this SIP revision and concurrently withdrew the FIP's applicability to these two units.[13] In addition to approving the SO_2 BART determinations for the AEP/PSO Northeastern Units 3 and 4 in that final rule, we also approved revised NO_X BART requirements for these two units,[14] and approved the portion of the 2013 Oklahoma Regional Haze SIP Revision concerning Oklahoma's interstate visibility transport obligations of CAA section 110(a)(2)(D)(i)(II) with respect to the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS as applied to this source and its associated impacts on other states' programs to protect visibility in Class I Areas.[15] The FIP provisions applicable to the OG&E Muskogee and Sooner plants remain in place.

II. Oklahoma Infrastructure SIP Submittals

On January 28, 2015, Oklahoma submitted a SIP revision to address the infrastructure requirements for the 2010 1-hour SO_2 NAAQS, including the interstate visibility transport requirements. In its evaluation, Oklahoma stated that the 2010 Regional Haze SIP describes Oklahoma's measures to protect visibility and ensure that emissions do not interfere with any other state's measures to protect visibility. Oklahoma stated that these measures include provisions in the Oklahoma Administrative Code 252:100–8, Part 11. Oklahoma noted that EPA partially approved and

[7] 82 FR 65291 (Oct. 26, 2015). Additional information on the history of the NAAQS for ozone is available at *https://www.epa.gov/ozone-pollution/table-historical-ozone-national-ambient-air-quality-standards-naaqs.*

[8] See 85 FR 17502 (March 30, 2020).

[9] 76 FR 81728 (December 28, 2011).

[10] In a final rule published in the **Federal Register** on January 5, 2016, we disapproved Oklahoma's 2018 RPGs on the 20% least impaired and 20% most impaired days for the Wichita Mountains Class I area because Oklahoma did not adequately demonstrate that its RPGs provide for reasonable progress towards meeting the national visibility goal. Specifically, Oklahoma did not satisfy several of the requirements at section 51.308(d)(1) with regard to setting RPGs, including the requirement to adequately consult with other states that may reasonably be anticipated to cause or contribute to visibility impairment at the Wichita Mountains and the requirement to adequately justify RPGs that are less stringent than the uniform rate of progress (URP). However, that final rulemaking was challenged, and in December 2016, following the submittal of a request by the EPA for a voluntary remand of the parts of the rule under challenge, the Fifth Circuit Court of Appeals remanded the rule in its entirety without vacatur. *Texas* v. *EPA,* 829 F.3d 405 (5th Cir. 2016).

[11] 76 FR 81728.

[12] Id.

[13] 79 FR 12944, 12954 (March 7, 2014).

[14] EPA approved the NO_X BART determinations for the AEP/PSO Northeastern Units 3 and 4 and all other subject-to-BART sources in Oklahoma in the December 28, 2011 final rule, but Oklahoma revised the EPA-approved NO_X BART determinations for Northeastern Units 3 and 4 in the 2013 Oklahoma Regional Haze SIP Revision to require earlier installation and compliance with reduced NO_X emission limits prior to the original SIP-imposed deadline. This is discussed in more detail in section III.C of this notice.

[15] 79 FR at 12945.

partially disapproved Oklahoma's Regional Haze SIP and partially approved and partially disapproved Oklahoma's SIP submission addressing its prong 4 visibility transport requirements for the 1997 8-hour Ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS on December 28, 2011. Oklahoma noted that in the same action, EPA promulgated a FIP addressing the disapproved portions of Oklahoma's 2010 Regional Haze SIP and the interstate visibility transport SIP revisions for the 1997 8-hour Ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS, and that EPA found that the controls under this FIP, in combination with the controls required by the portion of the Oklahoma Regional Haze SIP submittal approved by EPA, will serve to prevent sources in Oklahoma from emitting pollutants in amounts that will interfere with efforts to protect visibility in other states. Oklahoma also noted that it submitted a revision to its regional haze and interstate visibility transport SIPs (2013 Oklahoma Regional Haze SIP Revision) on June 14, 2013, to replace the FIP as it relates to the AEP/PSO Northeastern Units 3 and 4, and that EPA approved this revision effective April 7, 2014. Oklahoma asserted that any contribution to visibility impairment or interference with any other state's measures to protect visibility attributable to SO_2 emissions are addressed through Oklahoma's 2010 Regional Haze SIP as revised in the 2013 Oklahoma Regional Haze SIP Revision and through EPA's related regional haze actions in Oklahoma. This includes EPA's FIP action that currently addresses the OG&E Sooner Units 1 and 2 and the OG&E Muskogee Units 4 and 5. Oklahoma also noted that although no additional visibility protection obligations are anticipated on Oklahoma's part as a result of the revised 2010 1-hour SO_2 NAAQ, other program actions taken to ensure maintenance of the revised SO_2 NAAQS will indirectly assist in avoiding interference with any other state's measures to protect visibility.

On June 16, 2016, Oklahoma submitted a SIP revision to address the infrastructure requirements for the 2012 $PM_{2.5}$ NAAQS, including the transport requirements. In its evaluation, Oklahoma stated that the 2010 Regional Haze SIP describes Oklahoma's measures to protect visibility and ensure that emissions do not interfere with any other state's measures to protect visibility. Oklahoma stated that these measures include provisions in the Oklahoma Administrative Code 252:100–8, Part 11. Oklahoma noted that EPA partially approved and partially disapproved Oklahoma's Regional Haze SIP and partially approved and partially disapproved Oklahoma's SIP submission addressing the visibility prong of interstate transport for the 1997 8-hour Ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS on December 28, 2011. Oklahoma noted that in the same action, EPA promulgated a FIP addressing the disapproved portions of Oklahoma's 2010 Regional Haze SIP and the interstate visibility transport SIP submittals for the 1997 8-hour Ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS, and that EPA found that the controls under this FIP, in combination with the controls required by the portion of the Oklahoma Regional Haze SIP submittal approved by EPA, will serve to prevent sources in Oklahoma from emitting pollutants in amounts that will interfere with efforts to protect visibility in other states. Oklahoma also noted that it submitted a revision to its regional haze and interstate visibility transport SIPs on June 14, 2013, to replace the FIP as it relates to the AEP/PSO Northeastern Units 3 and 4, and that EPA approved this revision effective April 7, 2014. In its evaluation, Oklahoma asserted that any contribution to visibility impairment or interference with any other state's measures to protect visibility attributable to emission of $PM_{2.5}$ or its precursors (*e.g.,* SO_2) are addressed through Oklahoma's 2010 Regional Haze SIP as revised in the 2013 Oklahoma Regional Haze SIP Revision and through EPA's related regional haze actions in Oklahoma. This includes EPA's FIP action that currently addresses the OG&E Sooner Units 1 and 2 and the OG&E Muskogee Units 4 and 5. Oklahoma also noted that although no additional visibility protection obligations are anticipated on Oklahoma's part as a result of the revised 2012 $PM_{2.5}$ NAAQS, other program actions taken to assure maintenance of the revised $PM_{2.5}$ NAAQS will indirectly assist in avoiding interference with any other state's measures to protect visibility.

On October 25, 2018, Oklahoma submitted a SIP revision to address the CAA section 110(a)(1) and 110(a)(2) infrastructure and transport requirements for the 2015 Ozone NAAQS. In its evaluation, Oklahoma stated that the 2010 Regional Haze SIP describes Oklahoma's measures to protect visibility and ensure that emissions do not interfere with any other state's measures to protect visibility. Oklahoma stated that these measures include provisions in the Oklahoma Administrative Code 252:100–8, Part 11. Oklahoma noted that EPA partially approved and partially disapproved Oklahoma's Regional Haze SIP and partially approved and partially disapproved Oklahoma's SIP submission addressing the visibility prong of interstate transport for the 1997 8-hour Ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS on December 28, 2011. Oklahoma noted that in the same action, EPA promulgated a FIP addressing the disapproved portions of Oklahoma's 2010 Regional Haze SIP and the interstate visibility transport SIP submittals for the 1997 8-hour Ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS, and that EPA found that the controls under this FIP, in combination with the controls required by the portion of the Oklahoma Regional Haze SIP submittal approved by EPA, will serve to prevent sources in Oklahoma from emitting pollutants in amounts that will interfere with efforts to protect visibility in other states. Oklahoma also noted that it submitted a revision to its regional haze and interstate visibility transport SIPs on June 14, 2013, to replace the FIP as it relates to the AEP/PSO Northeastern Units 3 and 4, and that EPA approved this revision effective April 7, 2014. In its evaluation, Oklahoma asserted that ozone from ozone precursor emissions are not believed to contribute significantly to visibility impairment and that Oklahoma's 2010 Regional Haze SIP demonstrates that Oklahoma's $PM_{2.5}$ emissions do not interfere with any other state's measures to protect visibility. Oklahoma noted that this portion of the 2010 Regional Haze SIP was approved by EPA on December 28, 2011. Additionally, the submission includes a technical support document (TSD) [16] intended to address the requirements of CAA section 110(a)(2)(D)(i)(I), which requires a state's SIP to contain adequate provisions prohibiting any source or other type of emissions activity within the state from emitting any air pollutant in amounts which will contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to any such national primary or secondary ambient air quality standard (*i.e.,* prongs 1 and 2). In that document, Oklahoma asserted that the Oklahoma Department of Environmental Quality (ODEQ) has determined that Oklahoma meets the

[16] See ''Oklahoma Demonstration of Compliance with the Good Neighbor Requirements of Clean Air Act Section 110(a)(2)(D)(i)(I) for the 2015 Ozone National Ambient Air Quality Standard,'' which is part of Oklahoma's October 25, 2018 Infrastructure SIP submittal for the 2015 Ozone NAAQS.

prong 4 visibility transport provisions for the 2015 Ozone NAAQS, as the state is not contributing significantly to nonattainment or maintenance issues in any other state.

In summary, Oklahoma relied on the following points to support its conclusion that Oklahoma meets the prong 4 visibility transport provision for the 2015 Ozone NAAQS: (1) The modeling and technical analysis in the State's interstate transport SIP revision (as to ''prongs 1 and 2'' under section 110(a)(2)(D)(i)(I)) purportedly demonstrating that Oklahoma does not significantly contribute to nonattainment or maintenance in another state for the 2015 Ozone NAAQS; (2) the fact that ozone formed from ozone precursor emissions is not believed to contribute significantly to visibility impairment; and (3) Oklahoma's 2010 Regional Haze SIP, which Oklahoma says demonstrates that $PM_{2.5}$ emissions from Oklahoma do not interfere with any other state's measures to protect visibility.

On December 1, 2020, EPA sent a letter to ODEQ requesting clarification on how the Oklahoma SIP satisfies the prong 4 interstate visibility transport requirement with respect to the 2015 Ozone NAAQS.[17] In a letter dated January 5, 2021, ODEQ pointed out that EPA approved the NO_X BART determinations in the 2010 Oklahoma Regional Haze SIP and also clarified that the SIP addressed NO_X and VOC emissions, which are ozone precursors, using an approach that is consistent with what was anticipated under the CENRAP process for the first regional haze planning period.[18] In the letter, ODEQ noted that Sections VII and IX of the 2010 Oklahoma Regional Haze SIP explain that the SIP requires NO_X reductions resulting from BART and other program requirements, as well as other factors, that are consistent with what was anticipated under the CENRAP consultation process for regional haze SIP development for the first planning period. In the letter, ODEQ further noted that Section VIII of the 2010 Oklahoma Regional Haze SIP explains that the CENRAP modeling used to project the visibility impacts in 2018 as a result of growth and control of emissions from the baseline for Class I areas in CENRAP states included emission adjustments made by ODEQ to reflect presumptive BART controls for the OG&E Sooner Plant, the OG&E Muskogee Plant, and the AEP/PSO Northeastern Plant. For NO_X emissions, this presumptive control level is equivalent to 0.15 lb/MMBtu for NO_X BART and is consistent with the NO_X emission limits required by the 2010 Oklahoma Regional Haze SIP for subject-to-BART units at these three power plants.

In the January 5, 2021 letter, ODEQ also explains that the 2010 Oklahoma Regional Haze SIP did not include additional control requirements to address VOC emissions under regional haze for the first planning period. In the letter, ODEQ points to Section VI(A) of the 2010 Oklahoma Regional Haze SIP, which explains that ODEQ determined that the visibility impairing pollutants in Oklahoma include SO_2, NO_X, PM_{10}, and $PM_{2.5}$, while CENRAP modeling showed that anthropogenic VOCs do not significantly impair visibility at the Wichita Mountains. ODEQ also notes that Section IX(E)(4) of the 2010 Oklahoma Regional Haze SIP explains that the emissions inventory associated with the SIP assigns most emissions of VOCs to biogenic sources, which ODEQ considers to be natural and therefore uncontrollable. ODEQ explains that Section IX(E)(4) of the 2010 Oklahoma Regional Haze SIP noted that a minority of VOC emissions in Oklahoma originate from area, industrial, point, and mobile sources, and that most of these sources already employ controls under various federal mandates. The 2010 Oklahoma Regional Haze SIP explained that considering the small and uncertain contribution of anthropogenic sources of VOC to visibility impairment at the Wichita Mountains, ODEQ did not find further VOC controls reasonable. In the letter, ODEQ explains that these determinations similarly apply to the approach taken in the 2010 Oklahoma Regional Haze SIP regarding potential VOC-related impacts of and remedies for visibility impairment at other states' Class I areas, and that this approach is consistent with what was anticipated under the CERNAP process for the first regional haze planning period. Further, ODEQ notes that Section VIII of the 2010 Oklahoma Regional Haze SIP presented model output data that demonstrates that Oklahoma emissions are projected to impair visibility only insignificantly at all Class I areas in other states, and ODEQ therefore concluded that additional emission reduction action was not needed to protect other Class I areas, including for NO_X and VOC as ozone precursors.

Thus, ODEQ clarifies in the letter that the EPA-approved portion of the 2010 Oklahoma Regional Haze SIP addressed NO_X and VOC emissions using an approach that is consistent with what was anticipated in the CENRAP process for the first regional haze planning period and ODEQ states that it believes that, considering the clarifications in the January 5, 2021 letter, and as certified in the October 25, 2018 submittal, the Oklahoma SIP satisfies the interstate visibility transport CAA requirement of section 110(a)(2)(D)(i)(II) with respect to the 2015 Ozone NAAQS.

III. The EPA's Evaluation

Our 2013 i-SIP guidance addresses the requirements for prong 4 and lays out two ways in which a state's infrastructure SIP submittal may satisfy these requirements.[19] The first method is through a state's confirmation in its infrastructure SIP submittal that it has a fully approved regional haze SIP in place. As previously discussed, EPA promulgated a partial approval and partial disapproval of the 2010 Oklahoma Regional Haze SIP in 2011 because the SO_2 BART determinations for the OG&E Sooner Units 1 and 2, the OG&E Muskogee Units 4 and 5, and the AEP/PSO Northeastern Units 3 and 4 did not comply with our regional haze regulations under 40 CFR 51.308(e), and EPA concurrently promulgated a FIP to address these deficiencies.[20] On June 20, 2013, Oklahoma submitted a SIP revision to address this deficiency with respect to the AEP/PSO Northeastern Units 3 and 4, and the FIP with respect to these two units was withdrawn on March 7, 2014.[21] However, the FIP remains in place with SO_2 BART requirements for the OG&E Sooner Units 1 and 2 and the OG&E Muskogee Units 4 and 5. Therefore, Oklahoma cannot rely on a fully approved Regional Haze SIP as the basis for meeting its prong 4 visibility transport obligations for the 2010 SO_2, 2012 $PM_{2.5}$, and the 2015 Ozone NAAQS.

In the absence of a fully approved Regional Haze SIP, the second method provided by the 2013 i-SIP guidance to meet prong 4 requirements is a demonstration that emissions within a state's jurisdiction do not interfere with

[17] Letter from Michael Feldman, Chief, SO_2 and Regional Haze Section, U.S. Environmental Protection Agency, Region 6, to Melanie Foster, Manager, Rules & Planning Section, Air Quality Division, Oklahoma Department of Environmental Quality, (December 1, 2020). A copy of this letter is included in the docket associated with this proposed rulemaking.

[18] Letter from Kendal Stegmann, Director, Air Quality Division, Oklahoma Department of Environmental Quality, to Michael Feldman, Chief, SO_2 and Regional Haze Section, U.S. Environmental Protection Agency, Region 6 (January 5, 2021). A copy of this letter is included in the docket associated with this proposed rulemaking.

[19] *See* 2013 i-SIP Guidance at 32–35.

[20] 76 FR 81728.

[21] 79 FR 12954.

other states' plans to protect visibility.[22] EPA interprets prong 4 to be pollutant-specific such that the state need only address the potential for interference with visibility protection caused by the pollutant (including precursors) to which the new or revised NAAQS applies.[23] According to the guidance, such a demonstration for the first planning period should establish or identify the measures in the approved SIP that limit visibility-impairing pollutants and ensure that the resulting reductions conform with any mutually agreed emission reductions under the relevant regional haze regional planning organization (RPO) process.[24] As explained below, Oklahoma did not make such a demonstration in the i-SIP submittals for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS. The i-SIP submittal for the 2015 Ozone NAAQS as clarified by Oklahoma's January 5, 2021 letter, provides a demonstration identifying the measures in the approved SIP that limit visibility-impairing ozone precursor emissions and clarifies that the resulting reductions conform with mutually agreed emission reductions under the relevant regional haze RPO process with respect to the 2015 Ozone NAAQS. We discuss this in the subsections that follow.

A. Analysis of Oklahoma's January 28, 2015 Prong 4 Submittal for the 2010 SO_2 NAAQS

The portion of the 2015 infrastructure SIP submittal for the 2010 1-hour SO_2 NAAQS that addresses interstate visibility transport relied on both Oklahoma's 2010 Regional Haze SIP submittal, as revised in the 2013 Regional Haze SIP revision that addresses the AEP/PSO facility, and EPA's FIP that currently applies to the OG&E Sooner Units 1 and 2 and the OG&E Muskogee Units 4 and 5. As explained above, the prong 4 requirements are pollutant specific. Some portions of the 2010 Oklahoma Regional Haze SIP that address SO_2 emissions have been disapproved and thus cannot be relied upon by Oklahoma to satisfy the prong 4 requirements. Further, the EPA's 2013 i-SIP guidance states, ''Under section 110(a)(2)(D(i)(II), an i-SIP submission cannot be approved with respect to prong 4 (visibility transport) until the EPA has issued final approval of SIP provisions that the EPA has found to adequately address any contribution of that state's sources to impacts on visibility program requirements in other states.'' [25] Thus, Oklahoma cannot rely on the existing SO_2 BART FIP to satisfy the prong 4 requirements for the 2010 1-hour SO_2 NAAQS. Moreover, the 2015 i-SIP submittal does not provide any additional information to demonstrate that the measures in the SIP are sufficient to prohibit emissions from sources within Oklahoma from interfering with measures that have been developed by other states to protect visibility with respect to the 2010 1-hour SO_2 NAAQS. Therefore, while the FIP provides an appropriate level of SO_2 control to prohibit emissions from sources within Oklahoma from interfering with measures that have been developed by other states to protect visibility (as discussed in Section III.E.), the SIP submittal does not; Thus, we are proposing to disapprove the 110(a)(2)(D)(i)(II) prong 4 portion of Oklahoma's 2015 i-SIP submittal for the 2010 1-hour SO_2 NAAQS.

B. Analysis of Oklahoma's June 16, 2016 Prong 4 Submittal for the 2012 $PM_{2.5}$ NAAQS

The portion of the 2016 infrastructure SIP submittal for the 2012 $PM_{2.5}$ NAAQS that addresses interstate visibility transport relied on both Oklahoma's 2010 Regional Haze SIP submittal, as revised in the June 20, 2013 SIP revision with respect to the AEP/PSO facility, and EPA's FIP that currently applies to the OG&E Sooner Units 1 and 2 and the OG&E Muskogee Units 4 and 5. The portions of Oklahoma's 2010 Regional Haze SIP that address PM BART have been approved, but portions of the SIP that address PM precursor emissions (*i.e.,* SO_2) have not, and thus cannot be relied upon to satisfy the prong 4 requirements. PM emissions can be emitted directly from sources and can also form in the atmosphere as a result of complex reactions of other pollutants (*i.e.,* precursors) such as SO_2 and NO_X, which are visibility impairing pollutants themselves and are required to be addressed under regional haze.[26] As discussed above, EPA disapproved the SO_2 BART determinations for the OG&E Sooner Units 1 and 2, the OG&E Muskogee Units 4 and 5, and the AEP/PSO Northeastern Units 3 and 4, and promulgated a FIP to address these deficiencies.[27] EPA approved the 2013 Oklahoma Regional Haze SIP Revision that addressed SO_2 BART for the AEP/PSO Northeastern Units 3 and 4, and EPA withdrew the FIP with respect to these two units on March 7, 2014.[28] However, the FIP remains in place with SO_2 BART requirements for the OG&E Sooner Units 1 and 2 and the OG&E Muskogee Units 4 and 5. As explained above, Oklahoma cannot rely upon the portions of the 2010 Oklahoma Regional Haze SIP that address SO_2 emissions that have been disapproved or on the existing SO_2 BART FIP to satisfy the prong 4 requirements for the 2012 $PM_{2.5}$ NAAQS. The 2016 i-SIP submittal does not provide any additional information to demonstrate that the measures in the SIP are sufficient to prohibit emissions from sources within Oklahoma from interfering with measures that have been developed by other states to protect visibility with respect to the 2012 $PM_{2.5}$ NAAQS. We are therefore proposing to disapprove the 110(a)(D)(2)(i)(II) prong 4 portion of Oklahoma's 2016 infrastructure SIP submittal for the 2012 $PM_{2.5}$ NAAQS.

C. Analysis of Oklahoma's 2018 Prong 4 Submittal for the 2015 Ozone NAAQS

In Oklahoma's 2018 infrastructure SIP submittal for the 2015 Ozone NAAQS, Oklahoma asserted that it meets the visibility transport provisions under section 110(a)(2)(D)(i)(II) for the 2015 Ozone NAAQS given that it has determined the state is not contributing significantly to nonattainment or maintenance issues in any other state under section 110(a)(2)(D)(i)(I). The analysis in the SIP submittal that purports to find that Oklahoma emissions do not significantly contribute to nonattainment or interfere with maintenance in another state under section 110(a)(2)(D)(i)(I) focuses on the potential impact of ozone-precursor emissions at certain ozone monitor locations in other states as related to the attainment and maintenance of the ozone NAAQS (*i.e.,* prongs 1 and 2), but does not provide an analysis of *visibility* impacts at Class I areas due to emissions of ozone precursors as visibility pollutants (prong 4).[29] This basis is

[22] *See* 2013 i-SIP Guidance at 34.

[23] *See* 2013 i-SIP Guidance at 33.

[24] *See* 2013 i-SIP Guidance at 34. *See also* 76 FR 22036 (April 20, 2011) (containing EPA's approval of the visibility requirement of 110(a)(2)(D)(i)(II) based on a demonstration by Colorado that did not rely on the Colorado Regional Haze SIP).

[25] *See* 2013 i-SIP Guidance at 32–33.

[26] The BART Guidelines direct states to address SO_2, NO_X and direct PM (including both PM_{10} and $PM_{2.5}$) emissions as visibility-impairment pollutants, and states must exercise their ''best judgment to determine whether VOC or ammonia emissions from a source are likely to have an impact on visibility in an area.'' See 70 FR 39162.

[27] 76 FR 81728.

[28] 79 FR 12954.

[29] *See* 2013 i-SIP Guidance at 33 (''The EPA interprets [prong 4] to be pollutant-specific, such that the infrastructure SIP submission need only address the potential for interference with protection of visibility caused by the pollutant (including precursors) to which the new or revised NAAQS applies.'')

inadequate for approval of the visibility transport requirements.

In the 2018 submittal, Oklahoma also stated that ozone formed from ozone precursor emissions is not believed to contribute significantly to visibility impairment. Oklahoma asserted that the 2010 Regional Haze SIP demonstrates that $PM_{2.5}$ emissions from Oklahoma do not interfere with any other state's measures to protect visibility, and that this portion of the SIP was approved by EPA on December 28, 2011. Here, Oklahoma is referring to EPA's approval of all the PM BART determinations in Oklahoma's 2010 Regional Haze SIP. However, it is unclear in the submittal how the SIP fulfills the prong 4 requirements for the 2015 Ozone NAAQS.[30]

The EPA has not established a separate visibility transport standard for ozone because it does not directly impair visibility or substantially produce or contribute to the production of the secondary air contaminants that cause visibility impairment or regional haze. As stated above, section 110(a)(2)(D)(i)(II) prong 4 requirements apply to all pollutants (including precursors) for which EPA has promulgated a NAAQS. As such, Oklahoma is required to demonstrate to EPA that it has approved measures in its SIP that ensure that ozone-precursor emissions within its jurisdiction do not interfere with other states' visibility protection plans. While ozone itself does not directly impair visibility, ozone precursors (*i.e.,* NO_X and in some cases volatile organic compounds) can react to generate visibility impairing pollutants. Thus, the pertinent question is whether Oklahoma's SIP adequately controls emissions of ozone precursors that may contribute to visibility impairment in other states and whether the level of control of these emissions is consistent with mutually-agreed emissions reductions under the CENRAP regional haze planning process for the first planning period.

As explained in Oklahoma's January 5, 2021 clarification letter, EPA approved all NO_X BART determinations in Oklahoma's 2010 Regional Haze SIP and these EPA-approved NO_X BART determinations conform with the mutually-agreed emission reductions[31] under the CENRAP regional haze planning process that Oklahoma and other Midwestern states participated in for regional haze SIP development for the first regional haze planning period.[32] In the 2013 Oklahoma Regional Haze SIP Revision, Oklahoma revised the NO_X BART requirements for the Northeastern Units 3 and 4 that EPA approved in the December 28, 2011 final rule.[33] The revisions require earlier installation and compliance with reduced NO_X emission limits prior to the original SIP-imposed deadline.[34] Our December 2011 approval of NO_X BART for Units 3 and 4 required that these units meet a NO_X emission limit of 0.15 lb/MMBtu (based on a 30-day rolling average) within five years from the effective date of EPA's approval, or by January 27, 2017.[35] However, under the 2013 Oklahoma Regional Haze SIP Revision, which EPA approved on March 7, 2014, both units are required to meet an initial NO_X emission limit of 0.23 lb/MMBtu (based on a 30-day rolling average) by December 31, 2013, with additional limits of 1,098 lb/hr per unit on a 30-day rolling average basis and a 9,620 tpy combined cap for both units.[36] By April 16, 2016, one unit is required to be permanently shut down, while the remaining unit is required to meet a NO_X emission limit of 0.15 lb/MMBtu (based on a 30-day rolling average), with an additional limit of 716 lb/hr on a 30-day rolling average basis and a cap of 3,137 tpy on a 12-month rolling basis. Finally, this second unit is required to shut down by December 31, 2026. Thus, these revised NO_X BART determination for the Northeastern Units 3 and 4 are more stringent than the determinations that we previously approved given that they require compliance with the 0.15 lb/MMBtu limit on a more expeditious schedule. The Oklahoma SIP contains NO_X BART determinations for all subject-to-BART sources in Oklahoma, which have been approved by EPA in previous actions and conform with the mutually-agreed emission reductions under the CENRAP regional haze planning process that Oklahoma and other Midwestern states participated in for regional haze SIP development for the first regional haze planning period.

In the January 5, 2021 letter, ODEQ also explained that VOC emissions, which are an ozone precursor, were addressed in the 2010 Oklahoma Regional Haze SIP in a manner consistent with what was anticipated under the CENRAP process for the first regional haze planning period. Specifically, in the 2010 Oklahoma Regional Haze SIP, ODEQ asserted that the emissions inventory associated with that SIP submittal assigns most VOC emissions to biogenic sources, which ODEQ considers to be uncontrollable;[37] The CENRAP modeling shows that anthropogenic VOC emissions do not significantly impair visibility at the Wichita Mountains;[38] And, only a minority of VOC emissions in Oklahoma originate from area, industrial, point, and mobile sources, which ODEQ asserted are sources that are already controlled under various federal mandates.[39] ODEQ stated in the 2010 Oklahoma Regional Haze SIP that considering the small and uncertain contribution of anthropogenic sources of VOC to visibility impairment at the Wichita Mountains, ODEQ did not find further controls for VOC sources to be reasonable.[40] The CENRAP modeling used to project the visibility impacts in 2018 for Class I areas in CENRAP states, which reflects the mutually-agreed emissions reductions in CENRAP states, did not assume additional control of VOC emissions in Oklahoma. In the December 28, 2011 final rule on the 2010 Oklahoma Regional Haze SIP, EPA agreed with ODEQ's decision to not further evaluate or require additional controls for VOC emissions in Oklahoma.[41] Thus, Oklahoma's approach for VOC emissions in the 2010 Oklahoma Regional Haze SIP has been approved by EPA and conforms with the mutually-agreed emission reductions under the CENRAP regional haze planning process that Oklahoma and other Midwestern states participated in for regional haze SIP development for the first regional haze planning period.

Therefore, we are proposing to find that the Oklahoma SIP includes the necessary emission reductions to satisfy the 110(a)(2)(D)(i)(II) prong 4 requirements for the 2015 Ozone NAAQS and are proposing to approve the portion of the 2018 infrastructure SIP submittal that addresses interstate visibility transport for the 2015 Ozone NAAQS.

[30] Id.

[31] During consultation ODEQ indicated that Sooner Units 1 and 2, Muskogee Units 4 and 5, and Northeastern Units 3 and 4 would have emission limits based on 0.15 lb of NO_X per MMBtu. ODEQ's January 5, 2021 letter noted that Section VIII of the 2010 Oklahoma Regional Haze SIP explained that these emissions reductions for these six units were included in the CENRAP 2018 modeling projections that other CENRAP states relied on in developing their regional haze SIPs.

[32] 76 FR 81728.

[33] 76 FR at 81729.

[34] 78 FR 51686, 51690 (August 21, 2013).

[35] 76 FR 16168, 16181, 16182 (March 22, 2011).

[36] 79 FR at 12944.

[37] See 2010 Oklahoma Regional Haze SIP, Section IX.E.4, page 113. A copy of the submittal is included in the docket associated with this proposed rulemaking.

[38] Id at Section VI.A, page 69.

[39] Id.

[40] Id.

[41] See 76 FR at 81729 77 FR (proposed rule) and 76 FR 81728 (final rule).

D. AEP/PSO Northeastern SO_2 Emission Reductions Assumed in the CENRAP Modeling

As discussed earlier in this notice, Oklahoma engaged in a regional planning process with other CENRAP states to develop their regional haze SIP for the first planning period. This regional planning process included a forum in which state representatives built emission inventories that assumed that specific pollution sources would be controlled to specific levels. This included adjustments to projected emissions by ODEQ to reflect the assumption that the OG&E Sooner Units 1 and 2, the OG&E Muskogee Units 4 and 5, and the AEP/PSO Northeastern Units 3 and 4 would each be controlled to presumptive BART emission levels for SO_2,[42] which is equivalent to 0.15 lb/MMBtu.[43] Visibility modeling projections conducted by CENRAP subsequently included those emission reductions, and other states relied on them as part of their reasonable progress demonstrations. However, Oklahoma, in its subsequent 2010 Regional Haze SIP, did not include these promised reductions on which the other states relied on in developing their own RPGs and regional haze SIPs. Instead, Oklahoma determined that SO_2 BART for these units was no additional control and specified an SO_2 limit of 0.65 lbs/MMBtu on a 30-day rolling average. In a final rule published on December 28, 2011, we disapproved the SIP's SO_2 BART determinations for these six units because they do not comply with our regulations under 40 CFR 51.308(e).[44] In the same final rule, we promulgated a FIP establishing an emission limit of 0.06 lb/MMBtu for each of the six units for purposes of complying with SO_2 BART.[45]

On June 20, 2013, Oklahoma submitted a regional haze SIP revision to replace the FIP's SO_2 BART requirements for the AEP/PSO Northeastern Units 3 and 4. On March 7, 2014, we approved this SIP revision and concurrently withdrew the sections of the FIP that applied to those two units.[46] The 2013 Oklahoma Regional Haze SIP Revision requires one of the two Northeastern units to shut down no later than April 16, 2016, while the remaining unit is required to install dry sorbent injection (DSI) to meet an SO_2 emission limit of 0.4 lb/MMBtu.[47] However, the SO_2 emission reductions for the AEP/PSO Northeastern facility contained in the 2013 Oklahoma Regional Haze SIP Revision fall short of the levels assumed in other states' regional haze plans through the CENRAP RPO process. In order to achieve emission levels equivalent to the levels assumed in other states' regional haze plans through the CENRAP RPO process, the remaining Northeastern unit would have to meet an emission limit of 0.3 lb/MMBtu (0.15 + 0.15).[48] To address this, the 2013 Oklahoma Regional Haze SIP Revision also requires the source operators to optimize the performance of DSI on the remaining unit to ensure that the best possible performance is achieved and adjust the limit accordingly. The ''AEP/PSO Settlement Agreement'' included in the 2013 Oklahoma Regional Haze SIP Revision requires the company to develop and propose a monitoring program to test various operating profiles and other measures in order to determine whether increased SO_2 removal efficiencies can be achieved during normal operations.[49] AEP/PSO was required to implement this monitoring program and to evaluate and report the results to EPA and ODEQ. If the evaluation demonstrated that the technology is capable of sustainably achieving an emission rate of less than 0.37 lbs/MMBtu on a 30-day rolling average basis without (i) altering the unit's fuel supply, (ii) incurring additional capital costs, (iii) increasing operating expenses by more than a negligible amount, and/or (iv) adversely impacting overall unit operations, ODEQ would have to propose to revise the emission rate for the remaining Northeastern unit by 60 percent of the difference between 0.40 and the demonstrated emission rate.[50]

If it is determined that the remaining operating unit still cannot meet the emission limit of 0.3 lb/MMBtu, then the 2013 Oklahoma Regional Haze SIP Revision contains an enforceable commitment obligating ODEQ to ''obtain and/or identify additional SO_2 reductions within the State of Oklahoma to the extent necessary to achieve the anticipated visibility benefits estimated'' by CENRAP.[51] As explained in our March 7, 2014 final rule approving the 2013 Oklahoma Regional Haze SIP Revision, any additional SO_2 emissions reductions that can be obtained or identified from the northeast quadrant of the State will be presumed to count toward the emission reductions necessary to achieve the anticipated visibility benefits associated with a 0.30 lb/MMBtu emission limit at Northeastern Power Station.[52] Emissions reductions obtained outside the northeast quadrant that are technically justified will also be counted.[53] We explained in our March 7, 2014 final rule that if necessary, additional emissions reductions are to be obtained via enforceable emission limits or control equipment requirements where necessary and submitted to EPA as a SIP revision as expeditiously as practicable, but in no event later than the end of the first full Oklahoma legislative session occurring subsequent to AEP/PSO's submission of the evaluation and report for the monitoring program required under the AEP/PSO Settlement Agreement.[54]

On June 25, 2019, AEP/PSO submitted to ODEQ the ''BART SO_2 Monitoring Program for Northeastern Power Station Unit 3'' (SO_2 Monitoring Program), pursuant to one of the requirements in the AEP/PSO Settlement Agreement.[55] Based on the results of the SO_2 Monitoring Program, AEP/PSO concluded that the lowest target emission rate sustainably achieved consistent with the conditions in the AEP/PSO Agreement is 0.35 lb/MMBTU on a 30-day rolling average basis, and that the resulting federally enforceable emission rate should be 0.37 lb/MMBtu on a 30-day rolling average basis.[56] However, an emission limit of 0.37 lb/MMBtu for AEP/PSO Northeastern Unit 3 would still fall short of the 0.3 lb/MMBtu emission limit necessary to achieve emission levels equivalent to the levels assumed in other states' regional haze plans through the CENRAP RPO process.

Following final disapproval of a SIP revision in whole or in part, EPA has an obligation under section 110(c) of the Act to either approve a SIP revision and/or promulgate a FIP to address the disapproval within 24 months. We believe EPA's FIP obligation under

[42] 76 FR at 16189 and 76 FR at 81735.

[43] 70 FR 39104, 39131 (July 6, 2005).

[44] 76 FR at 81730.

[45] 76 FR 81728.

[46] 79 FR 12954.

[47] 79 FR at 12945.

[48] Northeastern Units 3 and 4 are similar design capacity so comparing them as the same is a reasonable approximation for this contextual assessment. Specific assessment is included later in this notice and in docket materials.

[49] See Attachment A, paragraph 1(f) of the ''AEP/PSO Settlement Agreement,'' which is presented in Appendix I of the June 20, 2013 Oklahoma Regional Haze SIP revision. A copy of the submittal is found in the docket for this proposed rulemaking.

[50] Id.

[51] 79 FR at 12945.

[52] 79 FR at 12945

[53] 79 FR at 12945.

[54] 79 FR at 12945.

[55] A copy of the June 25, 2019 ''BART SO_2 Monitoring Program for Northeastern Power Station Unit 3'' can be found in the docket for this proposed rulemaking.

[56] The 0.37 lb/MMBtu emission rate is 60 percent of the difference between 0.40 and the demonstrated emission rate (0.35 lb/MMBtu), per the terms of the AEP/PSO Settlement Agreement.

section 110(c) could be addressed through a demonstration that the deficiencies in the Oklahoma SIP that form the basis of our proposed disapproval of the interstate visibility transport portions of the Oklahoma i-SIP submissions for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS are already addressed by the existing FIP in place for the Oklahoma Regional Haze program. As discussed in the next section, we have assessed whether the emissions reductions secured by the existing SO_2 BART emission limits for the OG&E Sooner Units 1 and 2 and the OG&E Muskogee Units 4 and 5, required under the existing FIP, are sufficient to make up for any shortfall to achieve the necessary anticipated visibility benefits associated with a 0.30 lb/MMBtu emission limit at Northeastern Power Station that CENRAP states agreed on and relied upon in their regional haze plans. We discuss our technical analysis in the subsection that follows.

E. Proposed Finding That EPA's Prong 4 FIP Obligations Are Satisfied for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS

For the reasons explained above, Oklahoma's reliance on both its 2010 Regional Haze SIP submittal as revised in its 2013 Regional Haze SIP revision and EPA's FIP that applies to the OG&E Sooner Units 1 and 2 and OG&E Muskogee Units 4 and 5 is insufficient to satisfy its prong 4 requirements in accordance with EPA's 2013 i-SIP guidance. EPA is thus proposing to disapprove the submissions with regard to CAA section 110(a)(2)(D)(i)(II). EPA's disapproval triggers its obligation to promulgate a FIP under CAA section 111(c)(1) to address the deficiencies in the state's SIP. However, as discussed below, EPA finds that its FIP obligation with respect to prong 4 for these two NAAQS is already satisfied, and no further action is required.

The FIP we published on December 28, 2011,[57] included SO_2 emission limitations for the OG&E Sooner Units 1 and 2, the OG&E Muskogee Units 4 and 5, and the AEP/PSO Northeastern Units 3 and 4 based on EPA's analysis of the five BART statutory factors, and these emission limitations reflected a level of control more stringent than what was assumed in the CENRAP modeling.[58] On June 20, 2013, Oklahoma submitted a regional haze SIP revision to replace the FIP's SO_2 BART requirements for the AEP/PSO Northeastern Units 3 and 4. On March 7, 2014, we approved this SIP revision and concurrently withdrew the FIP's applicability to these two units.[59] The FIP provisions applicable to the OG&E Sooner Units 1 and 2 and the OG&E Muskogee Units 4 and 5 remain in place.

As discussed in the previous subsection, based on the results of the SO_2 Monitoring Program that was required under the AEP/PSO Settlement Agreement and part of the 2013 Regional Haze SIP Revision, AEP/PSO concluded that the federally enforceable emission rate for AEP/PSO Northeastern Unit 3 should be 0.37 lb/MMBtu on a 30-day rolling average basis. However, this level of control falls short of the 0.3 lb/MMBtu emission limit necessary to achieve emission levels equivalent to the levels assumed in other states' regional haze plans through the CENRAP RPO process. To address this issue, EPA assessed whether the SO_2 emissions reductions secured from other facilities under the existing FIP promulgated on December 28, 2011, would be sufficient to make up for the shortfall in emissions reductions and associated visibility benefit from the AEP/PSO Northeastern facility compared to what was assumed in the CENRAP modeling. Under the CENRAP regional haze planning process, CENRAP included emissions for these sources based upon Oklahoma's indications that the OG&E Sooner Units 1 and 2, the OG&E Muskogee Units 4 and 5, and the AEP/PSO Northeastern Units 3 and 4 would each be controlled to presumptive BART emission levels for SO_2, which is 0.15 lb/MMBtu.[60] Further, the FIP EPA promulgated on December 28, 2011, which continues to apply to the OG&E Sooner Units 1 and 2 and the OG&E Muskogee Units 4 and 5, requires each of these four units to comply with an emission limit of 0.06 lb/MMBtu for purposes of complying with the SO_2 BART requirements.[61]

In Table 1 below, we present the controlled SO_2 annual emission levels included in the CENRAP chemical transport modeling using the Comprehensive Air Quality Model with Extensions (CAMx) for the six units and the controlled SO_2 annual emission levels required by both the FIP for 4 units and the 2013 Oklahoma Regional Haze SIP Revision for the AEP/PSO Northeastern facility's 2 units.[62] These SO_2 annual emissions were based on annual firing rate information for the base period (2002) and the appropriate lb/MMBtu emission limit. The CENRAP CAMx modeling assumed that AEP/PSO Northeastern Units 3 and 4 would have combined controlled SO_2 emissions of 5,921 tpy, while the 2013 Oklahoma Regional Haze SIP revision includes control requirements that result in combined controlled SO_2 emissions of 7,895 tpy using the same annual firing rate information used in CENRAP's CAMx modeling. This results in a shortfall of 1,974 tpy between the controlled emission level assumed in the CENRAP CAMx modeling and the level of control required by the 2013 SIP Revision. The CENRAP CAMx modeling also assumed that the OG&E Muskogee Units 4 and 5 would have combined controlled SO_2 emissions of 5,249 tpy, while the FIP requires SO_2 controls that result in combined controlled SO_2 emissions of 2,100 tpy using the same annual firing rate information used in CENRAP's CAMx modeling. The FIP results in SO_2 controlled emissions on Muskogee units that are 3,150 SO_2 tpy lower than the level assumed in the CENRAP modeling, which is greater than the 1,974 tpy shortfall from the AEP/PSO Northeastern facility. Focusing on the OG&E Muskogee Units 4 and 5 alone, the level of SO_2 control required by the FIP at these two units is sufficient to make up for the shortfall in emission reductions from the AEP/PSO Northeastern facility. This is significant because the OG&E Muskogee facility is located in the northeast quadrant of Oklahoma, which is where the AEP/PSO Northeastern facility is located. In our final rule approving the 2013 Oklahoma Regional Haze SIP revision, we explained that any additional SO_2 emissions reductions that can be obtained or identified from the northeast quadrant of the State will be presumed to count toward the emission reductions necessary to achieve the anticipated visibility benefits associated with a 0.30 lb/MMBtu emission limit at Northeastern Power Station.[63] The OG&E Sooner Units 1 & 2 also provide additional surplus emissions (3,304 tpy of SO_2) that provide benefit beyond the net surplus of 1,176 tpy of SO_2 from the net of Muskogee units surplus and Northeastern units shortfall (3,150 tpy − 1,974 tpy). The level of SO_2 controls within EPA's FIP is therefore sufficient

[57] 76 FR 81728.

[58] 76 FR 16193.

[59] 79 FR 12954 (March 7, 2014).

[60] 76 FR at 16189 and 76 FR at 81735.

[61] Although the FIP requires an SO_2 emission limit of 0.06 lb/MMBtu for the OG&E Muskogee Units 4 and 5, the company elected to convert the units to natural gas in 2019 to comply with this emission limit. Therefore, these two units have actual SO_2 emissions near zero.

[62] See the Excel spreadsheet ''NE SIP vs FIP visibility review calcs.xlsx'' which can be found in the docket for this proposed rulemaking.

[63] 79 FR 12945.

to make up for the shortfall from the AEP/PSO Northeastern facility.

TABLE 1—COMPARISON OF CONTROLLED SO_2 EMISSIONS REDUCTIONS IN SIP/FIP VS. CENRAP CAMX MODELING

Facility/unit	Annual avg. heat input rate used in CAMx modeling for SIP (MMBtu/hr)	CENRAP modeling SO_2 emission limit assumption (lb/MMBtu)	CENRAP Modeling Controlled SO_2 emissions assumption (tpy) *	SIP/FIP SO_2 emission limit (lb/MMBtu)	SIP/FIP controlled SO_2 emissions (tpy) *
OG&E Sooner Unit 1	4,548	0.15	2,988.2	0.06	1,195.3
OG&E Sooner Unit 2	3,835	0.15	2,519.4	0.06	1,007.7
OG&E Muskogee Unit 4	4,112	0.15	2,701.7	0.06	** 1,440.1
OG&E Muskogee Unit 5	3,877	0.15	2,547.5	0.06	** 1,080.7
AEP/PSO Northeastern Unit 3	4,506	0.15	2,960.6	0.40	7,895.0
AEP/PSO Northeastern Unit 4	4,506	0.15	2,960.6	0	0
Total Controlled SO_2 Emissions			16,678		12,198

* Controlled SO_2 emissions calculated based on the 2002 annual heat input rate (MMBtu/yr) of the unit used in CENRAP's CAMx modeling that was included in CENRAP states SIPs.

** The controlled SO_2 emissions we have calculated in this table for the OG&E Muskogee Units 4 and 5 are based on the FIP emission limits and the actual annual heat input rate (MMBtu/yr). However, OG&E Muskogee Units 4 and 5 converted to natural gas to comply with their SO_2 BART emission limits in the FIP. Therefore, even though the FIP requires SO_2 emission limits of 0.06 lb/MMBtu, these two units are actually emitting SO_2 at much lower (near negligible) levels.

Since hourly emission estimates for these six units were also used in CALPUFF modeling that was part of the BART analyses in the 2010 Oklahoma Regional Haze SIP, the FIP and the 2013 SIP revision, we also evaluated the difference in modeled emission rates and emissions used in the CALPUFF modeling to compare the estimated hourly emission rates between the 0.15 lb/MMBtu presumptive rate utilized in the CENRAP RPO process and the rates required by the FIP and 2013 SIP revision. The CALPUFF modeling provides visibility impact information for each of the three facilities to further support that the net changes in emissions at these three facilities result in a net surplus of emission reductions and visibility benefits that supports EPA's proposed conclusion that visibility transport is adequately addressed for SO_2. Below we discuss the difference in emissions followed by a discussion of the modeled visibility impacts.

Single source modeling with the CALPUFF model was conducted for each of these facilities using maximum firing rates (instead of the actual annual firing rate used in CAMx analysis). The use of maximum firing rate rather than the actual annual rate that was utilized in the CENRAP CAMx modeling results in a higher estimate of hourly emission rates and also annual emission rates. Since these maximum hourly emission rates used for CALPUFF modeling give a larger difference (larger potential shortfall) for the Northeastern Units 3 & 4 and also are the emission rates evaluated for individual visibility assessments, we perform our evaluation on these rates as well as the annual CAMx modeled rates discussed above and in Table 1. In Table 2, these controlled SO_2 maximum hourly emission levels were calculated assuming the maximum heat input rate (MMBtu/hr) of each unit, which is also the heat input rate used in EPA's CALPUFF BART modeling for the FIP, multiplied by the applicable emission rate (lb/MMBtu). A comparison of these numbers shows that even though the AEP/PSO Northeastern Unit 3 is required to comply with an emission limit of 0.40 lb/MMBtu under the 2013 Oklahoma Regional Haze SIP Revision, which is higher (less stringent) than the 0.30 lb/MMBtu level (0.15 + 0.15 for Northeastern Units 3 and 4) needed in order to achieve hourly emission levels equivalent to the levels relied upon in other states' regional haze plans through the CENRAP RPO process, the total maximum hourly controlled SO_2 emissions levels for the six units under the FIP and the 2013 Oklahoma Regional Haze SIP Revision are lower than the total controlled maximum hourly SO_2 emissions levels based on the presumptive control level included in the CENRAP RPO consultation and modeling. In other words, the FIP and the 2013 Oklahoma Regional Haze SIP Revision result in greater SO_2 emission reductions for these three facilities for the maximum hourly emissions compared to the maximum hourly emissions based on the 0.15 lb/MMBtu emission limit used in the CENRAP RPO consultation process. Specifically, the combination of the FIP and the 2013 Oklahoma Regional Haze SIP Revision result in combined maximum hourly controlled SO_2 emissions of 3,596.3 lb/hr from the six units, which is 1,293.4 lb/hr less than the levels estimated from the rate (4,889.7 lb/hr) based on the 0.15 lb of SO_2/MMBtu controlled emission rate that Oklahoma shared in consultation and was used in the CENRAP RPO process, including the CENRAP CAMx modeling. This is because the FIP requires a greater level of SO_2 control for the OG&E Sooner Units 1 and 2 and the OG&E Muskogee Units 4 and 5 than the presumptive rate included in consultation and in the CENRAP CAMx modeling. The more stringent level of SO_2 controls required by EPA's FIP is therefore sufficient to make up for the shortfall from the AEP/PSO Northeastern facility. Using the 0.15 lb/MMBtu controlled emission rate from the CENRAP CAMx modeling, the maximum hourly emission rate using the higher firing rate (maximum firing rate) calculated that AEP/PSO Northeastern Units 3 and 4 would have combined controlled SO_2 emissions of 1710.9 lb/hr, while the 2013 Oklahoma Regional Haze SIP revision includes control requirements that result in combined controlled SO_2 maximum hourly emissions of 2324.8 lb/hr, resulting in a shortfall of 613.9 lb/hr. Using the 0.15 lb/MMBtu from the CENRAP CAMx modeling, the OG&E Muskogee Units 4 and 5 would have combined maximum hourly controlled SO_2 emissions of 1644 lb/hr, while the FIP requires SO_2 controls that result in combined maximum hourly controlled SO_2 emissions of 657.6 lb/hr, a difference of 986.4 lb/hr. This surplus of 986.4 lb/hr of SO_2 is greater than the 613.9 lb/hr shortfall from the AEP/PSO Northeastern facility. Focusing on the OG&E Muskogee Units 4 and 5 alone, the level of SO_2 control required by the FIP at these two units is sufficient to make up for the shortfall from the AEP/PSO Northeastern facility. This is significant because the OG&E Muskogee facility is located in the northeast quadrant of Oklahoma, which is where

the AEP/PSO Northeastern facility is located. In our final rule approving the 2013 Oklahoma Regional Haze SIP revision, we explained that any additional SO_2 emissions reductions that can be obtained or identified from the northeast quadrant of the State will be presumed to count toward the emission reductions necessary to achieve the anticipated visibility benefits associated with a 0.30 lb/MMBtu emission limit at Northeastern Power Station.[64] The OG&E Sooner Units 1 & 2 also provide an additional surplus of maximum hourly emission reductions (920.9 lb/hr of SO_2) that provide benefit beyond the net surplus of 372.5 lb/hr of SO_2 from Muskogee units surplus and Northeastern units shortfall (986.4 lb/hr − 613.9 lb/hr). The level of SO_2 controls within EPA's FIP is therefore sufficient to make up for the shortfall from the AEP/PSO Northeastern facility when comparing maximum hourly emissions. In the spreadsheet in the docket we also evaluated using these maximum hourly emission estimates on an annual basis (tpy) for general comparison and it also indicated that EPA's FIP requirements result in a net surplus of annual emissions.[65]

TABLE 2—COMPARISON OF CONTROLLED SO_2 EMISSIONS REDUCTIONS IN SIP/FIP VS. CENRAP CALPUFF MODELING

Facility/unit	Maximum heat input rate used in BART modeling for FIP (MMBtu/hr)	CENRAP modeling SO_2 emission limit assumption (lb/MMBtu)	CENRAP modeling controlled SO_2 emissions assumption (lb/hr) *	SIP/FIP SO_2 emission limit (lb/MMBtu)	SIP/FIP controlled SO_2 emissions (lb/hr) *
OG&E Sooner Unit 1	5,116	0.15	767.40	0.06	306.96
OG&E Sooner Unit 2	5,116	0.15	767.40	0.06	306.96
OG&E Muskogee Unit 4	5,480	0.15	822.0	0.06	** 328.8
OG&E Muskogee Unit 5	5,480	0.15	822.0	0.06	** 328.8
AEP/PSO Northeastern Unit	5,812	0.15	871.8	0.40	2,324.8
AEP/PSO Northeastern Unit	5,594	0.15	839.1	0	0
Total Controlled SO_2 Emissions			4,889.7		3,596.3

* Controlled SO_2 emissions calculated based on the maximum heat input rate (MMBtu/hr) of the unit used in EPA's BART modeling for the FIP.

** The controlled SO_2 emissions we have calculated in this table for the OG&E Muskogee Units 4 and 5 are based on the FIP emission limits. However, OG&E Muskogee Units 4 and 5 converted to natural gas to comply with their SO_2 BART emission limits in the FIP. Therefore, even though the FIP requires SO_2 emission limits of 0.06 lb/MMBtu, these two units are actually emitting SO_2 at much lower (near negligible) levels.

We also assessed whether the visibility benefits resulting from the SO_2 controls for the OG&E Sooner Units 1 and 2 and the OG&E Muskogee Units 4 and 5 under the FIP are estimated to make up for any visibility benefit shortfall from the AEP/PSO Northeastern Units 3 and 4 by scaling modeled visibility improvements from the CALPUFF modeling that was performed as part of the 2011 Oklahoma SO_2 BART FIP.[66] Based on previous modeling performed for these sources and other sources in other Region 6 FIPs and SIPs linear scaling within the ranges performed is a reasonable approach to estimate impacts. We scaled modeled visibility improvements for Wichita Mountains as well as Class I areas in other states affected by Oklahoma: Caney Creek Wilderness Area and Upper Buffalo Wilderness Area in Arkansas and Hercules-Glades Wilderness Area in Missouri. We used the 2001–2003 average of the 98th percentile of daily maximum dv as the visibility impact values for our calculations and assumed linear concentration and linear visibility impairment calculations. Based on our calculations, the SO_2 emission reduction shortfall in the 2013 Oklahoma Regional Haze SIP Revision for the AEP/PSO Northeastern Units 3 and 4 (difference between visibility impacts under the 2013 SIP requirements and the CENRAP consultation and modeling assumptions of 0.15 lb/MMBtu for each unit) is estimated to result in a visibility benefit shortfall of 0.096 dv for the four affected Class I areas combined (See Table 3 below).[67] On the other hand, the FIP's estimated visibility benefits in excess of the assumptions in the CENRAP consultation and modeling (*i.e.,* comparing 0.15 lb/MMBtu emission limit from the CENRAP consultation and CAMx modeling with 0.06 lb/MMBtu emission limit required under the FIP) with respect to the OG&E Muskogee Units 4 and 5 are 0.332 dv and the OG&E Sooner Units 1 and 2 are 0.190 dv for the four affected Class I areas combined.[68] The excess benefit from OG&E Muskogee Units 4 and 5 alone is enough to more than offset the Northeastern shortfall at each Class I area, including the nearby areas in other states. In addition, the cumulative benefit at all four Class I areas is greater than the cumulative shortfall, resulting in an overall benefit of 0.236 dv (0.332 dv excess − 0.096 dv shortfall = 0.236 dv). Including the benefits from the four OG&E Muskogee and Sooner units results in t a net estimated excess visibility benefit of 0.425 dv at the four affected Class I areas combined. These results are summarized in the Table 3 below.

[64] 79 FR 12945.

[65] See ''CALPUFF tpy'' tab of the Excel spreadsheet ''NE SIP vs FIP visibility review calcs.xlsx,'' which can be found in the docket for this proposed rulemaking.

[66] Our calculations are found in the Excel spreadsheet ''NE SIP vs FIP visibility review calcs.xlsx,'' which can be found in the docket for this proposed rulemaking.

[67] See ''Summary Visibility'' tab of the Excel spreadsheet ''NE SIP vs FIP visibility review calcs.xlsx,'' which can be found in the docket for this proposed rulemaking.

[68] See ''Summary Visibility'' tab of the Excel spreadsheet ''NE SIP vs FIP visibility review calcs.xlsx,'' which can be found in the docket for this proposed rulemaking.

TABLE 3—ESTIMATED SHORTFALL AND EXCESS VISIBILITY BENEFITS AT AFFECTED CLASS I AREAS DUE TO SO_2 CONTROLS

Class I Area	2001–2003 Average 98th percentile value (Δdv)				
	AEP/PSO Northeastern estimated visibility benefit shortfall [1] (Δdv)	OG&E Sooner estimated visibility benefit excess [2] (Δdv)	OG&E Muskogee estimated visibility benefit excess [2] (Δdv)	Sum of OG&E Sooner and Muskogee estimated visibility benefit excess [2] (Δdv)	Estimated net excess visibility benefit [3] (Δdv)
Wichita Mountains	0.033	0.097	0.091	0.187	0.154
Caney Creek	0.025	0.035	0.072	0.107	0.082
Upper Buffalo	0.017	0.033	0.094	0.127	0.110
Hercules-Glades	0.022	0.026	0.076	0.102	0.081
Total	0.096	0.190	0.332	0.522	0.425

[1] Based on a comparison of SO_2 control requirements for the AEP/PSO Northeastern facility in the 2013 Regional Haze SIP (*i.e.,* zero emissions for one unit and 0.4 lb/MMBtu for the remaining unit) against the CENRAP consultation and modeling assumptions (0.15 lb/MMBtu for each unit).
[2] Based on a comparison of SO_2 control requirements in the FIP (0.06 lb/MMBtu for each unit) against the CENRAP consultation and modeling assumptions (0.15 lb/MMBtu for each unit).
[3] Based on a comparison of the ''Sum of OG&E Sooner and Muskogee Estimated Visibility Benefit Excess'' column against the ''AEP/PSO Northeastern Estimated Visibility Benefit Shortfall'' column.

The FIP SO_2 emission limits for the OG&E Sooner Units 1 and 2 and the OG&E Muskogee Units 4 and 5 are permanent and federally enforceable.[69] Therefore, we are proposing to find that the existing SO_2 emission limits for the OG&E Sooner Units 1 and 2 and the OG&E Muskogee Units 4 and 5, required under the FIP, are sufficient to make up for the shortfall in the 2013 Oklahoma Regional Haze SIP Revision to secure the emission reductions necessary to achieve the anticipated visibility benefits associated with a 0.30 lb/MMBtu emission limit at Northeastern Power Station.

The CENRAP modeling did not assume there would be any PM emission reductions from sources in Oklahoma for the first planning period. Therefore, the PM BART determinations in Oklahoma's 2010 Regional Haze SIP, which EPA approved on December 28, 2011,[70] conform with the mutually agreed emission reductions under the CENRAP regional haze planning process. Based on our assessment presented in the preceding paragraphs, we believe that the SO_2 controls required by the existing FIP, in combination with the SO_2 controls required by the EPA-approved 2013 Oklahoma Regional Haze SIP Revision, constitute an assemblage of SO_2 controls that conform with the mutually agreed emission reductions under the CENRAP regional haze planning process. This ensures that the existing FIP, together with the approved SIP, prevents sources in Oklahoma from emitting pollutants in amounts that will interfere with efforts to protect visibility in other states with respect to the 2010 1-hour SO_2 and the 2012 $PM_{2.5}$ NAAQS. Under EPA's 2013 i-SIP guidance, this is sufficient to satisfy prong 4 requirements for the first planning period.[71] Thus, there are no additional practical consequences from this disapproval for the state, the sources within its jurisdiction, or the EPA.[72] EPA is proposing to find that its prong 4 obligations in Oklahoma for the 2010 1-hour SO_2 and 2012 $PM_{2.5}$ NAAQS are satisfied.

F. Impact on Areas of Indian Country

Following the U.S. Supreme Court decision in *McGirt v. Oklahoma,* 140 S.Ct. 2452 (2020), the Governor of the State of Oklahoma requested approval under Section 10211(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005: A Legacy for Users, Public Law 109–59, 119 Stat. 1144, 1937 (August 10, 2005) (''SAFETEA''), to administer in certain areas of Indian country (as defined at 18 U.S.C. 1151) the State's environmental regulatory programs that were previously approved by the EPA outside of Indian country.[73] The State's request excluded certain areas of Indian country further described below. In addition, the State only sought approval to the extent that such approval is necessary for the State to administer a program in light of *Oklahoma Dept. of Environmental Quality* v. *EPA,* 740 F.3d 185 (D.C. Cir. 2014).[74]

On October 1, 2020, the EPA approved Oklahoma's SAFETEA request to administer all of the State's EPA-approved environmental regulatory programs, including the Oklahoma SIP, in the requested areas of Indian country.[75] As requested by Oklahoma, the EPA's approval under SAFETEA does not include Indian country lands, including rights-of-way running through the same, that: (1) Qualify as Indian allotments, the Indian titles to which have not been extinguished, under 18 U.S.C. 1151(c); (2) are held in trust by the United States on behalf of an individual Indian or Tribe; or (3) are owned in fee by a Tribe, if the Tribe (a) acquired that fee title to such land, or an area that included such land, in accordance with a treaty with the United States to which such Tribe was a party, and (b) never allotted the land to a member or citizen of the Tribe (collectively ''excluded Indian country lands'').

EPA's approval under SAFETEA expressly provided that to the extent EPA's prior approvals of Oklahoma's environmental programs excluded

[69] Due to litigation over the FIP, the deadline by which these units were required to meet their SO_2 emission limits contained in the FIP is January 4, 2019. The necessary control equipment was installed by the compliance deadline and these units are currently meeting their SO_2 emission limits.

[70] 76 FR 81728.

[71] *See* 2013 i-SIP Guidance at 33.

[72] Id at 34–35.

[73] A copy of the Governor's July 22, 2020 request can be found in the docket for this proposed rulemaking.

[74] In *ODEQ* v. *EPA,* the D.C. Circuit held that under the CAA, a state has the authority to implement a SIP in non-reservation areas of Indian country in the state, where there has been no demonstration of tribal jurisdiction. Under the D.C. Circuit's decision, the CAA does not provide authority to states to implement SIPs in Indian reservations. *ODEQ* did not, however, substantively address the separate authority in Indian country provided specifically to Oklahoma under SAFETEA. That separate authority was not invoked until the State submitted its request under SAFETEA, and was not approved until EPA's decision, described in this section, on October 1, 2020.

[75] A copy of EPA's October 1, 2020 approval can be found in the docket for this proposed rulemaking.

Indian country, any such exclusions are superseded for the geographic areas of Indian country covered by the EPA's approval of Oklahoma's SAFETEA request.[76] The approval also provided that future revisions or amendments to Oklahoma's approved environmental regulatory programs would extend to the covered areas of Indian country (without any further need for additional requests under SAFETEA).

As explained above, the EPA is proposing to disapprove the interstate visibility transport portions of the Oklahoma i-SIP submittals for the 2010 SO_2 and the 2012 $PM_{2.5}$ NAAQS because they do not meet the interstate visibility transport requirements of CAA Section 110(a)(2)(D)(i)(II) with respect to these NAAQS; however, the EPA is also proposing to make the determination that the deficiencies forming the basis of the proposed disapproval of these SIPs are met through the existing Federal Implementation Plan (FIP) in place for the Oklahoma Regional Haze program. The FIP applies to all lands within the State regardless of land status. In practice, the FIP requirements, as discussed previously, only apply to the OG&E facilities, Sooner Station Units 1 and 2, and Muskogee, Units 4 and 5.

Additionally, EPA is proposing to approve the interstate visibility transport element of the Oklahoma i-SIP for the 2015 Ozone NAAQS. Consistent with the D.C. Circuit's decision in *ODEQ* v. *EPA* and with EPA's October 1, 2020, SAFETEA approval, if this approval is finalized as proposed, this portion of the SIP will apply in certain areas of Indian country. Under EPA's October 1, 2020 SAFETEA approval, the SIP will apply to all Indian country within the State of Oklahoma, other than the excluded Indian country lands. Because—per the State's request under SAFETEA—EPA's October 1, 2020 approval does not displace any SIP authority previously exercised by the State under the CAA as interpreted in *ODEQ* v. *EPA,* the SIP will also apply to any Indian allotments or dependent Indian communities located outside of an Indian reservation over which there has been no demonstration of tribal authority. [77]

This action will not result in the imposition of new requirements for the affected sources. Rather, it proposes to approve Oklahoma's determination that the regional haze measures that have already been approved and are currently being implemented satisfy the visibility transport requirements for the 2015 Ozone NAAQS and also proposes to make the determination that the regional haze measures promulgated by EPA in the Oklahoma FIP that are currently being implemented address the deficiencies in the Oklahoma SIP with respect to visibility transport requirements for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

IV. Proposed Action

We are proposing to approve the interstate visibility transport element of Oklahoma's infrastructure SIP submission for the 2015 Ozone NAAQS. We are also proposing to disapprove the interstate visibility transport elements of two SIP submissions from Oklahoma: One for the 2010 1-hour SO_2 NAAQS and the other for the 2012 $PM_{2.5}$ NAAQS. In order to address EPA's FIP obligation under section 110(c) of the Act, we are proposing to find that the deficiencies in the Oklahoma SIP that form the basis of our proposed disapproval of the interstate visibility transport portions of the Oklahoma i-SIP submissions for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS are already addressed by the existing FIP in place for the Oklahoma Regional Haze program, and no further federal action is required.

V. Statutory and Executive Order Reviews

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

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget for review.

B. Paperwork Reduction Act (PRA)

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

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action merely proposes to disapprove a SIP submission as not meeting the CAA.

D. Unfunded Mandates Reform Act (UMRA)

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

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This proposal to approve the interstate visibility transport element of the Oklahoma i-SIP submission for the 2015 Ozone NAAQS and to disapprove the interstate visibility transport elements of the Oklahoma i-SIP submissions for the 2010 1-hour SO_2 NAAQS and the 2012 $PM_{2.5}$ NAAQS (and to propose a determination that no further action is required to address the deficiencies identified in the proposed disapproval) will apply, if finalized as proposed, to certain areas of Indian country as discussed in the preamble, and therefore has tribal implications as specified in E.O. 13175 (65 FR 67249, November 9, 2000). However, this action will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. This action will not impose substantial direct compliance costs on federally recognized tribal governments because no actions will be required of tribal governments. This action will also not preempt tribal law as no Oklahoma tribe implements a regulatory program under the CAA, and thus does not have applicable or related tribal laws. Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes (May 4,

[76] EPA's prior approvals relating to Oklahoma's SIP frequently noted that the SIP was not approved to apply in areas of Indian country (consistent with the D.C. Circuit's decision in *ODEQ* v. *EPA*) located in the state. *See, e.g.,* 85 FR 20178, 20180 (April 10, 2020). Such prior expressed limitations are superseded by the EPA's approval of Oklahoma's SAFETEA request.

[77] In accordance with Executive Order 13990, EPA is currently reviewing our October 1, 2020 SAFETEA approval and is engaging in further consultation with tribal governments and discussions with the state of Oklahoma as part of this review. EPA also notes that the October 1, 2020 approval is the subject of a pending challenge in federal court. (*Pawnee* v. *Regan,* No. 20–9635 (10th Cir.)). Pending completion of EPA's review, EPA is proceeding with this proposed action in accordance with the October 1, 2020 approval. EPA's final action on the approved interstate visibility transport portion of the Oklahoma i-SIP for the 2015 Ozone NAAQS will address the scope of the state's program with respect to Indian country, and may make any appropriate adjustments, based on the status of our review at that time. If EPA's final action on Oklahoma's SIP is taken before our review of the SAFETEA approval is complete, EPA may make further changes to the approval of Oklahoma's program to reflect the outcome of the SAFETEA review.

2011), the EPA has offered consultation to tribal governments that may be affected by this action.

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

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it merely proposes to disapprove a SIP submission as not meeting the CAA.

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

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

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

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

EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. This action merely proposes to disapprove a SIP submission as not meeting the CAA.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Visibility transport.

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

Dated: July 15, 2021.

David Gray,

Acting Regional Administrator, Region 6.

[FR Doc. 2021–15467 Filed 7–21–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2021–0256; FRL–8692–01–R5]

Air Plan Approval; Wisconsin; Attainment Plan for the Rhinelander SO_2 Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the State Implementation Plan (SIP) revision submitted by Wisconsin on March 29, 2021, which amends a SIP submission previously submitted to EPA on January 22, 2016 and supplemented on July 18, 2016, and November 29, 2016, for attaining the 1-hour sulfur dioxide (SO_2) primary national ambient air quality standard (NAAQS) for the Rhinelander SO_2 nonattainment area. This plan (herein referred to as Wisconsin's Rhinelander SO_2 plan or plan) includes Wisconsin's attainment demonstration and other elements required under the Clean Air Act (CAA). In addition to an attainment demonstration, the plan addresses the requirement for meeting reasonable further progress (RFP) toward attainment of the NAAQS, reasonably available control measures and reasonably available control technology (RACM/RACT), and contingency measures. This action supplements a prior action which found that Wisconsin had satisfied emission inventory and new source review (NSR) requirements for this area, but had not met requirements for the elements proposed to be approved here. EPA is proposing to conclude that Wisconsin has appropriately demonstrated that the plan provisions provide for attainment of the 2010 1-hour primary SO_2 NAAQS in the Rhinelander SO_2 nonattainment area and that the plan meets the other applicable requirements under the CAA.

DATES: Comments must be received on or before August 23, 2021.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2021–0256 at *http://www.regulations.gov,* or via email to *leslie.michael@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, *etc.*) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Abigail Teener, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–7314, *teener.abigail@epa.gov.* The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19.

SUPPLEMENTARY INFORMATION: This **SUPPLEMENTARY INFORMATION** section is arranged as follows:

I. Why was Wisconsin required to submit an SO_2 plan for the Rhinelander area?
II. Requirements for SO_2 Nonattainment Area Plans
III. Attainment Demonstration and Longer Term Averaging
IV. Review of Modeled Attainment Plan
A. Model Selection
B. Simulation of Downwash
C. Meteorological Data
D. Emissions Data
E. Emission Limits
F. Background Concentrations
G. Summary of Results
V. Review of Other Plan Requirements
A. RACM/RACT
B. Reasonable Further Progress (RFP)
C. Contingency Measures
VI. What action is EPA taking?
VII. Incorporation by Reference
VIII. Statutory and Executive Order Reviews

I. Why was Wisconsin required to submit an SO_2 plan for the Rhinelander area?

On June 22, 2010, EPA promulgated a new 1-hour primary SO_2 NAAQS of 75 parts per billion (ppb), which is met at an ambient air quality monitoring site when the 3-year average of the annual 99th percentile of daily maximum 1-

hour average concentrations does not exceed 75 ppb, as determined in accordance with appendix T of 40 CFR part 50. *See* 75 FR 35520, codified at 40 CFR 50.17(a)–(b). On August 5, 2013, EPA designated 29 areas of the country as nonattainment for the 2010 SO_2 NAAQS, including the Rhinelander area within the State of Wisconsin. *See* 78 FR 47191, codified at 40 CFR part 81, subpart C. These area designations were effective October 4, 2013. Section 191 of the CAA directs states to submit SIPs for areas designated as nonattainment for the SO_2 NAAQS to EPA within 18 months of the effective date of the designation, *i.e.,* by no later than April 4, 2015 in this case. These SIPs are required to demonstrate that their respective areas will attain the NAAQS as expeditiously as practicable, but no later than 5 years from the effective date of designation, which is October 4, 2018.

In response to the requirement for SO_2 nonattainment plan submittals, Wisconsin submitted a nonattainment plan for the Rhinelander area on January 22, 2016, and supplemented it on July 18, 2016, and November 29, 2016. On March 23, 2021,[1] EPA partially approved and partially disapproved Wisconsin's Rhinelander SO_2 plan as submitted and supplemented in 2016. EPA approved the base-year emissions inventory and affirmed that the new source review requirements for the area had previously been met.[2] EPA also approved the SO_2 emission limit for Ahlstrom-Munksjö's Rhinelander facility (Ahlstrom-Munksjö) (formerly Expera Specialty Solutions LLC (Expera)) as SIP-strengthening. At that time, EPA disapproved the attainment demonstration, since the plan relied on credit for more stack height than is creditable under the regulations for good engineering practice (GEP) stack height. Additionally, EPA disapproved the plan for failing to meet the requirements for meeting RFP toward attainment of the NAAQS, RACM/RACT, emission limitations and control measures as necessary to attain the NAAQS, and contingency measures.

Under sections 110(c) and 179(a)–(b) of the CAA, a disapproval in whole or in part of a state submittal initiates a Federal Implementation Plan (FIP) clock and sanctions clocks, respectively, which are terminated by an EPA rulemaking approving a revised plan. On March 29, 2021, Wisconsin submitted a permit containing a revised emission limit and supplemental information in order to remedy the plan's deficiencies specified in EPA's March 23, 2021 rulemaking, along with a request that EPA approve its revised plan for the Rhinelander area.

The remainder of this action describes the requirements that SO_2 nonattainment plans must meet in order to obtain EPA approval, provides a review of Wisconsin's revised plan with respect to these requirements, and describes EPA's proposed action on the plan.

II. Requirements for SO_2 Nonattainment Area Plans

Nonattainment SIPs must meet the applicable requirements of the CAA, and specifically CAA sections 172, 191 and 192. EPA's regulations governing nonattainment SIPs are set forth at 40 CFR part 51, with specific procedural requirements and control strategy requirements residing at subparts F and G, respectively. Soon after Congress enacted the 1990 Amendments to the CAA, EPA issued comprehensive guidance on SIPs, in a document entitled the ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' published at 57 FR 13498 (April 16, 1992) (General Preamble). Among other things, the General Preamble addressed SO_2 SIPs and fundamental principles for SIP control strategies. *Id.,* at 13545–49, 13567–68. On April 23, 2014, EPA issued recommended guidance for meeting the statutory requirements in SO_2 SIPs, in a document entitled, ''Guidance for 1-Hour SO_2 Nonattainment Area SIP Submissions,'' available at *https://www.epa.gov/sites/production/files/2016-06/documents/20140423guidance_nonattainment_sip.pdf.* In this guidance EPA described the statutory requirements for a complete nonattainment area SIP, which includes: An accurate emissions inventory of current emissions for all sources of SO_2 within the nonattainment area; an attainment demonstration; demonstration of RFP; implementation of RACM (including RACT); NSR; emissions limitations and control measures as necessary to attain the NAAQS; and adequate contingency measures for the affected area. EPA already concluded in its March 23, 2021 rulemaking that Wisconsin has met the emissions inventory and NSR requirements.

In order for EPA to fully approve a SIP as meeting the requirements of CAA sections 110, 172 and 191–192 and EPA's regulations at 40 CFR part 51, the SIP for the affected area needs to demonstrate to EPA's satisfaction that each of the aforementioned requirements have been met. Under CAA sections 110(l) and 193, EPA may not approve a SIP that would interfere with any applicable requirement concerning NAAQS attainment and RFP, or any other applicable requirement, and no requirement in effect (or required to be adopted by an order, settlement, agreement, or plan in effect before November 15, 1990) in any area which is a nonattainment area for any air pollutant, may be modified in any manner unless it ensures equivalent or greater emission reductions of such air pollutant.

III. Attainment Demonstration and Longer Term Averaging

CAA section 172(c)(1) directs states with areas designated as nonattainment to demonstrate that the submitted plan provides for attainment of the NAAQS. 40 CFR part 51, subpart G, further delineates the control strategy requirements that SIPs must meet, and EPA has long required that all SIPs and control strategies reflect four fundamental principles of quantification, enforceability, replicability, and accountability. General Preamble at 13567–68. SO_2 attainment plans must consist of two components: (1) Emission limits and other control measures that ensure implementation of permanent, enforceable and necessary emission controls, and (2) a modeling analysis which meets the requirements of 40 CFR part 51, appendix W, which demonstrates that these emission limits and control measures provide for timely attainment of the primary SO_2 NAAQS as expeditiously as practicable, but by no later than the attainment date for the affected area. In all cases, the emission limits and control measures must be accompanied by appropriate methods and conditions to determine compliance with the respective emission limits and control measures and must be quantifiable (*i.e.,* a specific amount of emission reduction can be ascribed to the measures), fully enforceable (specifying clear, unambiguous and measurable requirements for which compliance can be practicably determined), replicable (the procedures for determining compliance are sufficiently specific and non-subjective so that two independent entities applying the procedures would obtain the same result), and accountable (source specific limits must be permanent and must reflect the assumptions used in the SIP demonstrations).

EPA's April 2014 guidance recommends that the emission limits be expressed as short-term average limits (*e.g.,* addressing emissions averaged

[1] 86 FR 15418 (March 23, 2021).

[2] 79 FR 60064 (October 6, 2014).

over one or three hours), but also describes the option to utilize emission limits with longer averaging times of up to 30 days so long as the state meets various suggested criteria. *See* 2014 guidance, pp. 22 to 39. The guidance recommends that, should states and sources utilize longer averaging times, the longer term average limit should be set at an adjusted level that reflects a stringency comparable to the 1-hour average limit at the critical emission value shown to provide for attainment that the plan otherwise would have set.

The April 2014 guidance provides an extensive discussion of EPA's rationale for concluding that appropriately set comparably stringent limitations based on averaging times as long as 30 days can be found to provide for attainment of the 2010 SO_2 NAAQS. In evaluating this option, EPA considered the nature of the standard, conducted detailed analyses of the impact of use of 30-day average limits on the prospects for attaining the standard, and carefully reviewed how best to achieve an appropriate balance among the various factors that warrant consideration in judging whether a state's plan provides for attainment. *Id.* at pp. 22 to 39. *See also id.* at appendices B, C, and D.

As specified in 40 CFR 50.17(b), the 1-hour primary SO_2 NAAQS is met at an ambient air quality monitoring site when the 3-year average of the annual 99th percentile of daily maximum 1-hour concentrations is less than or equal to 75 ppb. In a year with 365 days of valid monitoring data, the 99th percentile would be the fourth highest daily maximum 1-hour value. The 2010 SO_2 NAAQS, including this form of determining compliance with the standard, was upheld by the U.S. Court of Appeals for the District of Columbia Circuit in *Nat'l Envt'l Dev. Ass'n's Clean Air Project* v. *EPA,* 686 F.3d 803 (D.C. Cir. 2012). Because the standard has this form, a single exceedance does not create a violation of the standard. Instead, at issue is whether a source operating in compliance with a properly set longer term average could cause exceedances, and if so the resulting frequency and magnitude of such exceedances, and in particular whether EPA can have reasonable confidence that a properly set longer term average limit will provide that the average fourth highest daily maximum value will be at or below 75 ppb. A synopsis of how EPA judges whether such plans ''provide for attainment,'' based on modeling of projected allowable emissions and in light of the NAAQS' form for determining attainment at monitoring sites follows.

For SO_2 plans based on 1-hour emission limits, the standard approach is to conduct modeling using fixed emission rates. The maximum emission rate that would be modeled to result in attainment (*i.e.,* in an ''average year'' [3] which shows three days with maximum hourly levels exceeding 75 ppb) is labeled the ''critical emission value.'' The modeling process for identifying this critical emissions value inherently considers the numerous variables that affect ambient concentrations of SO_2, such as meteorological data, background concentrations, and topography. In the standard approach, the state would then provide for attainment by setting a continuously applicable 1-hour emission limit at this critical emission value.

EPA recognizes that some sources have highly variable emissions, for example due to variations in fuel sulfur content and operating rate, that can make it extremely difficult, even with a well-designed control strategy, to ensure in practice that emissions for any given hour do not exceed the critical emission value. EPA also acknowledges the concern that longer term emission limits can allow short periods with emissions above the ''critical emissions value,'' which, if coincident with meteorological conditions conducive to high SO_2 concentrations, could in turn create the possibility of a NAAQS exceedance occurring on a day when an exceedance would not have occurred if emissions were continuously controlled at the level corresponding to the critical emission value. However, for several reasons, EPA believes that the approach recommended in its guidance document suitably addresses this concern. First, from a practical perspective, EPA expects the actual emission profile of a source subject to an appropriately set longer term average limit to be similar to the emission profile of a source subject to an analogous 1-hour average limit. EPA expects this similarity because it has recommended that the longer term average limit be set at a level that is comparably stringent to the otherwise applicable 1-hour limit (reflecting a downward adjustment from the critical emissions value) and that takes the source's emissions profile into account. As a result, EPA expects either form of emission limit to yield comparable air quality.

Second, from a more theoretical perspective, EPA has compared the likely air quality with a source having maximum allowable emissions under an appropriately set longer term limit, as compared to the likely air quality with the source having maximum allowable emissions under the comparable 1-hour limit. In this comparison, in the 1-hour average limit scenario, the source is presumed at all times to emit at the critical emission level, and in the longer term average limit scenario, the source is presumed occasionally to emit more than the critical emission value but on average, and presumably at most times, to emit well below the critical emission value. In an ''average year,'' compliance with the 1-hour limit is expected to result in three exceedance days (*i.e.,* three days with hourly values above 75 ppb) and a fourth day with a maximum hourly value at 75 ppb. By comparison, with the source complying with a longer term limit, it is possible that additional exceedances would occur that would not occur in the 1-hour limit scenario (if emissions exceed the critical emission value at times when meteorology is conducive to poor air quality). However, this comparison must also factor in the likelihood that exceedances that would be expected in the 1-hour limit scenario would not occur in the longer term limit scenario. This result arises because the longer term limit requires lower emissions most of the time (because the limit is set well below the critical emission value), so a source complying with an appropriately set longer term limit is likely to have lower emissions at critical times than would be the case if the source were emitting as allowed with a 1-hour limit.

As a hypothetical example to illustrate these points, suppose a source always emits 1,000 pounds of SO_2 per hour (lbs/hr), which results in air quality at the level of the NAAQS (*i.e.,* results in a design value of 75 ppb). Suppose further that in an ''average year,'' these emissions cause the 5 highest maximum daily average 1-hour concentrations to be 100 ppb, 90 ppb, 80 ppb, 75 ppb, and 70 ppb. Then suppose that the source becomes subject to a 30-day average emission limit of 700 lbs/hr. It is theoretically possible for a source meeting this limit to have emissions that occasionally exceed 1,000 lbs/hr, but with a typical emissions profile emissions would much more commonly be between 600 and 800 lbs/hr. In this simplified example, assume a zero background concentration, which allows one to assume a linear relationship between emissions and air quality. (A nonzero

[3] An ''average year'' is used to mean a year with average air quality. While 40 CFR 50 appendix T provides for averaging three years of 99th percentile daily maximum values (*e.g.,* the fourth highest maximum daily concentration in a year with 365 days with valid data), this discussion and an example below uses a single ''average year'' in order to simplify the illustration of relevant principles.

background concentration would make the mathematics more difficult but would give similar results.) Air quality will depend on what emissions happen on what critical hours, but suppose that emissions at the relevant times on these 5 days are 800 lbs/hr, 1,100 lbs/hr, 500 lbs/hr, 900 lbs/hr, and 1,200 lbs/hr, respectively. (This is a conservative example because the average of these emissions, 900 lbs/hr, is well over the 30-day average emission limit.) These emissions would result in daily maximum 1-hour concentrations of 80 ppb, 99 ppb, 40 ppb, 67.5 ppb, and 84 ppb. In this example, the fifth day would have an exceedance that would not otherwise have occurred (84 ppb under the 30-day average limit compared to 70 ppb under the 1-hour limit). However, the third day would not have an exceedance that otherwise would have occurred (40 ppb under the 30-day average limit compared to 80 ppb under the 1-hour limit). The fourth day would have been below, rather than at, 75 ppb (67.5 ppb under the 30-day average limit compared to 75 ppb under the 1-hour limit). In this example, the fourth highest maximum daily concentration under the 30-day average would be 67.5 ppb.

This simplified example illustrates the findings of a more complicated statistical analysis that EPA conducted using a range of scenarios using actual plant data. As described in appendix B of EPA's April 2014 SO_2 nonattainment planning guidance, EPA found that the requirement for lower average emissions is likely to yield as good air quality as is required with a comparably stringent 1-hour limit. Based on analyses described in appendix B of its 2014 guidance and similar subsequent work, EPA expects that emission profiles with maximum allowable emissions under an appropriately set comparably stringent 30-day average limit are likely to have the net effect of no more exceedances and as good air quality of an emission profile with maximum allowable emissions under a 1-hour emission limit at the critical emission value.[4] This result provides a compelling policy rationale for allowing the use of a longer averaging period, in appropriate circumstances where the facts indicate this result can be expected to occur.

The question then becomes whether this approach, which is likely to produce a lower number of overall exceedances even though it may produce some unexpected exceedances above the critical emission value, meets the requirement in section 110(a)(1) and 172(c)(1) for state implementation plans to ''provide for attainment'' of the NAAQS. For SO_2, as for other pollutants, it is generally impossible to design a nonattainment plan in the present that will guarantee that attainment will occur in the future. A variety of factors can cause a well-designed attainment plan to fail and unexpectedly not result in attainment, for example if meteorology occurs that is more conducive to poor air quality than was anticipated in the plan. Therefore, in determining whether a plan meets the requirement to provide for attainment, EPA's task is commonly to judge not whether the plan provides absolute certainty that attainment will in fact occur, but rather whether the plan provides an adequate level of confidence of prospective NAAQS attainment. From this perspective, in evaluating use of a 30-day average limit, EPA must weigh the likely net effect on air quality. Such an evaluation must consider the risk that occasions with meteorology conducive to high concentrations will have elevated emissions leading to exceedances that would not otherwise have occurred, and must also weigh the likelihood that the requirement for lower emissions on average will result in days not having exceedances that would have been expected with emissions at the critical emissions value. Additional policy considerations, such as accommodating real world emissions variability without significant risk of violations, are also appropriate factors for EPA to weigh in judging whether a plan provides a reasonable degree of confidence that the plan will lead to attainment. Based on these considerations, EPA believes that a continuously enforceable limit averaged over as long as 30 days, if determined in accordance with EPA's guidance, can reasonably be considered to provide for attainment of the 2010 SO_2 NAAQS.

The April 2014 guidance offers specific recommendations for determining an appropriate longer term average limit. The recommended method starts with determination of the 1-hour emission limit that would provide for attainment (*i.e.,* the critical emission value), then applies an adjustment factor to determine the (lower) level of the longer term average emission limit that would be estimated to have a stringency comparable to the 1-hour emission limit. This method uses a database of continuous emission data reflecting the type of control that the source will be using to comply with the SIP emission limits, which (if compliance requires new controls) may require use of an emission database from another source. The recommended method involves using these data to compute a complete set of emission averages, computed according to the averaging time and averaging procedures of the prospective emission limitation. In this recommended method, the ratio of the 99th percentile among these long term averages to the 99th percentile of the 1-hour values represents an adjustment factor that may be multiplied by the candidate 1-hour emission limit to determine a longer term average emission limit that may be considered comparably stringent.[5] The guidance also addresses a variety of related topics, such as the potential utility of setting supplemental emission limits, such as mass-based limits, to reduce the likelihood and/or magnitude of elevated emission levels that might occur under the longer term emission rate limit.

Preferred air quality models for use in regulatory applications are described in appendix A of EPA's *Guideline on Air Quality Models (40 CFR part 51, appendix W).* In 2005, EPA promulgated AERMOD as the Agency's preferred near-field dispersion modeling for a wide range of regulatory applications addressing stationary sources (for example in estimating SO_2 concentrations) in all types of terrain based on extensive developmental and performance evaluation. Supplemental guidance on modeling for purposes of demonstrating attainment of the SO_2 standard is provided in appendix A to the April 23, 2014 SO_2 nonattainment area SIP guidance document referenced above. Appendix A provides extensive guidance on the modeling domain, the source inputs, assorted types of meteorological data, and background concentrations. Consistency with the recommendations in this guidance is generally necessary for the attainment

[4] *See also* further analyses described in rulemaking on the SO_2 nonattainment plan for Southwest Indiana. In response to comments expressing concern that the emission profiles analyzed for appendix B represented actual rather than allowable emissions, EPA conducted additional work formulating sample allowable emission profiles and analyzing the resulting air quality impact. This analysis provided further support for the conclusion that an appropriately set longer term average emission limit in appropriate circumstances can suitably provide for attainment. The rulemaking describing these further analyses was published on August 17, 2020, at 85 FR 49967, available at *https://www.govinfo.gov/content/pkg/FR-2020-08-17/pdf/2020-16044.pdf.* A more detailed description of these analyses is available in the docket for that action, specifically at *https://www.regulations.gov/document?D=EPA-R05-OAR-2015-0700-0023.*

[5] For example, if the critical emission value is 1,000 lbs/hr of SO_2, and a suitable adjustment factor is determined to be 70 percent, the recommended longer term average limit would be 700 lbs/hr.

demonstration to offer adequately reliable assurance that the plan provides for attainment.

As stated previously, attainment demonstrations for the 2010 1-hour primary SO_2 NAAQS must demonstrate future attainment and maintenance of the NAAQS in the entire area designated as nonattainment (*i.e.,* not just at the violating monitor). This is demonstrated by using air quality dispersion modeling (*see* appendix W to 40 CFR part 51) that shows that the mix of sources, enforceable control measures, and emission rates in an identified area will not lead to a violation of the SO_2 NAAQS. For a short-term (*i.e.,* 1-hour) standard, EPA believes that dispersion modeling, using allowable emissions and addressing stationary sources in the affected area (and in some cases those sources located outside the nonattainment area which may affect attainment in the area) is technically appropriate, efficient and effective in demonstrating attainment in nonattainment areas because it takes into consideration combinations of meteorological and emission source operating conditions that may contribute to peak ground-level concentrations of SO_2.

The meteorological data used in the analysis should generally be processed with the most recent version of AERMET. Estimated concentrations should include ambient background concentrations, should follow the form of the standard, and should be calculated as described in section 2.6.1.2 of the August 23, 2010 clarification memo on ''Applicability of appendix W Modeling Guidance for the 1-hr SO_2 National Ambient Air Quality Standard'' (U.S. EPA, 2010a).

IV. Review of Modeled Attainment Plan

The following discussion evaluates various features of the modeling that Wisconsin used in its attainment demonstration.

A. Model Selection

Wisconsin's attainment demonstration used AERMOD, the preferred model for this application. Wisconsin's January 2016 submittal used version 15181 of this model, which was the most recent version at that time. However, the supplemental modeling that Wisconsin submitted in March 2021 used version 19191, which is the current regulatory version of AERMOD. EPA finds this selection appropriate.

Wisconsin's receptor grid and modeling domain for the Rhinelander area followed the recommended approaches from EPA's *Guideline on Air Quality Models (40 CFR part 51, appendix W).* Receptor spacing for each modeled facility was every 25 meters out to a distance of 500 meters from each source, then every 50 meters to 1,000 meters, every 100 meters out to 3 kilometers, every 250 meters out to 6 kilometers, and every 500 meters out to 10 kilometers.

Wisconsin determined that the Rhinelander area should be modeled with rural dispersion coefficients, as Ahlstrom-Munksjö is surrounded by less than 50% of land classified as industrial, commercial, or dense residential within 3 kilometers, as recommended by EPA's *Guideline on Air Quality Models.* Therefore, EPA concurs with Wisconsin's determination that this area warrants being modeled with rural dispersion coefficients.

B. Simulation of Downwash

Modeling of emissions from Ahlstrom-Munksjö has historically underpredicted concentrations measured at a nearby monitor. When winds blow from this facility toward the monitor, the emissions traverse a corner of the building. Under these circumstances, the building appears to cause enhanced eddies in the air flow, known as corner vortices, which in certain circumstances appear to result in a substantial enhancement of downwash of emissions to ground level and substantially greater concentrations than are modeled using the standard downwash algorithm in AERMOD.

Recognizing these issues, the company contracted for a wind tunnel study, carried out by Cermak Peterka Petersen (CPP), to assess the magnitude of this effect and to support a more accurate assessment of downwash at this facility. This study supported the conclusion that the discrepancy between modeled and monitored SO_2 concentrations were due to the corner vortex phenomenon, a phenomenon that is described in EPA's ''Guideline for Determination of Good Engineering Practice Stack Height (Technical Support Document for the Stack Height Regulations).'' [6] The wind tunnel study showed that as the wind approaches the corner of the Ahlstrom-Munksjö building, vortices are created that act to increase the SO_2 concentrations downwind of the building. Analysis of these results suggested that the influence of these corner vortices vary by wind speed. Ahlstrom-Munksjö's consultants, AECOM and CPP, developed an equation estimating a multiplier, varying by wind speed, by which to estimate the impact of downwash in this case, *i.e.,* a multiplier by which to multiply concentrations estimated in absence of downwash to estimate concentrations reflecting the downwash induced by this facility. The wind tunnel study focused on concentrations in the direction with the most enhanced downwash but applied the same adjustment in all directions. Since there is less downwash in directions less influenced by corner vortices, EPA considers this approach conservative in maximizing estimated downwash effects on concentrations.

Wisconsin's 2016 SIP submittal relied on modeling Ahlstrom-Munksjö using a stack height of 90 meters. For this facility, the ''formula good engineering practice (GEP) stack height'' computed according to the formula in EPA's stack height regulations (defined at 40 CFR 51.100(ii)(2)(ii)) is 75 meters. EPA disapproved the 2016 submittal because EPA's stack height regulations prohibit credit for a stack above formula GEP stack height unless the state meets requirements specified in those regulations for the level of control at the facility. Wisconsin's 2021 submittal meets EPA's stack height regulations by applying a limit demonstrated to provide attainment with a stack at the creditable height of 75 meters.

The wind tunnel studies primarily simulated a stack with a height of 85 meters, with another run simulating a stack with a height of 90 meters. These runs indicated the following equation to estimate the ratio of concentrations expected with the building as compared concentrations without the building:

$$\text{Equation 1:} \qquad R = A\,exp\left(-\frac{\left(\frac{1}{Uairport}-\frac{1}{Umax}\right)^2}{B^2}\right)+1$$

[6] EPA–450/4–80–023R, June 1985.

The variable R is the ratio multiplier that is applied to the hourly emission rate file used in AERMOD. The Uairport and Umax values represent the actual hourly wind speed measured at the Rhinelander airport and the maximum wind speed, *i.e.,* wind speed exceeded less than 1% of the time, of 10.8 meters per second. The A and B parameters are best-fit coefficients. The A parameter, plus 1, represents the maximum multiplier that can be applied to the hourly emissions.

While this equation was originally derived to assess the wind-speed-dependent influence of downwash with a 90-meter stack, the influence of downwash for a 75-meter stack may be derived based on these same 85-meter and 90-meter results by using a best-fit coefficient (A) that is specific to a 75-meter stack. The best-fit coefficient was originally developed using wind tunnel data at an 85-meter stack height. This coefficient was then adjusted using observed and predicted concentration ratios, from the wind tunnel information, to determine the appropriate coefficient for a 75-meter stack height. For a 75-meter stack, Wisconsin applied the above equation with a value of A of 0.826 and B of 0.174.

Wisconsin did not modify any algorithms or computer code in AERMOD to reflect this enhancement of the influence of downwash. Instead, Wisconsin implemented this enhancement by using modified model inputs. Wisconsin first examined hourly wind speeds. Wisconsin computed hourly downwash multipliers based on the above equation. Ordinarily, Wisconsin would run AERMOD using a fixed emission rate reflecting the allowable emission rate, but in this case Wisconsin input an hourly varying emission rate in which each hour's input value equaled the fixed emission rate (reflecting the allowable emission rate) times that hour's downwash multiplier. For example, for an hour with a wind speed of 5 meters per second, for which the above equation gives a downwash multiplier of 1.564, the modeled emission rate for that hour reflected multiplication times 1.564. This multiplier gives the expected ratio of concentrations with the magnitude of downwash at this facility as compared to the concentrations expected if no downwash were occurring. Therefore, Wisconsin estimated hourly concentrations with Ahlstrom-Munksjö-specific downwash by modeling the facility without downwash but incorporating the expected impact of downwash at this facility by increasing the emission rate modeled for each hour accordingly.

EPA views Wisconsin's modeling as applying an alternate model under the terms of 40 CFR 51 appendix W section 3.2.2.b.2. Under the alternative model criteria discussed in section 3.2.2.b.2, it must be shown that the alternative model performs better for a given application than the recommended model, using a statistical analysis. The State of Wisconsin evaluated the performance of the alternative model from both a theoretical and a performance perspective. This information was included in the public notice which preceded Wisconsin finalizing its submittal. The Wisconsin analysis showed that the alternative model predicted a design value slightly above the monitored design value using the recent three years of monitoring data, 2017–2019. The most recent three years reflect the impact of emissions exiting the 90-meter stack. Recent meteorological data, processed for modeling purposes, was not available. Consequently, the comparison was conducted using the full five years of meteorology applied for the attainment demonstration.

Additional comparisons were conducted that examined, on a year-to-year basis, how well the alternative model was performing compared to the regulatory version of the model and compared to monitoring data. That analysis only used emissions from boiler B26, which vents through Stack S09, when the boiler was actually operating, essentially non-summer months for the years 2017–2019. This supplemental modeling was conducted using a grid focused on a 400-meter by 400-meter area around the monitor to the north of Ahlstrom-Munskjö. Again, 5 years of meteorological data (2011–2015) was used in the modeling.

The model to monitor comparison used High 1st High concentrations, the average of the top 26 values, fractional bias, and 99th percentile values. The results of the comparison showed that the alternative model performed consistently better than the regulatory version, that is it predicted higher concentrations than the standard version of AERMOD. Additionally, the year-by-year comparisons to the monitored data showed that the alternative model produced underestimates for one year, overestimates for one year, and very similar estimates for the third year. There was considerable year-to-year variability, as one would expect. Consequently, the alternative model was viewed to be acceptable based on the theoretical aspects of its development, the superior performance compared to the recommended model, and the overall unbiased nature of the alternative model's predictions.

Wisconsin's alternate model characterization was reviewed and concurred with on May 28, 2021 by EPA's Model Clearinghouse under EPA's *Guideline on Air Quality Models* criteria for alternate models. EPA Region 5's request for concurrence and EPA's Model Clearinghouse concurrence letters are included in the docket for this action.

C. Meteorological Data

Wisconsin used Rhinelander-Oneida County Airport (KRHI) surface data and Green Bay, Wisconsin upper air data, years 2011–1015, for modeling the Rhinelander area. The surface station is located less than 5 kilometers from Ahlstrom-Munksjö and is located in similar rolling terrain. Given the close proximity of the surface station and the similarity in surrounding terrain, EPA finds the use of the KRHI airport data, combined with the Green Bay upper air data to be appropriate, representative meteorological data sets for assessing dispersion at the facility.

D. Emissions Data

Wisconsin included all point sources within 50 kilometers of Rhinelander in its modeling analysis. These sources included boilers B26 (sometimes coal fired) and B28 (natural gas and oil fired) at Ahlstrom-Munksjö, the Kerry Inc. facility (formerly Red Arrow Foods), and the PCA facility. Wisconsin found that no other sources were close enough to cause significant concentration gradients. Boilers B20, B21, B22, and B23 at Ahlstrom-Munksjö were shut down in 2014, and their decommissioning is included in a federally enforceable permit, so they were not included in the modeling analysis. Wisconsin determined that boiler B26, which vents through stack S09, was primarily responsible for the Rhinelander area nonattainment designation, as the modeling results show that boiler B26 accounts for 94–95 percent of the total SO_2 concentration in the area depending on the boiler load. Therefore, boiler B26 was modeled at both minimum and maximum loads. The Kerry Inc. and PCA sources, as well as Ahlstrom-Munksjö boiler B28, were modeled at their current permitted maximum allowable SO_2 emissions, as contained in federally enforceable permits.

E. Emission Limits

An important prerequisite for approval of an attainment plan is that

the emission limits that provide for attainment be quantifiable, fully enforceable, replicable, and accountable. *See* General Preamble at 13567–68. The limit for Ahlstrom-Munksjö is expressed as a 24-hour average limit. Therefore, part of the review of Wisconsin's attainment plan must address the use of this limit, both with respect to the general suitability of using such limits for this purpose and with respect to whether the particular limits included in the plan have been suitably demonstrated to provide for attainment. The first subsection that follows addresses the enforceability of the limits in the plan, and the second subsection that follows addresses in particular the 24-hour average limit.

1. Enforceability

In preparing its plan, Wisconsin adopted a revision to a previously approved construction permit, Air Pollution Control Construction Permit Revision 15–DMM–128–R1, governing the Ahlstrom-Munksjö SO_2 emissions. These permit revisions were adopted by Wisconsin following established, appropriate public review procedures. The revised permit limits boiler B26 emission rates to 2.38 pounds per million British Thermal Unit (lbs/MMBTU) on a 24-hour average basis. This limit is more stringent than the previously approved limit of 3.0 lbs/MMBTU on a 24-hour average basis. The 3.0 lbs/MMBTU limit was included as part of Wisconsin's 2016 attainment demonstration that EPA disapproved in its March 23, 2021 rulemaking. In accordance with EPA policy, the 24-hour average limit is set at a lower level than the emission rate used in the attainment demonstration; the relationship between these two values is discussed in more detail in the following section. Additionally, the revised permit limits the maximum heat input to boiler B26 to 260 MMBTU/hour and requires that stack SO9 be a minimum of 75 meters (246 feet) above ground, as opposed to the previous boiler B26 limit of 300 MMBTU/hour and requirement that stack S09 be a minimum of 90 meters (296 feet) off the ground.[7] The permit compliance date for Ahlstrom-Munksjö is December 31, 2021. EPA finds that this construction permit revision provides for permanent enforceability.

2. Longer Term Average Limits

Ahlstrom-Munksjö requested a limit expressed as a 24-hour average limit in order to have a more robust limit, *i.e.,* a limit based on more values that would be less prone to indicate noncompliance based on ordinary fluctuations in emissions. In accordance with EPA's April 2014 guidance for SO_2 nonattainment plans, Wisconsin therefore adjusted its limit, reducing the limit for purposes of assuring comparable stringency to the 1-hour limit that it otherwise would have adopted.

Although compliance with this limit will be determined on the basis of continuous emissions monitoring system (CEMS) data, the facility does not have a sufficient historical record of CEMS data to be able to evaluate source-specific emissions variability for purposes of determining a source-specific factor by which to adjust the 1-hour limit for this source. Instead, Wisconsin determined its 24-hour average limit by applying one of the national average adjustment factors listed in appendix D of EPA's guidance. In particular, Wisconsin set its 24-hour average limit at 93 percent of the modeled emission rate, reflecting the national average adjustment factor that EPA found among facilities without emission control equipment. While the facility operates dry sorbent injection equipment to control hydrogen chloride (HCl) emissions so as to meet the maximum available control technology requirements for industrial boilers, HCl is generally much easier to control than SO_2, and the information about the facility's sorbent usage provided in Wisconsin's submittal supports a conclusion that sorbent injection likely reduces SO_2 emissions by less than one percent. Therefore, sorbent usage may be presumed to have very little impact on the variability of SO_2 emissions at this facility, and the national average adjustment factor for facilities without control equipment is likely to provide the best estimate of the appropriate degree of adjustment to determine a 24-hour limit that is comparably stringent to the 1-hour limit that otherwise would have been established.

Wisconsin set its limit at 2.38 lbs/MMBTU, corresponding to 93 percent of the 2.56 lbs/MMBTU emission rate that Wisconsin modeled.[8] Although appendix D of EPA's guidance reports average adjustment factors based on 99th percentile values among lbs/hr data rather than among lbs/MMBTU data, EPA generally finds that lbs/hr data show greater variability than lbs/MMBTU data, and so use of an adjustment factor determined from analysis of lbs/hr data is likely to yield a conservative (more stringent) result.

The Ahlstrom-Munksjö 24-hour average SO_2 emissions will be calculated by summing the emissions rates of each 1-hour operating period and dividing by the number of operating hours for that calendar day. Although EPA recommends that the average values be calculated by summing the total emissions and dividing by the total heat input for each day, this approach is infeasible for Ahlstrom-Munksjö. Because Ahlstrom-Munksjö is using Method 19, calculating lbs/MMBTU SO_2 concentration without evaluating either the mass or the heat input,[9] the facility does not obtain the hourly mass or heat input values to support a calculation of daily total mass or daily total heat input. As the differences in results of the two approaches are expected to be minimal, EPA concurs with Wisconsin's approach.

Ahlstrom-Munksjö requested that Wisconsin specify compliance determination procedures for days with fewer hours of data (generally, days with fewer hours of operation) in order to ensure robust compliance determinations, specifically to ensure that compliance is determined on the basis of a minimum of 18 hours of data. For days with fewer than 24 but at least 18 hours of data, compliance will be determined by averaging the emissions rates from the hours of operation. For operating days with fewer than 18 hours of data, compliance will be determined by averaging all the values from that day along with all the values from the most recent day with at least 18 hours of valid data. EPA supports the principle of ensuring that compliance with a long-term average limit should be based on a robust data set. Wisconsin's approach also is consistent with the principle that the facility shall be accountable for emissions at all times, *i.e.,* that days with fewer hours of data shall not be disregarded but rather shall be included in a suitably constructed compliance determination. Therefore, EPA concludes that Wisconsin is using an appropriate approach for addressing days with fewer hours of data.

Based on a review of the State's submittal, EPA believes that the 24-hour-average limit for Boiler B26 at Ahlstrom-Munksjö provides a suitable alternative to establishing a 1-hour average emission limit for this source.

[7] For more discussion on stack height, *see* EPA's November 25, 2020 proposed partial approval and partial disapproval (85 FR 75273).

[8] To be precise, the emission rates that Wisconsin modeled reflected 2.56 lbs/MMBTU times the allowable operating rate of 260 MMBTU/hour times the hour-specific downwash multiplier discussed above.

[9] ''Method 19—Determination of Sulfur Dioxide Removal Efficiency and Particulate Matter, Sulfur Dioxide, and Nitrogen Oxide Emission Rates'' (40 CFR part 60, appendix A).

EPA finds that Wisconsin used an appropriate adjustment factor, yielding an emission limit that has comparable stringency to the 1-hour average limit that the State determined would otherwise have been necessary to provide for attainment. While the 24-average limit allows occasions in which emissions may be higher than the level that would be allowed with the 1-hour limit, the State's limit compensates by requiring average emissions to be lower than the level that would otherwise have been required by a 1-hour average limit. For the reasons described above and explained in more detail in EPA's April 2014 guidance for SO_2 nonattainment plans, EPA finds that appropriately set longer term average limits provide a reasonable basis by which nonattainment plans may provide for attainment. Based on its review of this general information as well as the particular information in Wisconsin's plan, EPA finds that the 24-hour-average limit for boiler B26 at Ahlstrom-Munksjö is a suitable alternative to establishing a 1-hour limit on emissions from this boiler.

F. Background Concentrations

Wisconsin determined background concentrations for the Rhinelander area using 2013–2015 data from the Horicon (Dodge County) monitor, which is approximately 250 kilometers south of Rhinelander. The background concentration values that Wisconsin used varied by month and hour of the day and ranged from 1.40 micrograms per cubic meter ($\mu g/m^3$) to 14.1 $\mu g/m^3$ with an average value of 4.87 $\mu g/m^3$. EPA agrees that the values from the Horicon monitor are representative for background concentration estimates.

G. Summary of Results

Modeling for the Rhinelander Area in Wisconsin's March 2021 submittal showed a design value of 74.8 ppb (195.8 $\mu g/m^3$). This resulted from modeling the Ahlstrom-Munksjö boiler B26 at maximum load, combined with all other area sources and including a background concentration. The run was conducted with emissions at 2.56 lbs/MMBTU, a level that corresponds in stringency to the 2.38 lbs/MMBTU 24-hour average emission limit that Wisconsin adopted and submitted and is more stringent than the previous 24-hour emission limit of 3.0 lbs/MMBTU. Therefore, EPA concludes that Wisconsin's plan provides for attainment in this area.

V. Review of Other Plan Requirements

A. RACM/RACT

CAA section 172(c)(1) states that nonattainment plans shall provide for the implementation of all RACM as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of RACT) and shall provide for attainment of the national primary ambient air quality standards. CAA section 172(c)(6) requires plans to include enforceable emissions limitations, and such other control measures as may be necessary or appropriate to provide for attainment of the NAAQS. In its March 23, 2021 rulemaking, EPA disapproved Wisconsin's 2016 attainment plan because the Ahlstrom-Munksjö emissions limits (3.0 lbs/MMBTU 24-hour average SO_2 limit and 300 MMBTU/hr operating limit) provided in the plan were not calculated in compliance with the stack height regulations. Therefore, the plan could not be considered to provide an appropriate attainment demonstration, and it did not demonstrate RACM/RACT or meet the requirement for necessary emissions limitations or control measures. Wisconsin's revised plan for attaining the 1-hour SO_2 NAAQS in the Rhinelander area is based on a variety of measures, including more stringent SO_2 emissions and operating limits (2.38 lbs/MMBTU 24-hour average SO_2 limit and 260 MMBTU/hr operating limit) for Ahlstrom-Munksjö, which were calculated in compliance with the stack height regulations. Wisconsin's plan requires compliance with these measures by December 31, 2021. Wisconsin has determined that these measures suffice to provide for attainment. EPA concurs and proposes to conclude that the State has satisfied the requirement in section 172(c)(1) and (6) to adopt and submit all RACM/RACT and emissions limitations or control measures as needed to attain the standards as expeditiously as practicable.

B. Reasonable Further Progress (RFP)

In its March 23, 2021 rulemaking, EPA concluded that Wisconsin had not satisfied the requirement in section 172(c)(2) to provide for RFP toward attainment. Wisconsin's 2016 attainment plan did not demonstrate that the implementation of the control measures required under the plan were sufficient to provide for attainment of the NAAQS in the Rhinelander SO_2 nonattainment area consistent with EPA requirements (in particular consistent with EPA stack height regulations). Therefore, a compliance schedule to implement those controls was not sufficient to provide for RFP. Wisconsin's revised plan requires compliance by December 31, 2021. Wisconsin concludes that this is an ambitious compliance schedule, as described in April 2014 guidance for SO_2 nonattainment plans, and concludes that this plan therefore provides for RFP in accordance with the approach to RFP described in EPA's 2014 guidance. EPA concurs and proposes to conclude that the plan provides for RFP.

C. Contingency Measures

As noted above, EPA guidance describes special features of SO_2 planning that influence the suitability of alternative means of addressing the requirement in section 172(c)(9) for contingency measures for SO_2, such that in particular an appropriate means of satisfying this requirement is for the State to have a comprehensive enforcement program that identifies sources of violations of the SO_2 NAAQS and to undertake an aggressive follow-up for compliance and enforcement. Wisconsin's plan provides for satisfying the contingency measure requirement in this manner.[10] EPA concurs and proposes to approve Wisconsin's plan for meeting the contingency measure requirement in this manner.

VI. What action is EPA taking?

EPA is proposing to approve Wisconsin's SIP submission, which the State submitted to EPA on March 29, 2021 to supplement the prior SIP it had submitted on January 22, 2016 and supplemented on July 18, 2016, and November 29, 2016, for attaining the 2010 1-hour SO_2 NAAQS for the Rhinelander area and for meeting other nonattainment area planning requirements. This SO_2 attainment plan includes Wisconsin's attainment demonstration for the Rhinelander area. The plan also addresses requirements for RFP, RACT/RACM, and contingency measures. EPA has previously concluded that Wisconsin has addressed the requirements for

[10] Wisconsin Department of Natural Resources (WDNR) maintains an enforcement program to ensure compliance with SIP requirements. The Bureau of Air Management houses an active statewide compliance and enforcement team that works in all geographic regions of the State. WDNR refers actions as necessary to the Wisconsin Department of Justice with the involvement of WDNR. *Wis. Stats.* 285.83 and *Wis. Stats.* 285.87 provide WDNR with the authority to enforce violations and assess penalties, to ensure that required measures are ultimately implemented.

emissions inventories for the Rhinelander area and nonattainment area NSR. EPA has determined that Wisconsin's Rhinelander SO_2 plan meets applicable requirements of section 172 of the CAA.

Wisconsin's Rhinelander SO_2 plan is based on the emissions limits specified in Air Pollution Control Construction Permit Revision 15–DMM–128–R1. Wisconsin seeks EPA to approve several elements of the permit, including the permit cover sheet, emissions limitations for Ahlstrom-Munksjö (Conditions A.3.a.(1)–(3)), compliance demonstration (Conditions A.3.b.(1)–(3)), reference test methods, recordkeeping and monitoring requirements (Conditions A.3.c.(1)–(5) and A.3.c.(7)–(9)), and the effective date (Condition YYY.1.a.(1)). Wisconsin did not seek approval of limits and test methods associated with oil sulfur content. Wisconsin stated that limits on the portion of emissions from oil are unnecessary to comply with the 24-hour SO_2 emission limit and the boiler heat input limit, and attainment is ensured by limits on total emissions from boiler B26. EPA concurs with Wisconsin's rationale, and therefore EPA is proposing to approve these elements of the permit.

Additionally, EPA is proposing to replace the previously approved consent and administrative orders (AM–94–38 and AM–15–01) governing the Ahlstrom-Munksjö emission limits [11] with the elements of Wisconsin's Air Pollution Control Construction Permit Revision 15–DMM–128–R1 specified above. This replacement would not be effective until December 31, 2021, which is the revised permit compliance date for Ahlstrom-Munksjö. Section 110(l) of the CAA states that EPA ''shall not approve a revision of a plan if the revision would interfere with any applicable requirement . . .'' Since Permit 15–DMM–128–R1 contains a more stringent SO_2 limit for Ahlstrom-Munksjö (2.38 lbs/MMBTU on a 24-hour average basis) than the previous orders (3.0 lbs/MMBTU on a 24-hour average basis), and since Wisconsin has demonstrated that the limit in Permit 15–DMM–128–R1 provides for attainment without need for the limits in the prior orders, EPA concludes that Section 110(l) does not prohibit EPA from replacing the prior orders with the newer permit, and EPA is proposing to act in accordance with this Wisconsin request.

EPA is taking public comments for thirty days following the publication of this proposed action in the **Federal Register**. EPA will take all comments into consideration in the final action. If this approval is finalized, it would terminate the sanctions clock started under CAA section 179 resulting from EPA's partial disapproval of the prior SIP, as well as EPA's duty to promulgate a FIP for the area under CAA section 110(c) that resulted from the previous partial disapproval.

VII. Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the specific portions of Wisconsin Air Pollution Control Construction Permit Revision 15–DMM–128–R1, effective December 31, 2021, as described in section VI. above. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov* and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

Also in this document, as described in section VI, EPA is proposing to remove provisions of the EPA-Approved Wisconsin Source Specific Requirements from the Wisconsin State Implementation Plan, which is incorporated by reference in accordance with the requirements of 1 CFR part 51.

VIII. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: July 13, 2021.

Cheryl Newton,

Acting Regional Administrator, Region 5.

[FR Doc. 2021–15464 Filed 7–21–21; 8:45 am]

BILLING CODE 6560–50–P

[11] Orders AM–94–38 and AM–15–01 were issued to the facility's prior owner, Expera, but the orders continued to limit the facility's emissions after it was acquired by Ahlstrom-Munksjö.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2021–0260; FRL–8644–02–R9]

Partial Approval and Partial Disapproval of Air Quality Implementation Plans; California; San Joaquin Valley Serious Area and Section 189(d) Plan for Attainment of the 1997 Annual $PM_{2.5}$ NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve in part and disapprove in part portions of a state implementation plan (SIP) revision submitted by the State of California to meet Clean Air Act (CAA or ''Act'') requirements for the 1997 annual fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS or ''standards'') in the San Joaquin Valley $PM_{2.5}$ nonattainment area. Specifically, the EPA is proposing to approve the 2013 base year emissions inventories in the submitted SIP revisions. Because the area did not attain by the State's projected attainment date of December 31, 2020, the EPA is proposing to disapprove the attainment demonstration and related elements, including the comprehensive precursor demonstration, five percent annual emission reductions demonstration, best available control measures (BACM) demonstration, reasonable further progress (RFP) demonstration, quantitative milestone demonstration, and contingency measures. The EPA is also proposing to disapprove the motor vehicle emission budgets in the plan as not meeting the requirements of the CAA and EPA regulations.

DATES: Any comments on this proposal must be received by August 23, 2021.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2021–0260 at *https://www.regulations.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (*e.g.,* audio or video) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Ashley Graham, Air Planning Office (ARD–2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3877, or by email at *graham.ashleyr@epa.gov.*

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

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I. Background for Proposed Action

A. $PM_{2.5}$ NAAQS

Under section 109 of the CAA, the EPA has established NAAQS for certain pervasive air pollutants (referred to as ''criteria pollutants'') and conducts periodic reviews of the NAAQS to determine whether they should be revised or whether new NAAQS should be established.

On July 18, 1997, the EPA revised the NAAQS for particulate matter by establishing new NAAQS for particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers ($PM_{2.5}$).[1] The EPA established primary and secondary annual and 24-hour standards for $PM_{2.5}$.[2] The annual primary and secondary standards were set at 15.0 micrograms per cubic meter ($\mu g/m^3$), based on a three-year average of annual mean $PM_{2.5}$ concentrations, and the 24-hour primary and secondary standards were set at 65 $\mu g/m^3$, based on the three-year average of the 98th percentile of 24-hour $PM_{2.5}$ concentrations at each monitoring site within an area.[3] Collectively, we refer herein to the 1997 annual and 24-hour $PM_{2.5}$ NAAQS as the ''1997 $PM_{2.5}$ NAAQS'' or ''1997 $PM_{2.5}$ standards.''

On October 17, 2006, the EPA revised the level of the 24-hour $PM_{2.5}$ NAAQS to 35 $\mu g/m^3$,[4] and on January 15, 2013, the EPA revised the level of the primary annual $PM_{2.5}$ NAAQS to 12.0 $\mu g/m^3$.[5] Even though the EPA has lowered the 24-hour and annual $PM_{2.5}$ standards, the 1997 $PM_{2.5}$ standards remain in effect.

The EPA established these standards after considering substantial evidence from numerous health studies demonstrating that serious health effects are associated with exposures to $PM_{2.5}$ concentrations above these levels. Epidemiological studies have shown statistically significant correlations between elevated $PM_{2.5}$ levels and premature mortality. Other important health effects associated with $PM_{2.5}$ exposure include aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions, emergency room visits, absences from school or work, and restricted activity dates), changes in lung function and increased respiratory symptoms, and new evidence for more subtle indicators of cardiovascular health. Individuals particularly sensitive to $PM_{2.5}$ exposure include

[1] 62 FR 38652.

[2] For a given air pollutant, ''primary'' NAAQS are those determined by the EPA as requisite to protect the public health, allowing an adequate margin of safety, and ''secondary'' standards are those determined by the EPA as requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air. See CAA section 109(b).

[3] 40 CFR 50.7.

[4] 71 FR 61144.

[5] 78 FR 3086.

older adults, people with heart and lung disease, and children.[6]

Sources can emit $PM_{2.5}$ directly into the atmosphere as a solid or liquid particle (primary $PM_{2.5}$ or direct $PM_{2.5}$), or $PM_{2.5}$ can form in the atmosphere (secondary $PM_{2.5}$) as a result of various chemical reactions from precursor emissions of nitrogen oxides (NO_X), sulfur oxides (SO_X), volatile organic compounds (VOC), and ammonia.[7]

B. San Joaquin Valley $PM_{2.5}$ Designations, Classifications, and SIP Revisions

Following promulgation of a new or revised NAAQS, the EPA is required under CAA section 107(d) to designate areas throughout the nation as attaining or not attaining the NAAQS. Effective April 5, 2005, the EPA established the initial air quality designations for the 1997 annual and 24-hour $PM_{2.5}$ NAAQS, using air quality monitoring data for the three-year periods of 2001–2003 and 2002–2004.[8] The EPA designated the San Joaquin Valley as nonattainment for both the 1997 annual $PM_{2.5}$ NAAQS (15.0 μg/m³) and the 1997 24-hour $PM_{2.5}$ NAAQS (65 μg/m³).[9]

The San Joaquin Valley $PM_{2.5}$ nonattainment area encompasses over 23,000 square miles and includes all or part of eight counties: San Joaquin, Stanislaus, Merced, Madera, Fresno, Tulare, Kings, and the valley portion of Kern.[10] The area is home to four million people and is one of the nation's leading agricultural regions. Stretching over 250 miles from north to south and averaging 80 miles wide, it is partially enclosed by the Coast Mountain range to the west, the Tehachapi Mountains to the south, and the Sierra Nevada range to the east. Under State law, the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD or ''District'') has primary responsibility for developing plans to provide for attainment of the NAAQS in this area. The District works cooperatively with the California Air Resources Board (CARB) in preparing attainment plans. Authority for regulating sources under state jurisdiction in the San Joaquin Valley is split under State law between the District, which has responsibility for regulating stationary and most area sources, and CARB, which has responsibility for regulating most mobile sources.

Within three years of the effective date of designations, states with areas designated as nonattainment for the 1997 $PM_{2.5}$ NAAQS were required to submit SIP revisions that, among other things, provided for implementation of reasonably available control measures (RACM), RFP, attainment of the standards as expeditiously as practicable but no later than five years from the nonattainment designation (in this instance, no later than April 5, 2010) unless the state justified an attainment date extension of up to five years, and contingency measures.[11]

Between 2007 and 2011, California submitted six SIP revisions to address nonattainment area planning requirements for the 1997 $PM_{2.5}$ NAAQS in the San Joaquin Valley,[12] which we refer to collectively as the ''2008 $PM_{2.5}$ Plan.'' On November 9, 2011, the EPA approved the portions of the 2008 $PM_{2.5}$ Plan, as revised in 2009 and 2011, that addressed attainment of the 1997 $PM_{2.5}$ NAAQS in the San Joaquin Valley $PM_{2.5}$ nonattainment area, except for the attainment contingency measures, which we disapproved.[13] We also granted the State's request to extend the attainment deadline for the 1997 $PM_{2.5}$ NAAQS in the San Joaquin Valley to April 5, 2015.[14]

Following a January 4, 2013 decision of the U.S. Court of Appeals for the D.C. Circuit (''D.C. Circuit'') remanding the EPA's 2007 implementation rule for the 1997 $PM_{2.5}$ NAAQS,[15] the EPA published a final rule on June 2, 2014, classifying the San Joaquin Valley, among other areas, as a Moderate nonattainment area for the 1997 $PM_{2.5}$ NAAQS under subpart 4, part D of title I of the Act.[16]

Effective May 7, 2015, the EPA reclassified the San Joaquin Valley as a Serious nonattainment area for the 1997 $PM_{2.5}$ NAAQS based on our determination that the area could not practicably attain these NAAQS by the April 5, 2015 attainment date.[17] Upon reclassification as a Serious area, the San Joaquin Valley became subject to a December 31, 2015 deadline under CAA section 188(c)(2) to attain the 1997 $PM_{2.5}$ NAAQS. On February 9, 2016, the EPA proposed to grant the State's request for extensions of the December 31, 2015 attainment date under CAA section 188(e), to December 31, 2018, for the 1997 24-hour $PM_{2.5}$ NAAQS, and to December 31, 2020, for the 1997 annual $PM_{2.5}$ NAAQS in the San Joaquin Valley.[18] However, on October 6, 2016, after considering public comments, the EPA denied California's request for these extensions of the attainment dates.[19] Consequently, on November 23, 2016, the EPA determined that the San Joaquin Valley had failed to attain the 1997 $PM_{2.5}$ NAAQS by the December 31, 2015 Serious area attainment date.[20] This determination triggered a requirement for California to submit, by December 31, 2016, a revised $PM_{2.5}$ attainment plan for the 1997 $PM_{2.5}$ NAAQS for the San Joaquin Valley that satisfies the requirements of CAA section 189(d).

On December 6, 2018, the EPA determined that California had failed to submit a complete Serious area and section 189(d) attainment plan for the 1997 $PM_{2.5}$ NAAQS, among other required SIP submissions for the San Joaquin Valley, by the submittal deadline.[21] This finding, which became effective on January 7, 2019, triggered clocks under CAA section 179(a) for the application of emissions offset sanctions 18 months after the finding and highway funding sanctions six months thereafter, unless the EPA affirmatively determines that the State has submitted a complete SIP addressing the identified deficiencies.[22] The finding also triggered the obligation under CAA section 110(c) on the EPA to promulgate a federal implementation plan no later than two years after the finding, unless the State has submitted, and the EPA has approved, the required SIP

[6] EPA, Air Quality Criteria for Particulate Matter, No. EPA/600/P–99/002aF and EPA/600/P–99/002bF, October 2004.

[7] For example, see 72 FR 20586, 20589 (April 25, 2007).

[8] 70 FR 944 (January 5, 2005).

[9] 40 CFR 81.305.

[10] For a precise description of the geographic boundaries of the San Joaquin Valley nonattainment area, see 40 CFR 81.305.

[11] CAA sections 172(a)(2), 172(c)(1), 172(c)(2), and 172(c)(9).

[12] 76 FR 69896, n. 2 (November 9, 2011).

[13] Id. at 69924.

[14] Id.

[15] *Natural Resources Defense Council* v. *EPA,* 706 F.3d. 428 (D.C. Cir. 2013) (''NRDC''). In NRDC, the court held that the EPA erred in implementing the 1997 $PM_{2.5}$ standards solely pursuant to the general implementation requirements of subpart 1, without also considering the requirements specific to nonattainment areas for particles less than or equal to 10 μm in diameter (PM_{10}) in subpart 4, part D of title I of the CAA. The court reasoned that the plain meaning of the CAA requires implementation of the 1997 $PM_{2.5}$ standards under subpart 4 because $PM_{2.5}$ falls within the statutory definition of PM_{10} and is thus subject to the same statutory requirements as PM_{10}. The court remanded the rule, without vacatur, and instructed the EPA ''to repromulgate these rules pursuant to Subpart 4 consistent with this opinion.''

[16] 79 FR 31566.

[17] 80 FR 18528 (April 7, 2015).

[18] 81 FR 6936. California's request for extension of the Serious Area attainment date for the San Joaquin Valley accompanied its Serious Area attainment plan for the 1997 $PM_{2.5}$ NAAQS and related motor vehicle emission budgets, submitted June 25, 2015 and August 13, 2015, respectively.

[19] 81 FR 69396. The EPA did not finalize the actions proposed on February 9, 2016, with respect to the submitted Serious area plan. Id. at 69400.

[20] 81 FR 84481.

[21] 83 FR 62720.

[22] Id. at 62723.

submittal.[23] CARB submitted a revised attainment plan for the 1997 $PM_{2.5}$ NAAQS, among other submissions, on May 10, 2019.[24] This SIP revision is the subject of this proposal. On June 24, 2020, the EPA issued a letter finding the submittal complete and terminating the sanctions clocks under CAA section 179(a).[25]

II. Summary and Completeness Review of the San Joaquin Valley $PM_{2.5}$ Plan

The EPA is proposing action on portions of three SIP revisions submitted by CARB to meet CAA requirements for the 1997 annual $PM_{2.5}$ NAAQS in the San Joaquin Valley. Specifically, the EPA is proposing to act on those portions of the following two plan submissions that pertain to the 1997 annual $PM_{2.5}$ NAAQS: The ''2018 Plan for the 1997, 2006, and 2012 $PM_{2.5}$ Standards,'' adopted by the SJVUAPCD on November 15, 2018, and by CARB on January 24, 2019 (''2018 $PM_{2.5}$ Plan'');[26] and the ''San Joaquin Valley Supplement to the 2016 State Strategy for the State Implementation Plan,'' adopted by CARB on October 25, 2018 (''Valley State SIP Strategy''). CARB submitted the 2018 $PM_{2.5}$ Plan and Valley State SIP Strategy to the EPA as a revision to the California SIP on May 10, 2019.[27] We refer to these two SIP submissions collectively as the ''SJV $PM_{2.5}$ Plan'' or ''Plan.''

The EPA is also proposing action on 2019 amendments to the regional air district residential wood-burning rule, SJVUAPCD Rule 4901, ''Wood Burning Fireplaces and Wood Burning Heaters'' (''Rule 4901''), adopted by the SJVUAPCD on June 20, 2019, and by CARB on July 19, 2019.[28] These amendments include a contingency measure (in section 5.7.3 of the amended rule) that applies to the 1997 annual $PM_{2.5}$ NAAQS.

The SJV $PM_{2.5}$ Plan addresses the Serious area and CAA section 189(d) requirements for the 1997 $PM_{2.5}$ NAAQS in the San Joaquin Valley, including the State's demonstration that the area will attain the 1997 annual $PM_{2.5}$ NAAQS by December 31, 2020. In this proposal, the EPA is proposing to act only on those portions of the SJV $PM_{2.5}$ Plan that pertain to the 1997 annual $PM_{2.5}$ NAAQS. The EPA intends to act on the portions of the SJV $PM_{2.5}$ Plan that pertain to the 1997 24-hour $PM_{2.5}$ NAAQS and subsequent $PM_{2.5}$ NAAQS in separate rulemakings.

CAA sections 110(a)(1) and (2) and 110(l) require each state to provide reasonable public notice and opportunity for public hearing prior to the adoption and submission of a SIP or SIP revision to the EPA. To meet this requirement, every SIP submission should include evidence that adequate public notice was given and that an opportunity for a public hearing was provided consistent with the EPA's implementing regulations in 40 CFR 51.102.

CAA section 110(k)(1)(B) requires the EPA to determine whether a SIP submission is complete within 60 days of receipt. This section also provides that any plan that the EPA has not affirmatively determined to be complete or incomplete will become complete by operation of law six months after the date of submission. The EPA's SIP completeness criteria are found in 40 CFR part 51, Appendix V.

A. 2018 $PM_{2.5}$ Plan

The following portions of the 2018 $PM_{2.5}$ Plan and related support documents address both the Serious area requirements in CAA section 189(b) and the CAA section 189(d) requirements for the 1997 annual $PM_{2.5}$ NAAQS in the San Joaquin Valley: (i) Chapter 4 (''Attainment Strategy for $PM_{2.5}$''), (ii) Chapter 5 (''Demonstration of Federal Requirements for 1997 $PM_{2.5}$ Standards'');[29] (iii) numerous appendices to the 2018 $PM_{2.5}$ Plan; (iv) CARB's ''Staff Report, Review of the San Joaquin Valley 2018 Plan for the 1997, 2006, and 2012 $PM_{2.5}$ Standards,'' release date December 21, 2018 (''CARB Staff Report'');[30] and (v) the State's and District's board resolutions adopting the 2018 $PM_{2.5}$ Plan (CARB Resolution 19–1 and SJVUAPCD Governing Board Resolution 18–11–16).[31]

The appendices to the 2018 $PM_{2.5}$ Plan that address the requirements for the 1997 annual $PM_{2.5}$ NAAQS include: (i) Appendix A (''Ambient $PM_{2.5}$ Data Analysis''); (ii) Appendix B (''Emissions Inventory''); (iii) Appendix C (''Stationary Source Control Measure Analyses''); (iv) Appendix D (''Mobile Source Control Measure Analyses''); (v) Appendix G (''Precursor Demonstration''); (vi) Appendix H (''RFP, Quantitative Milestones, and Contingency'');[32] (vii) Appendix I (''New Source Review and Emission Reduction Credits''); (viii) Appendix J (''Modeling Emission Inventory''); (ix) Appendix K (''Modeling Attainment Demonstration''); and (x) Appendix L (''Modeling Protocol'').

The District provided public notice and opportunity for public comment prior to its November 15, 2018 public hearing on and adoption of the 2018 $PM_{2.5}$ Plan.[33] CARB also provided public notice and opportunity for public comment prior to its January 24, 2019 public hearing on and adoption of the

[23] Id.

[24] Letter dated May 9, 2019, from Richard Corey, Executive Officer, CARB, to Mike Stoker, Regional Administrator, EPA Region 9.

[25] Letter dated June 24, 2020, from Elizabeth J. Adams, Director, Air and Radiation Division, EPA Region IX, to Richard W. Corey, Executive Officer, CARB, Subject: ''RE: Completeness Finding for State Implementation Plan (SIP) Submissions for San Joaquin Valley for the 1997, 2006, and 2012 Fine Particulate Matter ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS) and Termination of Clean Air Act (CAA) Sanction Clocks.''

[26] The 2018 $PM_{2.5}$ Plan was developed jointly by CARB and the District.

[27] Letter dated May 9, 2019, from Richard Corey, Executive Officer, CARB, to Mike Stoker, Regional Administrator, EPA Region 9. The letter clarifies that the 2018 $PM_{2.5}$ Plan supersedes past submittals to the EPA that the agency has not yet acted on for the 1997 standards, including the *2015 Plan for the 1997 Standard* (submitted by CARB on June 25, 2015) and motor vehicle emission budgets (submitted by CARB August 13, 2015). The EPA previously acted on those portions of the ''2018 Plan for the 1997, 2006, and 2012 $PM_{2.5}$ Standards'' and the ''San Joaquin Valley Supplement to the 2016 State Strategy for the State Implementation Plan'' that pertain to the 2006 $PM_{2.5}$ NAAQS (85 FR 44192, July 22, 2020), and is not, at this time, proposing to act on those portions that pertain to the 1997 24-hour $PM_{2.5}$ NAAQS or the 2012 annual $PM_{2.5}$ NAAQS. We intend to act on these portions of the submitted SIP revisions in subsequent rulemakings.

[28] Letter dated July 19, 2019, from Richard W. Corey, Executive Officer, CARB, to Mike Stoker, Regional Administrator, EPA Region 9.

[29] Chapter 6 (''Demonstration of Federal Requirements for the 2006 $PM_{2.5}$ Standard: Serious Plan and Extension Request'') and Chapter 7 (''Demonstration of Federal Requirements for the 2012 $PM_{2.5}$ Standard'') of the 2018 $PM_{2.5}$ Plan pertain to the 2006 $PM_{2.5}$ NAAQS and the 2012 $PM_{2.5}$ NAAQS, respectively. The EPA previously acted on those portions of the Plan that pertain to the 2006 $PM_{2.5}$ NAAQS (85 FR 44192, July 22, 2020) and intends to act on those portions that pertain to the 1997 24-hour $PM_{2.5}$ NAAQS and 2012 $PM_{2.5}$ NAAQS in separate rulemakings.

[30] Letter dated December 11, 2019, from Richard Corey, Executive Officer, CARB, to Mike Stoker, Regional Administrator, EPA Region 9, transmitting the CARB Staff Report [on the 2018 $PM_{2.5}$ Plan]. The CARB Staff Report includes CARB's review of, among other things, the 2018 $PM_{2.5}$ Plan's control strategy and attainment demonstration.

[31] CARB Resolution 19–1, ''2018 $PM_{2.5}$ State Implementation Plan for the San Joaquin Valley,'' January 24, 2019, and SJVUAPCD Governing Board Resolution 18–11–16, ''Adopting the [SJVUAPCD] 2018 Plan for the 1997, 2006, and 2012 $PM_{2.5}$ Standards,'' November 15, 2018.

[32] Appendix H to 2018 $PM_{2.5}$ Plan, submitted February 11, 2020 via the EPA State Planning Electronic Collaboration System. Following the identification of a transcription error in the RFP tables of Appendix H, on February 11, 2020, the State submitted a revised version of Appendix H that corrects the transcription error and provides additional information on the RFP demonstration. All references to Appendix H in this proposed rule are to the revised version submitted on February 11, 2020, which replaces the version submitted with the 2018 $PM_{2.5}$ Plan on May 10, 2019.

[33] SJVUAPCD, ''Notice of Public Hearing for Adoption of Proposed 2018 $PM_{2.5}$ Plan for the 1997, 2006, and 2012 Standards,'' October 16, 2018, and SJVUAPCD Governing Board Resolution 18–11–16.

2018 $PM_{2.5}$ Plan.[34] The SIP submission includes proof of publication of notices for the respective public hearings. It also includes copies of the written and oral comments received during the State's and District's public review processes and the agencies' responses thereto.[35] Therefore, we find that the 2018 $PM_{2.5}$ Plan meets the procedural requirements for public notice and hearing in CAA sections 110(a) and 110(l) and 40 CFR 51.102. The 2018 $PM_{2.5}$ Plan became complete by operation of law on November 10, 2019.

B. Valley State SIP Strategy

CARB developed the ''Revised Proposed 2016 State Strategy for the State Implementation Plan'' (''2016 State Strategy'') to support attainment planning in the San Joaquin Valley and Los Angeles-South Coast Air Basin (''South Coast'') ozone nonattainment areas.[36] In its resolution adopting the 2016 State Strategy (CARB Resolution 17–7), the Board found that the 2016 State Strategy would achieve 6 tons per day (tpd) of NO_X emissions reductions and 0.1 tpd of direct $PM_{2.5}$ emissions reductions in the San Joaquin Valley by 2025 and directed CARB staff to work with SJVUAPCD to identify additional reductions from sources under District regulatory authority as part of a comprehensive plan to attain the $PM_{2.5}$ standards for the San Joaquin Valley and to return to the Board with a commitment to achieve additional emission reductions from mobile sources.[37]

CARB responded to this resolution by developing and adopting the ''San Joaquin Valley Supplement to the 2016 State Strategy for the State Implementation Plan'' (''Valley State SIP Strategy'') to support the 2018 $PM_{2.5}$ Plan. The State's May 10, 2019 SIP submission incorporates by reference the Valley State SIP Strategy as adopted by CARB on October 25, 2018 and submitted to the EPA on November 16, 2018.[38]

The Valley State SIP Strategy includes an ''Introduction'' (Chapter 1), a chapter on ''Measures'' (Chapter 2), and a ''Supplemental State Commitment from the Proposed State Measures for the Valley'' (Chapter 3). Much of the content of the Valley State SIP Strategy is reproduced in Chapter 4 (''Attainment Strategy for $PM_{2.5}$'') of the 2018 $PM_{2.5}$ Plan.[39] The Valley State SIP Strategy also includes CARB Resolution 18–49, which, among other things, commits CARB to achieve specific amounts of NO_X and $PM_{2.5}$ emissions reductions by specific years, for purposes of attaining the $PM_{2.5}$ NAAQS in the San Joaquin Valley.[40]

CARB provided the required public notice and opportunity for public comment prior to its October 25, 2018 public hearing on and adoption of the Valley State SIP Strategy.[41] The SIP submission includes proof of publication of the public notice for this public hearing. It also includes copies of the written and oral comments received during the State's public review process and CARB's responses thereto.[42] Therefore, we find that the Valley State SIP Strategy meets the procedural requirements for public notice and hearing in CAA sections 110(a) and 110(l) and 40 CFR 51.102. The Valley State SIP Strategy became complete by operation of law on November 10, 2019.

C. District Rule 4901

With respect to the District contingency measure, the District states in Appendix H of the 2018 $PM_{2.5}$ Plan that it will amend Rule 4901 to include a requirement to be triggered upon a determination by the EPA that the San Joaquin Valley failed to meet a regulatory requirement necessitating implementation of a contingency measure.[43] On June 20, 2019, the District adopted amendments to Rule 4901 including a contingency measure (in section 5.7.3 of the amended rule), and, as an attachment to a letter dated July 19, 2019, CARB submitted the amended rule to the EPA for approval.[44] On July 22, 2020, we approved Rule 4901, as amended June 20, 2019, into the SIP based on our conclusion that the rule meets the requirements for enforceability and for SIP revisions in CAA sections 110(a)(2)(A), 110(l), and 193 but we did not evaluate section 5.7.3 of the amended rule for compliance with CAA requirements for contingency measures.[45] As part of that rulemaking, we stated that we would determine in future actions whether section 5.7.3 of Rule 4901, in conjunction with other submitted provisions, meets the statutory and regulatory requirements for contingency measures.[46] We are now evaluating section 5.7.3 of Rule 4901, as amended June 20, 2019, for compliance with the requirements for contingency measures for purposes of the 1997 annual $PM_{2.5}$ NAAQS.

Consistent with the requirements of 40 CFR part 51, Appendix V, we previously determined that CARB's submittal of the June 20, 2019 revisions to Rule 4901 satisfied the procedural requirements for SIP revisions under CAA section 110 and the EPA's implementing regulations.[47]

III. Clean Air Act Requirements for Serious $PM_{2.5}$ Areas That Fail To Attain

In the event that a Serious area fails to attain the $PM_{2.5}$ NAAQS by the applicable attainment date, CAA section 189(d) requires that ''the State in which such area is located shall, after notice and opportunity for public comment, submit within 12 months after the applicable attainment date, plan revisions which provide for attainment of the . . . standard. . .'' An attainment plan under section 189(d) must, among other things, demonstrate expeditious attainment of the NAAQS within the time period provided under CAA section 179(d)(3) and provide for annual reductions in emissions of direct $PM_{2.5}$ or a $PM_{2.5}$ plan precursor pollutant within the area of not less than five

[34] CARB, ''Notice of Public Meeting to Consider the 2018 $PM_{2.5}$ State Implementation Plan for the San Joaquin Valley,'' December 21, 2018, and CARB Resolution 19–1.

[35] CARB, ''Board Meeting Comments Log,'' March 29, 2019; J&K Court Reporting, LLC, ''Meeting, State of California Air Resources Board,'' January 24, 2019 (transcript of CARB's public hearing), and 2018 $PM_{2.5}$ Plan, Appendix M (''Summary of Significant Comments and Responses'').

[36] The EPA has approved certain commitments made by CARB in the 2016 State Strategy for purposes of attaining the ozone NAAQS in the San Joaquin Valley and South Coast ozone nonattainment areas (for example, see 84 FR 3302 (February 12, 2019) and 84 FR 52005 (October 1, 2019)) and for attaining the 2006 $PM_{2.5}$ NAAQS in the San Joaquin Valley (85 FR 44192 (July 22, 2020)).

[37] CARB Resolution 17–7, ''2016 State Strategy for the State Implementation Plan,'' March 23, 2017, 6–7.

[38] Letter dated May 9, 2019, from Richard Corey, Executive Officer, CARB, to Mike Stoker, Regional Administrator, EPA Region 9, 2.

[39] For example, Table 2 (proposed mobile source measures and schedule), Table 3 (emissions reductions from proposed mobile source measures), and Table 4 (summary of emission reduction measures) of the Valley State SIP Strategy correspond to tables 4–8, 4–9, and 4–7, respectively, of the 2018 $PM_{2.5}$ Plan, Chapter 4.

[40] CARB Resolution 18–49, ''San Joaquin Valley Supplement to the 2016 State Strategy for the State Implementation Plan,'' October 25, 2018, 5.

[41] CARB, ''Notice of Public Meeting to Consider the San Joaquin Valley Supplement to the 2016 State Strategy for the State Implementation Plan,'' September 21, 2018, and CARB Resolution 18–49.

[42] CARB, ''Board Meeting Comments Log,'' November 2, 2018 and compilation of written comments; and J&K Court Reporting, LLC, ''Meeting, State of California Air Resources Board,'' October 25, 2018 (transcript of CARB's public hearing).

[43] 2018 $PM_{2.5}$ Plan, Appendix H, H–25.

[44] Letter dated July 19, 2019 from Richard W. Corey, Executive Officer, CARB, to Mike Stoker, Regional Administrator, EPA Region 9.

[45] 85 FR 44206 (July 22, 2020) (final approval of Rule 4901); 85 FR 1131, 1132–33 (January 9, 2020) (proposed approval of Rule 4901).

[46] 85 FR 1131, 1132–33.

[47] 85 FR 1131 (January 9, 2020) (proposed approval of revised Rule 4901) and 85 FR 44206 (July 22, 2020) (final approval of revised Rule 4901).

percent per year from the most recent emissions inventory for the area until attainment.[48] In addition to the requirement to submit control measures providing for a five percent reduction in emissions of certain pollutants on an annual basis, the EPA interprets CAA section 189(d) as requiring a state to submit an attainment plan that includes the same basic statutory plan elements that are required for other attainment plans.[49] Specifically, a state must submit to the EPA its plan to meet the requirements of CAA section 189(d) in the form of a complete attainment plan submission that includes the following elements:

1. A comprehensive, accurate, current inventory of actual emissions from all sources of $PM_{2.5}$ and $PM_{2.5}$ precursors in the area;
2. A control strategy that includes additional measures (beyond those already adopted in previous SIPs for the area as RACM/RACT, best available control measures/best available control technology (BACM/BACT), and most stringent measures (if applicable)) that provide for attainment of the standards and, from the date of such submission until attainment, demonstrate that the plan will at a minimum achieve an annual five percent reduction in emissions of direct $PM_{2.5}$ or any $PM_{2.5}$ plan precursor;
3. A demonstration (including air quality modeling) that the plan provides for attainment as expeditiously as practicable;
4. Plan provisions that require RFP;
5. Quantitative milestones that are to be achieved every three years until the area is redesignated attainment and that demonstrate RFP toward attainment by the applicable date;
6. Contingency measures to be implemented if the area fails to meet any requirement concerning RFP or quantitative milestones or to attain by the applicable attainment date; and
7. Provisions to assure that control requirements applicable to major stationary sources of $PM_{2.5}$ also apply to major stationary sources of $PM_{2.5}$ precursors, except where the state demonstrates to the EPA's satisfaction that such sources do not contribute significantly to $PM_{2.5}$ levels that exceed the standards in the area.

A state with a Serious $PM_{2.5}$ nonattainment area that fails to attain the NAAQS by the applicable Serious area attainment date must also address any statutory requirements applicable to Moderate and Serious nonattainment area plans under CAA sections 172 and 189 of the CAA to the extent that those requirements have not already been met.[50]

A section 189(d) plan must demonstrate attainment as expeditiously as practicable, and no later than five years from the date of the EPA's determination that the area failed to attain, consistent with sections 179(d)(3) and 172(a)(2) of the CAA.[51] Pursuant to those provisions, the Administrator may also extend the attainment date to the extent the Administrator deems appropriate, for a period no greater than 10 years from the effective date of the EPA's determination that the area failed to attain, considering the severity of nonattainment and the availability and feasibility of pollution control measures.

The EPA provided its preliminary views on the CAA's requirements for particulate matter plans under part D, title I of the Act in the following guidance documents: (1) ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (''General Preamble'');[52] (2) ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990; Supplemental'' (''General Preamble Supplement'');[53] and (3) ''State Implementation Plans for Serious PM–10 Nonattainment Areas, and Attainment Date Waivers for PM–10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (''General Preamble Addendum'').[54] More recently, in an August 24, 2016 final rule entitled, ''Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements'' (''$PM_{2.5}$ SIP Requirements Rule''), the EPA established regulatory requirements and provided further interpretive guidance on the statutory SIP requirements that apply to areas designated nonattainment for the $PM_{2.5}$ standards.[55] We discuss these regulatory requirements and interpretations of the Act as appropriate in our evaluation of the SJV $PM_{2.5}$ Plan that follows.

IV. Review of the San Joaquin Valley $PM_{2.5}$ Plan

A. Emissions Inventories

1. Statutory and Regulatory Requirements

CAA section 172(c)(3) requires that each SIP include a comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants in the nonattainment area. The EPA discussed the emissions inventory requirements that apply to $PM_{2.5}$ nonattainment areas in the $PM_{2.5}$ SIP Requirements Rule and codified these requirements in 40 CFR 51.1008.[56] The EPA has also issued guidance concerning emissions inventories for $PM_{2.5}$ nonattainment areas.[57]

The base year emissions inventory should provide a state's best estimate of actual emissions from all sources of the relevant pollutants in the area, *i.e.,* all emissions that contribute to the formation of a particular NAAQS pollutant. For the $PM_{2.5}$ NAAQS, the base year inventory must include direct $PM_{2.5}$ emissions, separately reported filterable and condensable $PM_{2.5}$ emissions,[58] and emissions of all chemical precursors to the formation of secondary $PM_{2.5}$: nitrogen oxides (NO_X), sulfur dioxide (SO_2), volatile organic compounds (VOC), and ammonia.[59] In addition, the emissions inventory base year for a Serious $PM_{2.5}$ nonattainment area subject to CAA section 189(d) must be one of the three years for which monitored data were used to determine that the area failed to attain the $PM_{2.5}$ NAAQS by the applicable Serious area attainment date, or another technically appropriate year justified by the state in its Serious area SIP submission.[60] A state's SIP submission must include documentation explaining how it calculated emissions data for the inventory. In estimating mobile source emissions, a state should use the latest emissions models and planning assumptions available at the time the SIP is developed. The latest EPA-approved version of California's mobile

[48] CAA section 189(d) and 40 CFR 51.1010(c).

[49] 81 FR 58010, 58098 (August 24, 2016).

[50] Id. Because the EPA has not previously approved a SIP submission for the San Joaquin Valley as meeting the Serious area planning requirements under CAA sections 172 and 189 for the 1997 annual $PM_{2.5}$ NAAQS, the EPA is evaluating relevant portions of the SJV $PM_{2.5}$ Plan for compliance with these requirements, in addition to the requirements of CAA section 189(d).

[51] 81 FR 84481, 84482.

[52] 57 FR 13498 (April 16, 1992).

[53] 57 FR 18070 (April 28, 1992).

[54] 59 FR 41998 (August 16, 1994).

[55] 81 FR 58010.

[56] Id. at 58098–58099.

[57] ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations,'' U.S. EPA, May 2017 (''Emissions Inventory Guidance''), available at *https://www.epa.gov/air-emissions-inventories/air-emissions-inventory-guidance-implementation-ozone-and-particulate.*

[58] The Emissions Inventory Guidance identifies the types of sources for which the EPA expects states to provide condensable PM emissions inventories. Emissions Inventory Guidance, section 4.2.1 (''Condensable PM Emissions''), 63–65.

[59] 40 CFR 51.1008(c)(1).

[60] Id.

source emission factor model for estimating tailpipe, brake, and tire wear emissions from on-road mobile sources that was available during the State's and District's development of the SJV $PM_{2.5}$ Plan was EMFAC2014.[61] Following CARB's submission of the Plan, the EPA approved EMFAC2017, the latest revision to this mobile source emissions model, and established grace periods during which EMFAC2014 may continue to be used for transportation conformity purposes (*i.e.,* new regional emissions analyses and CO, PM_{10}, and $PM_{2.5}$ hot-spot analyses).[62] States are also required to use the EPA's ''Compilation of Air Pollutant Emission Factors'' (''AP–42'') road dust method for calculating re-entrained road dust emissions from paved roads.[63] [64]

In addition to the base year inventory submitted to meet the requirements of CAA section 172(c)(3), the state must also submit a projected attainment year inventory and emissions projections for each RFP milestone year.[65] These future emissions projections are necessary components of the attainment demonstration required under CAA section 189(d) and the demonstration of RFP required under section 172(c)(2).[66] Emissions projections for future years (referred to in the Plan as ''forecasted inventories'') should account for, among other things, the ongoing effects of economic growth and adopted emissions control requirements. The state's SIP submission should include documentation to explain how the emissions projections were calculated. Where a state chooses to allow new major stationary sources or major modifications to use emission reduction credits (ERCs) that were generated through shutdown or curtailed emissions units occuring before the base year of an attainment plan, the projected emissions inventory used to develop the attainment demonstration must explicitly include the emissions from such previously shutdown or curtailed emissions units.[67]

2. Summary of the State's Submission

Summaries of the planning emissions inventories for direct $PM_{2.5}$ and $PM_{2.5}$ precursors (NO_X, SO_X,[68] VOC,[69] and ammonia) and the documentation for the inventories for the San Joaquin Valley $PM_{2.5}$ nonattainment area are included in Appendix B (''Emissions Inventory'') and Appendix I (''New Source Review and Emission Reduction Credits'') of the 2018 $PM_{2.5}$ Plan.

CARB and District staff worked together to develop the emissions inventories for the San Joaquin Valley $PM_{2.5}$ nonattainment area. The District worked with operators of the stationary facilities in the nonattainment area to develop the stationary source emissions estimates. The responsibility for developing emissions estimates for area sources such as agricultural burning and paved road dust was shared by the District and CARB. CARB staff developed the emissions inventories for both on-road and non-road mobile sources.[70]

The Plan includes winter (24-hour) average and annual average daily planning inventories for the 2013 base year, which were modeled from the 2012 emissions inventory, and estimated emissions for forecasted years from 2017 through 2028 for the attainment and RFP demonstrations for the 1997, 2006, and 2012 $PM_{2.5}$ NAAQS.[71] In this proposal, we are proposing action on those winter average and annual average emissions inventories necessary to support the attainment plan for the 1997 annual $PM_{2.5}$ NAAQS—*i.e.,* the 2013 base year inventory, forecasted inventories for the RFP milestone years of 2017, 2020 (attainment year), and 2023 (post-attainment milestone year), and additional forecasted inventories for 2018 and 2019 to support the five percent annual emission reduction demonstration. Each inventory includes emissions from stationary, area, on-road, and non-road sources.

The base year inventories for stationary sources were developed using actual emissions reports from facility operators. The State developed the base year emissions inventory for area sources using the most recent models and methodologies available at the time the State was developing the Plan.[72] The Plan also includes background, methodology, and inventories of condensable and filterable $PM_{2.5}$ emissions from stationary point and non-point combustion sources that are expected to generate condensable $PM_{2.5}$.[73] CARB used EMFAC2014 to estimate on-road motor vehicle emissions based on transportation activity data from the 2014 Regional Transportation Plan (2014 RTP) adopted by the transportation planning agencies in the San Joaquin Valley.[74] Re-entrained paved road dust emissions were calculated using a CARB methodology consistent with the EPA's AP–42 road dust methodology.[75]

CARB developed the emissions forecasts by applying growth and control profiles to the base year inventory. CARB's mobile source emissions projections take into account predicted activity rates and vehicle fleet turnover by vehicle model year and adopted controls.[76] In addition, the Plan states that the District is providing for use of pre-base year ERCs as offsets by accounting for such ERCs in the

[61] 80 FR 77337 (December 14, 2015). EMFAC is short for *EM*ission *FAC*tor. The EPA announced the availability of the EMFAC2014 model, effective on the date of publication in the **Federal Register**, for use in state implementation plan development and transportation conformity in California. Upon that action, EMFAC2014 was required to be used for all new regional emissions analyses and CO, PM_{10}, and $PM_{2.5}$ hot-spot analyses that were started on or after December 14, 2017, which was the end of the grace period for using the prior mobile source emissions model, EMFAC2011.

[62] 84 FR 41717 (August 15, 2019). The grace period for new regional emissions analyses begins on August 15, 2019 and ends on August 16, 2021, while the grace period for hot-spot analyses begins on August 15, 2019 and ends on August 17, 2020. 84 FR 41717, 41720.

[63] The EPA released an update to AP–42 in January 2011 that revised the equation for estimating paved road dust emissions based on an updated data regression that included new emission tests results. 76 FR 6328 (February 4, 2011). CARB used the revised 2011 AP–42 methodology in developing on-road mobile source emissions; see *http://www.arb.ca.gov/ei/areasrc/fullpdf/full7-9_2016.pdf.*

[64] AP–42 has been published since 1972 as the primary source of the EPA's emission factor information and is available at *https://www.epa.gov/air-emissions-factors-and-quantification/ap-42-compilation-air-emissions-factors.* It contains emission factors and process information for more than 200 air pollution source categories. A source category is a specific industry sector or group of similar emitting sources. The emission factors have been developed and compiled from source test data, material balance studies, and engineering estimates.

[65] 40 CFR 51.1008 and 51.1012. See also Emissions Inventory Guidance, section 3 (''SIP Inventory Requirements and Recommendations'').

[66] 40 CFR 51.1004, 51.1008, 51.1011, and 51.1012.

[67] 40 CFR 51.165(a)(3)(ii)(C)(1).

[68] The SJV $PM_{2.5}$ Plan generally uses ''sulfur oxides'' or ''SO_X'' in reference to SO_2 as a precursor to the formation of $PM_{2.5}$. We use SO_X and SO_2 interchangeably throughout this notice.

[69] The SJV $PM_{2.5}$ Plan generally uses ''reactive organic gasses'' or ''ROG'' in reference to VOC as a precursor to the formation of $PM_{2.5}$. We use ROG and VOC interchangeably throughout this notice.

[70] The EPA regulations refer to ''non-road'' vehicles and engines whereas CARB regulations refer to ''Other Mobile Sources'' or ''off-road'' vehicles and engines. These terms refer to the same types of vehicles and engines. We refer herein to such vehicles and engines as ''non-road'' sources.

[71] 2018 $PM_{2.5}$ Plan, Appendix B, B–18 to B–19. The winter average daily planning inventory corresponds to the months of November through April when daily ambient $PM_{2.5}$ concentrations are typically highest. The base year inventory is from the California Emissions Inventory Development and Reporting System (CEIDARS) and future year inventories were estimated using the California Emission Projection Analysis Model (CEPAM), 2016 SIP Baseline Emission Projections, version 1.05.

[72] 2018 $PM_{2.5}$ Plan, Appendix B, section B.2 (''Emissions Inventory Summary and Methodology'').

[73] Id. at B–42 to B–44.

[74] Id. at B–37.

[75] Id. at B–28.

[76] Id. at B–18 and B–19.

projected 2025 emissions inventory.[77] The 2018 $PM_{2.5}$ Plan identifies growth factors, control factors, and estimated offset use between 2013 and 2025 for direct $PM_{2.5}$, NO_X, SO_X, and VOC emissions by source category and lists all pre-base year ERCs issued by the District for PM_{10}, NO_X, SO_X, and VOC emissions, by facility.[78]

Table 1 provides a summary of the winter (24-hour) average inventories in tons per day (tpd) of direct $PM_{2.5}$ and $PM_{2.5}$ precursors for the 2013 base year. Table 2 provides a summary of annual average inventories of direct $PM_{2.5}$ and $PM_{2.5}$ precursors for the 2013 base year. These annual average inventories provide the basis for the control measure analysis and the RFP and attainment demonstrations in the SJV $PM_{2.5}$ Plan.

TABLE 1—SAN JOAQUIN VALLEY WINTER AVERAGE EMISSIONS INVENTORY FOR DIRECT $PM_{2.5}$ AND $PM_{2.5}$ PRECURSORS FOR THE 2013 BASE YEAR

[tpd]

Category	Direct $PM_{2.5}$	NO_X	SO_X	VOC	Ammonia
Stationary Sources	8.5	35.0	6.9	86.6	13.9
Area Sources	41.4	11.5	0.5	156.8	291.5
On-Road Mobile Sources	6.4	188.7	0.6	51.1	4.4
Non-Road Mobile Sources	4.4	65.3	0.3	27.4	0.0
Totals [a]	60.8	300.5	8.4	321.9	309.8

Source: 2018 $PM_{2.5}$ Plan, Appendix B, tables B–1 to B–5.
[a] Totals reflect disaggregated emissions and may not add exactly as shown here due to rounding.

TABLE 2—SAN JOAQUIN VALLEY ANNUAL AVERAGE EMISSIONS INVENTORY FOR DIRECT $PM_{2.5}$ AND $PM_{2.5}$ PRECURSORS FOR THE 2013 BASE YEAR

[tpd]

Category	Direct $PM_{2.5}$	NO_X	SO_X	VOC	Ammonia
Stationary Sources	8.8	38.6	7.2	87.1	13.9
Area Sources	41.5	8.1	0.3	153.4	310.9
On-Road Mobile Sources	6.4	183.1	0.6	49.8	4.4
Non-Road Mobile Sources	5.8	87.4	0.3	33.8	0.0
Totals [a]	62.5	317.2	8.5	324.1	329.2

Source: 2018 $PM_{2.5}$ Plan, Appendix B, tables B–1 to B–5.
[a] Totals reflect disaggregated emissions and may not add exactly as shown here due to rounding.

3. The EPA's Evaluation and Proposed Action

We have reviewed the 2013 base year emissions inventories in the SJV $PM_{2.5}$ Plan and emissions inventory estimation methodologies used by California for consistency with CAA requirements and the EPA's guidance. We find that the inventories are based on the most current and accurate information available to the State and District at the time they were developing the Plan and inventories, including the latest version of California's mobile source emissions model that had been approved by the EPA at the time, EMFAC2014. The inventories comprehensively address all source categories in the San Joaquin Valley $PM_{2.5}$ nonattainment area and are consistent with the EPA's inventory guidance.

In accordance with 40 CFR 51.1008(c)(1), the 2013 base year is one of the three years for which monitored data were used to determine that the San Joaquin Valley area failed to attain the $PM_{2.5}$ NAAQS by the applicable Serious area attainment date for the 1997 annual $PM_{2.5}$ NAAQS,[79] and it represents actual annual average emissions of all sources within the nonattainment area. Direct $PM_{2.5}$ and $PM_{2.5}$ precursors are included in the inventories, and filterable and condensable direct $PM_{2.5}$ emissions are identified separately.

For these reasons, we are proposing to approve the 2013 base year emissions inventories in the SJV $PM_{2.5}$ Plan for the 1997 annual $PM_{2.5}$ NAAQS as meeting the requirements of CAA section 172(c)(3) and 40 CFR 51.1008.

B. $PM_{2.5}$ Precursors

1. Statutory and Regulatory Requirements

The composition of $PM_{2.5}$ is complex and highly variable due in part to the large contribution of secondary $PM_{2.5}$ to total fine particle mass in most locations, and to the complexity of secondary particle formation processes. A large number of possible chemical reactions, often non-linear in nature, can convert gaseous NO_X, SO_2, VOC, and ammonia to $PM_{2.5}$, making them precursors to $PM_{2.5}$.[80] Formation of secondary $PM_{2.5}$ may also depend on atmospheric conditions, including solar radiation, temperature, and relative humidity, and the interactions of precursors with preexisting particles and with cloud or fog droplets.[81]

Under subpart 4 of part D, title I of the CAA and the $PM_{2.5}$ SIP Requirements Rule, each state containing a $PM_{2.5}$ nonattainment area must evaluate all $PM_{2.5}$ precursors for regulation unless, for any given $PM_{2.5}$ precursor, the state demonstrates to the Administrator's satisfaction that such precursor does not contribute significantly to $PM_{2.5}$ levels that exceed the NAAQS in the nonattainment area.[82] The provisions of

[77] 2018 $PM_{2.5}$ Plan, Appendix I, I–1 to I–5.

[78] Id. at tables I–1 to I–5.

[79] 81 FR 84481, 84482 (November 23, 2016).

[80] ''Air Quality Criteria for Particulate Matter'' (EPA/600/P–99/002aF), EPA, October 2004, Chapter 3.

[81] ''Regulatory Impact Analysis for the Final Revisions to the National Ambient Air Quality Standards for Particulate Matter'' (EPA/452/R–12–005), EPA, December 2012), 2–1.

[82] 81 FR 58010, 58017–58020.

subpart 4 do not define the term ''precursor'' for purposes of $PM_{2.5}$, nor do they explicitly require the control of any specifically identified $PM_{2.5}$ precursor. The statutory definition of ''air pollutant,'' however, provides that the term ''includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term 'air pollutant' is used.'' [83] The EPA has identified NO_X, SO_2, VOC, and ammonia as precursors to the formation of $PM_{2.5}$.[84] Accordingly, the attainment plan requirements of subpart 4 apply to emissions of all four precursor pollutants and direct $PM_{2.5}$ from all types of stationary, area, and mobile sources, except as otherwise provided in the Act (*e.g.,* CAA section 189(e)).

Section 189(e) of the Act requires that the control requirements for major stationary sources of direct PM_{10} also apply to major stationary sources of PM_{10} precursors, except where the Administrator determines that such sources do not contribute significantly to PM_{10} levels that exceed the standard in the area. Section 189(e) contains the only express exception to the control requirements under subpart 4 (*e.g.,* requirements for RACM and RACT, BACM and BACT, most stringent measures, and new source review (NSR)) for sources of direct $PM_{2.5}$ and $PM_{2.5}$ precursor emissions. Although section 189(e) explicitly addresses only major stationary sources, the EPA interprets the Act as authorizing it also to determine, under appropriate circumstances, that regulation of specific $PM_{2.5}$ precursors from other source categories in a given nonattainment area is not necessary.[85] For example, under the EPA's longstanding interpretation of the control requirements that apply to stationary, area, and mobile sources of PM_{10} precursors in the nonattainment area under CAA section 172(c)(1) and subpart 4,[86] a state may demonstrate in a SIP submission that control of a certain precursor pollutant is not necessary in light of its insignificant contribution to ambient PM_{10} levels in the nonattainment area.[87]

Under the $PM_{2.5}$ SIP Requirements Rule, a state may elect to submit to the EPA a ''comprehensive precursor demonstration'' for a specific nonattainment area to show that emissions of a particular precursor from all existing sources located in the nonattainment area do not contribute significantly to $PM_{2.5}$ levels that exceed the standards in the area.[88] If the EPA determines that the contribution of the precursor to $PM_{2.5}$ levels in the area is not significant and approves the demonstration, the state is not required to control emissions of the relevant precursor from existing sources in the attainment plan.[89]

In addition, in May 2019, the EPA issued the ''Fine Particulate Matter ($PM_{2.5}$) Precursor Demonstration Guidance'' (''$PM_{2.5}$ Precursor Guidance''),[90] which provides recommendations to states for analyzing nonattainment area $PM_{2.5}$ emissions and developing such optional precursor demonstrations, consistent with the $PM_{2.5}$ SIP Requirements Rule. The $PM_{2.5}$ Precursor Guidance builds upon the draft version of the guidance, released on November 17, 2016 (''Draft $PM_{2.5}$ Precursor Guidance''), which CARB referenced in developing its precursor demonstration in the SJV $PM_{2.5}$ Plan.[91] The EPA's recommendations in the $PM_{2.5}$ Precursor Guidance are essentially the same as those in the Draft $PM_{2.5}$ Precursor Guidance, including the recommended annual contribution threshold of 0.2 $\mu g/m^3$.

We are evaluating the SJV $PM_{2.5}$ Plan in accordance with the presumption embodied within subpart 4 that all $PM_{2.5}$ precursors must be addressed in the State's evaluation of potential control measures, unless the State adequately demonstrates that emissions of a particular precursor or precursors do not contribute significantly to ambient $PM_{2.5}$ levels that exceed the $PM_{2.5}$ NAAQS in the nonattainment area. In reviewing any determination by the State to exclude a $PM_{2.5}$ precursor from the required evaluation of potential control measures, we consider both the magnitude of the precursor's contribution to ambient $PM_{2.5}$ concentrations in the nonattainment area and the sensitivity of ambient $PM_{2.5}$ concentrations in the area to reductions in emissions of that precursor.

2. Summary of the State's Submission

The State presents a summary of its $PM_{2.5}$ precursor analysis in Chapter 5 of the 2018 $PM_{2.5}$ Plan and the full precursor demonstration in Appendix G (''Precursor Demonstration'') of the 2018 $PM_{2.5}$ Plan.[92] Additional modeling results are presented in Appendix K (''Modeling Attainment Demonstration''), section 5.6 (''$PM_{2.5}$ Precursor Sensitivity Analysis''). CARB also provided clarifying information on its precursor assessment, including an Attachment A to its letter transmitting the 2018 $PM_{2.5}$ Plan to the EPA [93] and further clarifications in five email transmittals.[94] The CARB Staff Report contains additional discussion of the role of ammonia in the formation of ammonium nitrate and the role of VOC in the formation of ammonium nitrate and secondary organic aerosol.[95]

The Plan provides both concentration-based and sensitivity-based analyses of precursor contributions to ambient $PM_{2.5}$ concentrations in the San Joaquin Valley. The State supplemented the sensitivity analysis, particularly for ammonia, with additional information, including factors identified in the $PM_{2.5}$ Precursor Guidance, such as emission trends, the appropriateness of future year versus base year sensitivity, available emission controls, and the

[83] CAA section 302(g).

[84] 81 FR 58010, 58015.

[85] Id. at 58018–58019.

[86] General Preamble, 57 FR 13498, 13539–13542.

[87] Courts have upheld this approach to the requirements of subpart 4 for PM_{10}. See, *e.g., Assoc. of Irritated Residents* v. *EPA, et al.,* 423 F.3d 989 (9th Cir. 2005).

[88] 40 CFR 51.1006(a)(1).

[89] Id.

[90] ''$PM_{2.5}$ Precursor Demonstration Guidance,'' EPA–454/R–19–004, May 2019, including memorandum dated May 30, 2019 from Scott Mathias, Acting Director, Air Quality Policy Division and Richard Wayland, Director, Air Quality Assessment Division, Office of Air Quality Planning and Standards (OAQPS), EPA to Regional Air Division Directors, Regions 1–10, EPA.

[91] ''$PM_{2.5}$ Precursor Demonstration Guidance, Draft for Public Review and Comments,'' EPA–454/P–16–001, November 17, 2016, including memorandum dated November 17, 2016 from Stephen D. Page, Director, OAQPS, EPA to Regional Air Division Directors, Regions 1–10, EPA.

[92] A copy of the contents of Appendix G appears in the CARB Staff Report, Appendix C4 (''Precursor Demonstrations for Ammonia, SO_X, and ROG'').

[93] Letter dated May 9, 2019, from Richard Corey, Executive Officer, CARB, to Michael Stoker, Regional Administrator, EPA Region 9, Attachment A (''Clarifying information for the San Joaquin Valley 2018 Plan regarding model sensitivity related to ammonia and ammonia controls'').

[94] Email dated June 20, 2019, from Jeremy Avise, CARB, to Scott Bohning, EPA Region IX, Subject: ''RE: SJV model disbenefit from SO_X reduction,'' with attachment (''CARB's June 2019 Precursor Clarification''); email dated September 19, 2019, from Jeremy Avise, CARB, to Scott Bohning, EPA Region IX, Subject: ''FW: SJV species responses,'' with attachments (''CARB's September 2019 Precursor Clarification''); email dated October 18, 2019, from Laura Carr, CARB, to Scott Bohning, Jeanhee Hong, and Rory Mays, EPA Region IX, Subject: ''Clarifying information on ammonia,'' with attachment ''Clarifying Information on Ammonia'' (''CARB's October 2019 Precursor Clarification''); email dated April 19, 2021, from Laura Carr, CARB, to Rory Mays, EPA Region IX, Subject: ''Ammonia update,'' with attachment ''Update on Ammonia in the San Joaquin Valley'' (''CARB's April 19, 2021 Precursor Clarification''); and email dated April 26, 2021, from Laura Carr, CARB, to Scott Bohning, EPA Region IX, Subject: ''RE: Ammonia update,'' with attachment ''Ammonia in San Joaquin Valley'' (''CARB's April 26, 2021 Precursor Clarification'').

[95] CARB Staff Report, Appendix C, 9–16. The CARB Staff Report, Appendix C4 (''Precursor Demonstrations for Ammonia, SO_X, and ROG'') is very similar to the contents of Appendix G of the 2018 $PM_{2.5}$ Plan.

severity of nonattainment.[96] These analyses led the State to conclude that direct $PM_{2.5}$ and NO_X emissions contribute significantly to ambient $PM_{2.5}$ levels that exceed the $PM_{2.5}$ NAAQS in the San Joaquin Valley while ammonia, SO_X, and VOC do not contribute significantly to such exceedances.[97] We summarize the State's analysis and conclusions below. For a more detailed summary of the precursor demonstration in the Plan, please refer to the EPA's ''Technical Support Document, EPA Evaluation of $PM_{2.5}$ Precursor Demonstration, San Joaquin Valley $PM_{2.5}$ Plan for the 2006 $PM_{2.5}$ NAAQS,'' February 2020 (''EPA's $PM_{2.5}$ Precursor TSD'').

For ammonia, SO_X, and VOC, CARB assessed the 2015 annual average concentration of each precursor in ambient $PM_{2.5}$ at Bakersfield, for which the necessary speciated $PM_{2.5}$ data are available and where the highest $PM_{2.5}$ design values have been recorded in most years, and compared those concentrations to the recommended annual average contribution threshold of 0.2 μg/m³ from the Draft $PM_{2.5}$ Precursor Guidance, which was available at the time the State developed the SIP.[98] The contributions of ammonia, SO_X, and VOC were 5.2 μg/m³, 1.6 μg/m³, and 6.2 μg/m³, respectively. Given that these levels are well above the EPA's 0.2 μg/m³ recommended contribution threshold, the State proceeded with a sensitivity-based analysis.

The State's sensitivity-based analysis used the same Community Multiscale Air Quality (CMAQ) modeling platform as that used for the Plan's attainment demonstration. The State modeled the sensitivity of ambient $PM_{2.5}$ concentration in the San Joaquin Valley to 30 percent and 70 percent emissions reductions in 2013, 2020, and 2024 for each of ammonia, SO_X, and VOC. The State estimated baseline (2013, 2020, and 2024) design values for $PM_{2.5}$ using relative response factors (RRFs) and calculated the ammonia, SO_X, and VOC precursor contribution for a given year and for each sensitivity scenario (30 percent and 70 percent emissions reductions) as the difference between its baseline design value and the design value for each sensitivity scenario.[99] Based on these analyses and supporting information, the State concludes that ammonia, SO_X, and VOC emissions do not contribute significantly to $PM_{2.5}$ levels that exceed the 1997 annual $PM_{2.5}$ NAAQS in the San Joaquin Valley.

3. The EPA's Evaluation and Proposed Action

As discussed in section IV of this proposal, the EPA is proposing to disapprove the attainment demonstration and related elements in the SJV $PM_{2.5}$ Plan for the 1997 annual $PM_{2.5}$ NAAQS, including the five percent annual emission reductions demonstration, reasonable further progress (RFP) demonstration, and quantitative milestones, based on ambient monitoring data that show that the Plan was insufficient to achieve attainment of the 1997 annual $PM_{2.5}$ NAAQS by December 31, 2020, the State's projected attainment date. Given that we are proposing to disapprove the attainment demonstration, and given that the precursor demonstration for the 1997 annual $PM_{2.5}$ NAAQS largely relies on the technical analyses and assumptions that provide the basis for the attainment demonstration, we are also proposing to disapprove the precursor demonstration in the SJV $PM_{2.5}$ Plan for the 1997 annual $PM_{2.5}$ NAAQS. Therefore, all precursors to the formation of $PM_{2.5}$ in the San Joaquin Valley (*i.e.,* NO_X, ammonia, SO_X, and VOC) remain ''$PM_{2.5}$ plan precursors'' as defined in 40 CFR 51.1000 for purposes of the 1997 annual $PM_{2.5}$ NAAQS for the Plan that is the subject of this proposal.

If the EPA takes final action on the SJV $PM_{2.5}$ Plan as proposed, California will be required to develop and submit a revised plan for the San Joaquin Valley area that addresses the applicable CAA requirements, including the requirements of CAA section 189(d). Under 40 CFR 51.1006, the State will be required to submit an updated precursor demonstration if it seeks to exempt sources of a particular precursor from control requirements in the new Serious area attainment demonstration. For these reasons, and because we are proposing to disapprove the precursor demonstration on the basis of our proposed disapproval of the attainment demonstration, we are not providing a full evaluation of the precursor demonstration for the 1997 annual $PM_{2.5}$ NAAQS in the SJV $PM_{2.5}$ Plan at this time.

C. Attainment Plan Control Strategy

1. Statutory and Regulatory Requirements

The overarching requirement for the CAA section 189(d) attainment control strategy is that it provides for attainment of the standards as expeditiously as practicable.[100] The control strategy must include any additional measures (beyond those already adopted in previous SIPs for the area as RACM/RACT or BACM/BACT) that are needed for the area to attain expeditiously. This includes reassessing any measures previously rejected during the development of any Moderate area or Serious area attainment plan control strategy.[101] The plan must also demonstrate that it will, at a minimum, achieve an annual five percent reduction in emissions of direct $PM_{2.5}$ or any $PM_{2.5}$ plan precursor from sources in the area until attainment, based on the most recent emissions inventory for the area.[102]

In the $PM_{2.5}$ SIP Requirements Rule, the EPA clarified its interpretation of the statutory language in CAA section 189(d) requiring a state to submit a new attainment plan to achieve annual reductions ''from the date of such submission until attainment,'' to mean annual reductions beginning from the due date of such submission until the new projected attainment date for the area based on the new or additional control measures identified to achieve at least five percent emissions reductions annually.[103] This interpretation is intended to make clear that even if a state is late in submitting its CAA section 189(d) plan, the area must still achieve its annual five percent emission reductions beginning from the date by

[96] $PM_{2.5}$ Precursor Guidance, 18–19 (consideration of additional information), 31 (available emission controls), and 35–36 (appropriateness of future year versus base year sensitivity).

[97] Direct $PM_{2.5}$ emissions are considered a primary source of ambient $PM_{2.5}$ (*i.e.,* no further formation in the atmosphere is required), and therefore is not considered a precursor pollutant under subpart 4, which may differ from a more generalized understanding of what contributes to ambient $PM_{2.5}$.

[98] 2018 $PM_{2.5}$ Plan, Appendix G, 3. The Plan does not present a concentration-based analysis for the 24-hour average concentrations in the San Joaquin Valley. Instead, CARB relied on the annual average concentration-based analysis as an interim step to the sensitivity-based analysis, for which CARB assessed the sensitivity of both 24-hour average and annual average ambient $PM_{2.5}$ concentrations to precursor emissions reductions. Separately, the Plan presents a graphical representation of annual average ambient $PM_{2.5}$ components (*i.e.,* crustal particulate matter, elemental carbon, organic matter, ammonium sulfate, and ammonium nitrate) for 2011–2013 for Bakersfield, Fresno, and Modesto. 2018 $PM_{2.5}$ Plan, Chapter 3, 3–3 to 3–4.

[99] This procedure is the procedure recommended by the EPA. $PM_{2.5}$ Precursor Guidance, 37.

[100] 81 FR 58010, 58100.

[101] 40 CFR 50.1010(c)(2)(ii).

[102] CAA section 189(d) and 40 CFR 51.1010(c).

[103] 81 FR 58010, 58101. The new projected attainment date is established by the EPA in accordance with the provisions of CAA sections 179(d)(3) and 172(a)(2), which require that the new attainment date be as expeditious as practicable but no later than 5 years from the date of publication in the **Federal Register** of the EPA's determination that the area failed to attain the relevant NAAQS, except that the EPA may extend the attainment date by up to 5 additional years based on the severity of nonattainment and the availability and feasibility of pollution control measures. Id. at 58103.

which the state was required to make its CAA section 189(d) submission, not by some later date. Because the deadline for California to submit a section 189(d) plan for the 1997 $PM_{2.5}$ NAAQS in the San Joaquin Valley was December 31, 2016, one year after the December 31, 2015 attainment date for these NAAQS under CAA section 188(c)(2), the starting point for the five percent emission reduction requirement under section 189(d) for this area is 2017.

As discussed in section III of this proposed rule, a state with a Serious $PM_{2.5}$ nonattainment area that fails to attain the NAAQS by the applicable Serious area attainment date must also address any statutory requirements applicable to Moderate and Serious nonattainment area plans under CAA sections 172 and 189 of the CAA to the extent that those requirements have not already been met. Because the EPA has not previously taken action to approve the California SIP as meeting the Serious nonattainment area planning requirements under CAA sections 172 and 189 for the 1997 annual $PM_{2.5}$ NAAQS for the San Joaquin Valley area, the EPA is reviewing the SJV $PM_{2.5}$ Plan for compliance with those requirements, including the requirement for BACM.

Section 189(b)(1)(B) of the Act requires for any Serious $PM_{2.5}$ nonattainment area that the state submit provisions to assure that BACM for the control of $PM_{2.5}$ and $PM_{2.5}$ precursors shall be implemented no later than four years after the date the area is reclassified as a Serious area. The EPA has defined BACM in the $PM_{2.5}$ SIP Requirements Rule to mean ''any technologically and economically feasible control measure that . . . can achieve greater permanent and enforceable emissions reductions of direct $PM_{2.5}$ emissions and/or emissions of $PM_{2.5}$ plan precursors from sources in the area than can be achieved through the implementation of RACM on the same source(s). BACM includes best available control technology (BACT).'' [104]

The EPA generally considers BACM a control level that goes beyond existing RACM-level controls, for example by expanding the use of RACM controls or by requiring preventative measures instead of remediation.[105] Indeed, as implementation of BACM and BACT is required when a Moderate nonattainment area is reclassified as Serious due to its inability to attain the NAAQS through implementation of ''reasonable'' measures, it is logical that ''best'' control measures should represent a more stringent and potentially more costly level of control.[106] If RACM and RACT level controls of emissions have been insufficient to reach attainment, the CAA contemplates the implementation of more stringent controls, controls on more sources, or other adjustments to the control strategy necessary to attain the NAAQS in the area.

Consistent with longstanding guidance provided in the General Preamble Addendum, the preamble to the $PM_{2.5}$ SIP Requirements Rule discusses the following steps for determining BACM and BACT:

(1) Develop a comprehensive emissions inventory of the sources of $PM_{2.5}$ and $PM_{2.5}$ precursors;

(2) Identify potential control measures;

(3) Determine whether an available control measure or technology is technologically feasible;

(4) Determine whether an available control measure or technology is economically feasible; and

(5) Determine the earliest date by which a control measure or technology can be implemented in whole or in part.[107]

The EPA allows consideration of factors such as physical plant layout, energy requirements, needed infrastructure, and workforce type and habits when considering technological feasibility. For purposes of evaluating economic feasibility, the EPA allows consideration of factors such as the capital costs, operating and maintenance costs, and cost effectiveness (*i.e.,* cost per ton of pollutant reduced by a measure or technology) associated with the measure or control.[108]

Once these analyses are complete, the state must use this information to develop enforceable control measures and submit them to the EPA for evaluation as SIP provisions to meet the basic requirements of CAA section 110 and any other applicable substantive provisions of the Act.

2. Summary of the State's Submission and the EPA's Evaluation and Proposed Action

The control strategy in the SJV $PM_{2.5}$ Plan is based on ongoing emissions reductions from baseline control measures. As the term is used here, baseline measures are State and District regulations adopted prior to the development of the SJV $PM_{2.5}$ Plan that continue to achieve emissions reductions through the projected 2020 attainment year and beyond. The 2018 $PM_{2.5}$ Plan describes these measures in Chapter 4,[109] Appendix C (''Stationary Source Control Measure Analyses''), and Appendix D (''Mobile Source Control Measure Analyses''). Reductions from these baseline measures are incorporated into the projected baseline inventories and reductions from District measures are individually quantified in Appendix C.

The 2018 $PM_{2.5}$ Plan states that mobile sources emit over 85 percent of the NO_X in the San Joaquin Valley and that CARB has adopted and amended regulations to reduce public exposure to diesel particulate matter, which includes direct $PM_{2.5}$ and NO_X, from ''fuel sources, freight transport sources like heavy-duty diesel trucks, transportation sources like passenger cars and buses, and non-road sources like large construction equipment.'' [110]

Given the need for substantial emissions reductions from mobile and area sources to meet the NAAQS in California nonattainment areas, the State of California has developed stringent control measures for on-road and non-road mobile sources and the fuels that power them. California has unique authority under CAA section 209 (subject to a waiver or authorization as applicable by the EPA) to adopt and implement new emissions standards for many categories of on-road vehicles and engines and new and in-use non-road vehicles and engines. The EPA has approved such mobile source regulations for which waiver authorizations have been issued as revisions to the California SIP.[111]

CARB's mobile source program extends beyond regulations that are subject to the waiver or authorization process set forth in CAA section 209 to

[104] 40 CFR 51.1000 (definitions). In longstanding guidance, the EPA has similarly defined BACM to mean, ''among other things, the maximum degree of emissions reduction achievable for a source or source category, which is determined on a case-by-case basis considering energy, environmental, and economic impacts.'' General Preamble Addendum, 42010, 42013.

[105] 81 FR 58010, 58081 and General Preamble Addendum, 42011, 42013.

[106] Id. and General Preamble Addendum, 42009–42010.

[107] 81 FR 58010, 58083–58085.

[108] 40 CFR 51.1010(a)(3) and 81 FR 58010, 58041–58042.

[109] 2018 $PM_{2.5}$ Plan, Chapter 4, Table 4–2.

[110] 2018 $PM_{2.5}$ Plan, Chapter 4, 4–9. For CARB's BACM analysis for mobile source measures, see 2018 $PM_{2.5}$ Plan, Appendix D, including analyses for on-road light-duty vehicles and fuels (starting on page D–17), on-road heavy-duty vehicles and fuels (starting on page D–35), and non-road sources (starting on page D–64).

[111] For example, see 81 FR 39424 (June 16, 2016); 82 FR 14446 (March 21, 2017); and 83 FR 23232 (May 18, 2018).

include standards and other requirements to control emissions from in-use heavy-duty trucks and buses, gasoline and diesel fuel specifications, and many other types of mobile sources. Generally, these regulations have also been submitted and approved as revisions to the California SIP.[112]

As to stationary and area sources, the SJV $PM_{2.5}$ Plan states that stringent regulations adopted for prior attainment plans continue to reduce emissions of NO_X and direct $PM_{2.5}$.[113] Specifically, Table 4–1 of the 2018 $PM_{2.5}$ Plan identifies 33 District measures that limit NO_X and direct $PM_{2.5}$ emissions from stationary and area sources.[114]

a. Best Available Control Measures

The State's BACM demonstration is presented in Appendix C (''Stationary Source Controls'') and Appendix D (''Mobile Source Control Measure Analyses'') of the 2018 $PM_{2.5}$ Plan. As discussed in section IV.A of this proposed rule, Appendix B (''Emissions Inventory'') of the 2018 $PM_{2.5}$ Plan contains the planning inventories for direct $PM_{2.5}$ and all $PM_{2.5}$ precursors (NO_X, SO_X, VOC, and ammonia) for the San Joaquin Valley nonattainment area together with documentation to support these inventories. Each inventory includes emissions from stationary, area, on-road, and non-road emission sources, and the State specifically identifies the condensable component of direct $PM_{2.5}$ for relevant stationary source and area source categories. As discussed in section IV.B of this proposed rule, the State concludes that the Plan should control emissions of $PM_{2.5}$ and NO_X to reach attainment. Accordingly, the BACM and BACT evaluation in the Plan addresses potential controls for sources of those pollutants.

For stationary and area sources, the District identifies the sources of direct $PM_{2.5}$ and NO_X in the San Joaquin Valley that are subject to District emission control measures and provides its evaluation of these regulations for compliance with BACM requirements in Appendix C of the 2018 $PM_{2.5}$ Plan. As part of its process for identifying candidate BACM and considering the technical and economic feasibility of additional control measures, the District reviewed the EPA's guidance documents on BACM, additional guidance documents on control measures for direct $PM_{2.5}$ and NO_X emission sources, and control measures implemented in other ozone and $PM_{2.5}$ nonattainment areas in California and other states.[115] The District also provides an analysis of several SIP-approved VOC regulations that, according to the District, also provide ammonia co-benefits.[116]

For mobile sources, CARB identifies the sources of direct $PM_{2.5}$ and NO_X in the San Joaquin Valley that are subject to the State's emission control measures and provides its evaluation of these regulations for compliance with BACM requirements in Appendix D of the 2018 $PM_{2.5}$ Plan. Appendix D describes CARB's process for determining BACM, including identification of the sources of direct $PM_{2.5}$ and NO_X in the San Joaquin Valley, identification of potential control measures for such sources, assessment of the stringency and feasibility of the potential control measures, and adoption and implementation of feasible control measures.[117] Appendix D of the 2018 $PM_{2.5}$ Plan also describes the current efforts of the eight local jurisdiction metropolitan planning organizations (MPOs) to implement cost-effective transportation control measures (TCMs) in the San Joaquin Valley.[118]

Because we are proposing to disapprove the comprehensive precursor demonstration in the SJV $PM_{2.5}$ Plan for purposes of the 1997 annual $PM_{2.5}$ NAAQS, all precursors to the formation of $PM_{2.5}$ (*i.e.,* NO_X, ammonia, SO_X and VOC) remain $PM_{2.5}$ plan precursors subject to control requirements under subpart 4 of part D, title I of the Act for purposes of the 1997 annual $PM_{2.5}$ NAAQS in the San Joaquin Valley. The SJV $PM_{2.5}$ Plan contains State and District control measures and related BACM analyses for sources of direct $PM_{2.5}$ and NO_X in the San Joaquin Valley but does not contain such measures or analyses for sources of SO_X or VOC emissions, given the State's assumption that these precursors would not be subject to controls. Furthermore, while the District provides an analysis of potential control of ammonia sources, the Plan does not identify any specific, enforceable requirement to reduce ammonia emissions in the area and does not demonstrate that the State or District adequately considered potential control measures for ammonia sources, given the State's assumption that ammonia would not be subject to controls. Without an approvable precursor demonstration, the SJV $PM_{2.5}$ Plan does not satisfy BACM and BACT requirements for sources of direct $PM_{2.5}$ and $PM_{2.5}$ plan precursors for purposes of the 1997 annual $PM_{2.5}$ NAAQS. We therefore propose to disapprove the BACM/BACT demonstration in the SJV $PM_{2.5}$ Plan for failure to meet the requirements of CAA section 189(b)(1)(B) and 40 CFR 51.1010 for the 1997 annual $PM_{2.5}$ NAAQS.

b. Five Percent Emission Reduction Requirement

The SJV $PM_{2.5}$ Plan's demonstration of annual five percent reductions in NO_X emissions is in section 5.2 of the 2018 $PM_{2.5}$ Plan. As shown in Table 3, the demonstration uses the 2013 base year inventory as the starting point from which the five percent per year emission reductions are calculated and uses 2017 as the year from which the reductions start. The target required reduction in 2017 is five percent of the base year (2013) inventory, which is approximately 15.9 tpd of NO_X, and the targets for subsequent years are additional reductions of five percent each year until the 2020 attainment year. The projected emissions inventories reflect NO_X emissions reductions achieved by baseline control measures and the demonstration shows that these NO_X emissions reductions are greater than the required five percent per year.

TABLE 3—2017–2020 ANNUAL FIVE PERCENT EMISSION REDUCTIONS DEMONSTRATION FOR THE SAN JOAQUIN VALLEY

Year	% Reduction from 2013 base year	5% Target (tpd NO_X)	CEPAM inventory v1.05 (tpd NO_X)	Meets 5%?
2013 (base year)			317.3	

[112] For example, see the EPA's approval of standards and other requirements to control emissions from in-use heavy-duty diesel trucks (77 FR 20308, April 4, 2012), and revisions to the California on-road reformulated gasoline and diesel fuel regulations (75 FR 26653, May 12, 2010).

[113] 2018 $PM_{2.5}$ Plan, Chapter 4, 4–3. For the District's BACM analysis for stationary and area source measures, see 2018 $PM_{2.5}$ Plan, Appendix C.

[114] Id. at Chapter 4, Table 4–1.

[115] 2018 $PM_{2.5}$ Plan, Chapter 4, section 4.3.1.

[116] Id. at Appendix C., section C.25.

[117] Id. at Appendix D, Chapter II.

[118] Id. at Appendix D, D–127 and D–128.

TABLE 3—2017–2020 ANNUAL FIVE PERCENT EMISSION REDUCTIONS DEMONSTRATION FOR THE SAN JOAQUIN VALLEY—Continued

Year	% Reduction from 2013 base year	5% Target (tpd NO_X)	CEPAM inventory v1.05 (tpd NO_X)	Meets 5%?
2017	5	301.3	233.4	Yes.
2018	10	285.5	221.5	Yes.
2019	15	269.6	214.5	Yes.
2020	20	253.8	203.3	Yes.

Source: 2018 $PM_{2.5}$ Plan, Table 5–2.

The State's methodology for calculating the five percent emission reduction targets for the years 2017, 2018, 2019, and 2020 is consistent with CAA requirements as interpreted in the $PM_{2.5}$ SIP Requirements Rule, and the Plan shows that NO_X emissions reductions from 2017 to 2020 are greater than the required five percent per year. However, the language in section 189(d) compels us to conclude that the five percent demonstration in the Plan does not meet that section's requirement for the 1997 annual $PM_{2.5}$ NAAQS. CAA section 189(d) requires that the plan provide for annual reductions of $PM_{2.5}$ or a $PM_{2.5}$ precursor of not less than five percent each year from the date of submission of the plan until the applicable attainment date approved by the EPA.[119] The Plan submitted by California does not demonstrate reductions after 2020 because it projects attainment of the 1997 annual $PM_{2.5}$ NAAQS by December 31, 2020. Because the EPA is proposing to disapprove the attainment demonstration, as discussed in section IV.D, based on ambient monitoring data for 2018–2020 indicating that the San Joaquin Valley did not attain the 1997 annual $PM_{2.5}$ NAAQS by the December 31, 2020 attainment date projected by the State in the SJV $PM_{2.5}$ Plan, December 31, 2020 is not the applicable attainment date for purposes of the 1997 annual $PM_{2.5}$ NAAQS in this area, and the Plan does not meet the requirement to demonstrate five percent reductions per year until attainment. Therefore, the EPA is proposing to disapprove the demonstration of the five percent annual emission reductions in the SJV $PM_{2.5}$ Plan for failure to meet the requirements of CAA section 189(d) and 40 CFR 51.1010(c) for the 1997 annual $PM_{2.5}$ NAAQS.

D. Attainment Demonstration and Modeling

1. Statutory and Regulatory Requirements

Section 189(d) of the CAA requires a state with a Serious nonattainment area that failed to attain the NAAQS by the Serious area attainment date to submit a revised attainment demonstration as part of a new plan. The $PM_{2.5}$ SIP Requirements Rule explains that the same general requirements that apply to Moderate and Serious area plans under CAA sections 189(a) and 189(b) should apply to plans developed pursuant to CAA section 189(d)—*i.e.,* the plan must include a demonstration (including air quality modeling) that the control strategy provides for attainment of the $PM_{2.5}$ NAAQS as expeditiously as practicable.[120] For purposes of determining the attainment date that is as expeditious as practicable, the state must conduct future year modeling that takes into account emissions growth, known controls (including any controls that were previously determined to be RACM/RACT or BACM/BACT), the five percent per year emissions reductions required by CAA section 189(d), and any other emissions controls that are needed for expeditious attainment of the NAAQS.

The EPA's $PM_{2.5}$ modeling guidance[121] (''Modeling Guidance'' and ''Modeling Guidance Update'') recommends that a photochemical model, such as the Comprehensive Air Quality Model with Extensions (CAMx) or Community Multiscale Air Quality Model (CMAQ), be used to simulate a base case, with meteorological and emissions inputs reflecting a base case year, to replicate concentrations monitored in that year. The model application to the base year undergoes a performance evaluation to ensure that it satisfactorily corroborates the concentrations monitored in that year. The model may then be used to simulate emissions occurring in other years required for a plan, namely the base year (which may differ from the base case year) and a future year.[122] The modeled response to the emission changes between those years is used to calculate RRFs that are applied to the design value in the base year to estimate the projected design value in the future year for comparison against the NAAQS. Separate RRFs are estimated for each chemical species component of $PM_{2.5}$, and for each quarter of the year, to reflect their differing responses to seasonal meteorological conditions and emissions. Because each species is handled separately, before applying an RRF, the base year design value must be speciated using available chemical species measurements—that is, each day's measured $PM_{2.5}$ design value must be split into its species components. The Modeling Guidance provides additional detail on the recommended approach.[123]

2. Summary of the State's Submission

As discussed in section IV.C, the SJV $PM_{2.5}$ Plan includes a modeled demonstration projecting that the San Joaquin Valley would attain the 1997

[119] Under 40 CFR 51.1000, the applicable attainment date is the latest statutory date by which an area is required to attain a particular $PM_{2.5}$ NAAQS or the attainment date approved by the EPA as part of an attainment plan for the area. For a Serious nonattainment area subject to the requirements of CAA section 189(d), the EPA establishes the applicable attainment date in accordance with the provisions of CAA sections 179(d)(3) and 172(a)(2). 81 FR 58010, 58103.

[120] 81 FR 58010, 58102.

[121] Memorandum dated November 29, 2018, from Richard Wayland, Air Quality Assessment Division, Office of Air Quality Planning and Standards, EPA, to Regional Air Division Directors, EPA, Subject: ''Modeling Guidance for Demonstrating Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze,'' (''Modeling Guidance''), and memorandum dated June 28, 2011, from Tyler Fox, Air Quality Modeling Group, OAQPS, EPA, to Regional Air Program Managers, EPA, Subject: ''Update to the 24 Hour $PM_{2.5}$ NAAQS Modeled Attainment Test,'' (''Modeling Guidance Update'').

[122] In this section, we use the terms ''base case,'' ''base year'' or ''baseline,'' and ''future year'' as described in section 2.3 of the EPA's Modeling Guidance. The ''base case'' modeling simulates measured concentrations for a given time period, using emissions and meteorology for that same year. The modeling ''base year'' (which can be the same as the base case year) is the emissions starting point for the plan and for projections to the future year, both of which are modeled for the attainment demonstration. Modeling Guidance, 37–38.

[123] Modeling Guidance, section 4.4, ''What is the Modeled Attainment Tests for the Annual Average $PM_{2.5}$ NAAQS.''

annual $PM_{2.5}$ NAAQS by December 31, 2020, based on ongoing emissions reductions from baseline control measures. CARB conducted photochemical modeling with the CMAQ model using inputs developed from routinely available meteorological and air quality data, as well as more detailed and extensive data from the DISCOVER–AQ field study conducted in January and February of 2013.[124] The Plan's primary discussion of the photochemical modeling appears in Appendix K (''Modeling Attainment Demonstration'') of the 2018 $PM_{2.5}$ Plan. The State briefly summarizes the area's air quality problem in Chapter 2 (''Air Quality Challenges and Trends'') and the modeling results in Chapter 5.3 (''Attainment Demonstration and Modeling'') of the 2018 $PM_{2.5}$ Plan. The State provides a conceptual model of $PM_{2.5}$ formation in the San Joaquin Valley as part of the modeling protocol in Appendix L (''Modeling Protocol''). Appendix J (''Modeling Emission Inventory'') describes emission input preparation procedures. The State presents additional relevant information in Appendix C (''Weight of Evidence Analysis'') of the CARB Staff Report, which includes ambient trends and other data in support of the attainment demonstration.

CARB's air quality modeling approach investigated the many inter-connected facets of modeling ambient $PM_{2.5}$ in the San Joaquin Valley, including model input preparation, model performance evaluation, use of the model output for the numerical NAAQS attainment test, and modeling documentation. Specifically, this required the development and evaluation of a conceptual model, modeling protocol, episode (*i.e.,* base year) selection, modeling domain, CMAQ model selection, initial and boundary condition procedures, meteorological model choice and performance, modeling emissions inventory preparation procedures, model performance, attainment test procedure, adjustments to baseline air quality for modeling, the 2020 attainment test, and an unmonitored area analysis. These analyses are generally consistent with the EPA's recommendations in the Modeling Guidance.

The model performance evaluation in Appendix K includes statistical and graphical measures of model performance. The magnitude and timing of predicted concentrations of total $PM_{2.5}$, as well as of its ammonium and nitrate components, generally match the occurrence of elevated $PM_{2.5}$ levels in the measured observations. A comparison to other recent modeling efforts shows good model performance on bias, error, and correlation with measurements, for total $PM_{2.5}$ and for most of its chemical components. The Weight of Evidence Analysis shows the downward trend in NO_X emissions along with a 24 to 44 percent decrease in annual $PM_{2.5}$ design values between 1999 and 2017.[125] The analysis also shows decreases in daily $PM_{2.5}$ concentrations during winter, and in the frequency of high $PM_{2.5}$ concentrations generally.[126] Available ambient air quality data show that total $PM_{2.5}$ and ammonium nitrate concentrations have declined over the 2004–2017 period, despite some increases from time to time.[127] These trends show that there has been an improvement in air quality due to emissions reductions in the San Joaquin Valley.

The State conducted three CMAQ[128] simulations: (1) A 2013 base year simulation to demonstrate that the model reasonably reproduced the observed $PM_{2.5}$ concentrations in the San Joaquin Valley; (2) a 2013 baseline year simulation that was the same as the 2013 base year simulation but excluded exceptional event emissions, such as wildfire emissions; and (3) a 2020 future year simulation that reflects projected emissions growth and reductions due to controls that have already been adopted and implemented.

Table 4 shows the 2013 base year and 2020 projected future year annual $PM_{2.5}$ design values at monitoring sites in the San Joaquin Valley. The highest 2020 projected design value is 14.6 μg/m^3 at the Bakersfield—California monitoring site, which is below the 15.0 μg/m^3 level of the 1997 annual $PM_{2.5}$ NAAQS.

TABLE 4—PROJECTED FUTURE ANNUAL $PM_{2.5}$ DESIGN VALUES AT MONITORING SITES IN THE SAN JOAQUIN VALLEY

[μg/m^3]

Monitoring site	2013 Base design value	2020 Projected design value
Bakersfield—California	17.2	14.6
Fresno—Garland	16.9	14.2
Hanford	16.5	13.3
Fresno—Hamilton & Winery	16.2	13.5
Clovis	16.1	13.4
Visalia	16.0	13.5
Bakersfield—Planz	15.0	12.4
Madera	14.9	12.5
Turlock	14.2	11.9
Modesto	13.1	11.4
Merced–M. Street	13.1	10.9
Stockton	13.0	11.0
Merced—S Coffee	11.0	9.3
Manteca	10.1	8.7
Tranquility	7.7	6.4

Source: 2018 $PM_{2.5}$ Plan, Table 5–4.

[124] NASA, ''Deriving Information on Surface conditions from COlumn and VERtically Resolved Observations Relevant to Air Quality,'' available at *https://www.nasa.gov/mission_pages/discover-aq/index.html.*

[125] Weight of Evidence Analysis, 26–27, Figure 12, and Figure 24.

[126] Id. at Figure 16 and Figure 17.

[127] Id. at Figure 21.

[128] CMAQ Version 5.0.2.

3. The EPA's Evaluation and Proposed Action

The EPA has reviewed monitoring data recorded at air quality monitors throughout the San Joaquin Valley $PM_{2.5}$ nonattainment area to consider whether the area attained the 1997 annual $PM_{2.5}$ NAAQS by the December 31, 2020 attainment date projected in the SJV $PM_{2.5}$ Plan. We based our review on preliminary but complete and quality-assured ambient air monitoring data recorded during the three years preceding the State's identified attainment date (2018–2020).[129] The EPA has found that the $PM_{2.5}$ monitoring network in the San Joaquin Valley currently meets or exceeds the requirements for the minimum number of monitoring sites designated as State and Local Air Monitoring Stations (SLAMS) for $PM_{2.5}$ and that CARB's and the District's annual network plans meet the applicable requirements in 40 CFR part 58.[130]

Table 5 shows the annual arithmetic means and preliminary annual $PM_{2.5}$ design values at each of the 18 SLAMS monitoring sites within the San Joaquin Valley nonattainment area for the most recent three-year period (2018–2020). The data show that the annual design value for the 2018–2020 period ranged from 9.5 to 17.6 μg/m^3 across the area at monitors with valid design values, and that the valid design values exceeded 15.0 μg/m^3 (*i.e.,* the level of the 1997 annual $PM_{2.5}$ NAAQS) at eight of the monitoring sites, indicating that the area did not attain the 1997 annual $PM_{2.5}$ NAAQS by the projected December 31, 2020 attainment date.

As discussed in section IV.D.2, CARB's Weight of Evidence Analysis shows a long-term downward trend in annual $PM_{2.5}$ design values through 2017, the latest year prior to development of the SJV $PM_{2.5}$ Plan for which air quality data were available. As described in the Weight of Evidence Analysis, the San Joaquin Valley has shown a general downward trend in measured $PM_{2.5}$ concentrations despite the effects of extensive wildfires in 2008 and unusual meteorological conditions during the 2013/2014 winter that resulted in higher concentrations during those periods. Similarly, the San Joaquin Valley area may have experienced higher than normal $PM_{2.5}$ concentrations in 2018 and 2020 due to wildfires in the surrounding areas during the summer and fall months. Table 5 shows that concentrations at all 17 monitors in the San Joaquin Valley area with data spanning 2018 to 2020 are significantly higher in 2018 and 2020 relative to concentrations in 2019, possibly due to the wildfires in those years.

TABLE 5—2018–2020 ANNUAL $PM_{2.5}$ DESIGN VALUES FOR THE SAN JOAQUIN VALLEY NONATTAINMENT AREA

County	General location site	AQS ID	Annual arithmetic mean (μg/m^3)			2018–2020 Annual design values (μg/m^3) [a]
			2018	2019	2020	
Fresno	Fresno—Pacific	06–019–5025	17.1	11.2	18.7	**15.7**
	Fresno—Garland	06–019–0011	16.2	11.1	19.2	**15.5**
	Fresno—Foundry	06–019–2016	Inc	Inc	20.3	[b] **20.3** (Inv)
	Clovis	06–019–5001	14.3	10.3 (Inc)	18.4	14.4 (Inv)
	Tranquility	06–019–2009	11.1	5.8	11.5	9.5
Kern	Bakersfield—Planz Road	06–029–0016	19.4	13.0	20.3	**17.6**
	Bakersfield—California Ave.	06–029–0014	17.7	11.9	19.7	**16.4**
	Bakersfield—Golden State Highway	06–029–0010	18.1	12.4	20.0	**16.8**
Kings	Corcoran	06–031–0004	17.2	12.1	19.5	**16.3**
	Hanford	06–031–1004	17.7	12.2	19.9	**16.6**
Madera	Madera—Avenue 14	06–039–2010	14.0	9.7	16.9	13.5
Merced	Merced—M Street	06–047–2510	14.2	9.6	15.5	13.1
	Merced—Coffee	06–047–0003	15.1	9.1	14.7	13.0
San Joaquin	Stockton	06–077–1002	17.6	9.3	14.4	13.8
	Manteca	06–077–2010	13.4	8.3 (Inc)	14.8	12.2 (Inv)
Stanislaus	Modesto	06–099–0005	15.2	7.7	14.5	12.5
	Turlock	06–099–0006	17.2	10.7	15.5	14.5
Tulare	Visalia	06–107–2002	17.3	12.9	19.7	**16.7**

Source: EPA, Preliminary 2020 AQS Design Value Report, AMP480, accessed June 15, 2021.

Notes: Inc = Incomplete data. Inv = Invalid design value due to incomplete data. Design values shown in bold type do not meet the 1997 annual $PM_{2.5}$ NAAQS.

[a] This preliminary design value includes all available data; no data flagged for exceptional events have been excluded.

[b] The preliminary 2018–2020 design value at Fresno-Foundry (AQS ID: 06–019–2016) is based on concentration data from January 1, 2020 to December 31, 2020. The site began operation in 2020; therefore, data from January 1, 2018 to December 31, 2019 are not available. Based on 40 CFR part 50, Appendix N, section 4.1(b), three years of valid annual means are required to produce a valid annual $PM_{2.5}$ NAAQS design value. Thus, the Fresno-Foundry 2018–2020 preliminary design value is considered invalid.

Under 40 CFR part 50, appendix N, because the 2018–2020 preliminary design value exceeded the 15.0 μg/m^3 level of the 1997 annual $PM_{2.5}$ NAAQS, the San Joaquin Valley area did not attain the 1997 annual $PM_{2.5}$ NAAQS by December 31, 2020, as projected in the SJV $PM_{2.5}$ Plan. Therefore, the EPA is proposing to disapprove the attainment

[129] At the time of the EPA's review, the State had not yet certified the 2020 ambient air monitoring data. We understand that the State is working to certify the data and anticipate that the 2020 data will be certified prior to our final action. We do not expect the certified data to differ significantly from the data reflected in this proposal.

[130] Letter dated October 26, 2020, from Gwen Yoshimura, Manager, EPA Region 9, Air Quality Analysis Office, to Jon Klassen, Director of Strategies and Incentives, SJVUAPCD, and letter dated November 5, 2020, from Gwen Yoshimura, Manager, EPA Region 9, Air Quality Analysis Office, to Ravi Ramalingam, Chief, Consumer Products and Air Quality Assessment Branch, CARB.

demonstration in the SJV $PM_{2.5}$ Plan for the 1997 annual $PM_{2.5}$ NAAQS for failure to meet the requirements of CAA sections 189(d) and 179(d) and 40 CFR 51.1011(b). Because our proposal is based on ambient monitoring data clearly indicating that the Plan was insufficient to achieve attainment of the 1997 annual $PM_{2.5}$ NAAQS by the December 31, 2020 attainment date, we do not provide a full evaluation of the attainment demonstration analyses for these NAAQS at this time.

E. Reasonable Further Progress and Quantitative Milestones

1. Statutory and Regulatory Requirements

CAA section 172(c)(2) provides that all nonattainment area plans shall require RFP toward attainment. In addition, CAA section 189(c) requires that all $PM_{2.5}$ nonattainment area SIPs include quantitative milestones to be achieved every three years until the area is redesignated to attainment and that demonstrate RFP. Section 171(l) of the Act defines RFP as ''such annual incremental reductions in emissions of the relevant air pollutant as are required by [Part D] or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable [NAAQS] by the applicable date.'' Neither subpart 1 nor subpart 4 of part D, title I of the Act requires that states achieve a set percentage of emission reductions in any given year for purposes of satisfying the RFP requirement. For purposes of the $PM_{2.5}$ NAAQS, the EPA has interpreted the RFP requirement to require that the nonattainment area plans show annual incremental emission reductions sufficient to maintain generally linear progress toward attainment by the applicable deadline.[131]

Attainment plans for $PM_{2.5}$ nonattainment areas should include detailed schedules for compliance with emission regulations in the area and provide corresponding annual emission reductions to be achieved by each milestone in the schedule.[132] In reviewing an attainment plan under subpart 4, the EPA considers whether the annual incremental emission reductions to be achieved are reasonable in light of the statutory objective of timely attainment. Although early implementation of the most cost-effective control measures is often appropriate, states should consider both cost-effectiveness and pollution reduction effectiveness when developing implementation schedules for control measures and may implement measures that are more effective at reducing $PM_{2.5}$ earlier to provide greater public health benefits.[133]

The $PM_{2.5}$ SIP Requirements Rule establishes specific regulatory requirements for purposes of satisfying the Act's RFP requirements and provides related guidance in the preamble to the rule. Specifically, under the $PM_{2.5}$ SIP Requirements Rule, each $PM_{2.5}$ attainment plan must contain an RFP analysis that includes, at minimum, the following four components: (1) An implementation schedule for control measures; (2) RFP projected emissions for direct $PM_{2.5}$ and all $PM_{2.5}$ plan precursors for each applicable milestone year, based on the anticipated control measure implementation schedule; (3) a demonstration that the control strategy and implementation schedule will achieve reasonable progress toward attainment between the base year and the attainment year; and (4) a demonstration that by the end of the calendar year for each milestone date for the area, pollutant emissions will be at levels that reflect either generally linear progress or stepwise progress in reducing emissions on an annual basis between the base year and the attainment year.[134] Additionally, states should estimate the RFP projected emissions for each quantitative milestone year by sector on a pollutant-by-pollutant basis.[135]

Section 189(c) of the Act requires that $PM_{2.5}$ attainment plans include quantitative milestones that demonstrate RFP. The purpose of the quantitative milestones is to allow periodic evaluation of the area's progress towards attainment of the NAAQS consistent with RFP requirements. Because RFP is an annual emission reduction requirement and the quantitative milestones are to be achieved every three years, when a state demonstrates compliance with the quantitative milestone requirement, it should also demonstrate that RFP has been achieved during each of the relevant three years. Quantitative milestones should provide an objective means to evaluate progress toward attainment meaningfully, *e.g.,* through imposition of emission controls in the attainment plan and the requirement to quantify those required emission reductions. The CAA also requires states to submit milestone reports (due 90 days after each milestone), and these reports should include calculations and any assumptions made by the state concerning how RFP has been met, *e.g.,* through quantification of emission reductions to date.[136]

The CAA does not specify the starting point for counting the three-year periods for quantitative milestones under CAA section 189(c). In the General Preamble and General Preamble Addendum, the EPA interpreted the CAA to require that the starting point for the first three-year period be the due date for the Moderate area plan submission.[137] In keeping with this historical approach, the EPA established December 31, 2014, the deadline that the EPA established for a state's submission of any additional attainment-related SIP elements necessary to satisfy the subpart 4 Moderate area requirements for the 1997 $PM_{2.5}$ NAAQS, as the starting point for the first three-year period under CAA section 189(c) for the 1997 $PM_{2.5}$ NAAQS in the San Joaquin Valley.[138]

Under the $PM_{2.5}$ SIP Requirements Rule, each attainment plan submission for an area designated nonattainment for the 1997 $PM_{2.5}$ NAAQS before January 15, 2015, must contain quantitative milestones to be achieved no later than three years after December 31, 2014, and every three years thereafter until the milestone date that falls within three years after the applicable attainment date.[139] If the area fails to attain, this post-attainment date milestone provides the EPA with the tools necessary to monitor the area's continued progress toward attainment while the state develops a new attainment plan.[140] Quantitative milestones must provide for objective evaluation of RFP toward timely attainment of the $PM_{2.5}$ NAAQS in the area and include, at minimum, a metric for tracking progress achieved in implementing SIP control measures, including BACM and BACT, by each milestone date.[141]

Because the EPA designated the San Joaquin Valley area as nonattainment for the 1997 annual $PM_{2.5}$ NAAQS effective

[131] General Preamble Addendum, 42015.

[132] Id. at 42016.

[133] Id.

[134] 40 CFR 51.1012(a).

[135] 81 FR 58010, 58056.

[136] General Preamble Addendum, 42016–42017.

[137] General Preamble, 13539, and General Preamble Addendum, 42016.

[138] 79 FR 31566 (June 2, 2014) (final rule establishing subpart 4 moderate area classifications and deadline for related SIP submissions). Although this final rule did not affect any action that the EPA had previously taken under CAA section 110(k) on a SIP for a $PM_{2.5}$ nonattainment area, the EPA noted that states may need to submit additional SIP elements to fully comply with the applicable requirements of subpart 4, even for areas with previously approved $PM_{2.5}$ attainment plans, and that the deadline for any such additional plan submissions was December 31, 2014. Id. at 31569.

[139] 40 CFR 51.1013(a)(4).

[140] 81 FR 58010, 58064.

[141] Id. at 58064 and 58092.

April 5, 2005,[142] the plan for this area must contain quantitative milestones to be achieved no later than three years after December 31, 2014 (*i.e.,* by December 31, 2017), and every three years thereafter until the milestone date that falls within three years after the applicable attainment date.[143]

2. Summary of the State's Submission

Appendix H (''RFP, Quantitative Milestones, and Contingency'') of the 2018 $PM_{2.5}$ Plan contains the State's RFP demonstration and quantitative milestones for the 1997 annual $PM_{2.5}$ NAAQS,[144] and the Valley State SIP Strategy contains the control measure commitments that CARB has identified as mobile source quantitative milestones for the 2020 milestone date.[145] Given the State's conclusions that ammonia, SO_X, and VOC emissions do not contribute significantly to $PM_{2.5}$ levels that exceed the 1997 annual $PM_{2.5}$ NAAQS in the San Joaquin Valley, as discussed in section IV.B of this proposed rule, the RFP demonstration provided by the State addresses emissions of direct $PM_{2.5}$ and NO_X.[146] Similarly, the State developed quantitative milestones based upon implementation of control strategy measures in the adopted SIP and in the SJV $PM_{2.5}$ Plan that achieve reductions in emissions of direct $PM_{2.5}$ and NO_X.[147] For the 1997 annual $PM_{2.5}$ NAAQS, the RFP demonstration in the Plan shows generally linear progress toward attainment.

We describe the RFP demonstration and quantitative milestones in the SJV $PM_{2.5}$ Plan in greater detail below.

Reasonable Further Progress

The State addresses the RFP and quantitative milestone requirements in Appendix H to the 2018 $PM_{2.5}$ Plan submitted in February 2020. The Plan estimates that emissions of direct $PM_{2.5}$ and NO_X will generally decline from the 2013 base year to the projected 2020 attainment year, and beyond to the 2023 post-attainment quantitative milestone year. The Plan's emissions inventory shows that direct $PM_{2.5}$ and NO_X are emitted by a large number and range of sources in the San Joaquin Valley. Table H–2 in Appendix H contains an anticipated implementation schedule for District regulatory control measures and Table 4–8 in Chapter 4 of the 2018 $PM_{2.5}$ Plan contains an anticipated implementation schedule for CARB control measures in the San Joaquin Valley. Table H–5 in Appendix H contains projected emissions for each quantitative milestone year. These emission levels reflect baseline emission projections through the 2023 post-attainment milestone year.[148]

The SJV $PM_{2.5}$ Plan identifies emission reductions needed for attainment of the 1997 annual $PM_{2.5}$ NAAQS by 2020,[149] and identifies San Joaquin Valley's progress toward attainment in each milestone year.[150] The State and District set RFP targets for each of the quantitative milestone years as shown in Table H–8 of Appendix H of the 2018 $PM_{2.5}$ Plan.

According to the Plan, reductions in both direct $PM_{2.5}$ and NO_X emissions from 2013 base year levels result in emission levels consistent with attainment in the 2020 attainment year. Based on these analyses, the State and District conclude that the adopted control strategy is adequate to meet the RFP requirement for the 1997 annual $PM_{2.5}$ NAAQS.

Quantitative Milestones

Appendix H of the 2018 $PM_{2.5}$ Plan identifies the milestone dates of December 31, 2017, December 31, 2020, and December 31, 2023, for the 1997 $PM_{2.5}$ NAAQS.[151] Appendix H also identifies target emission levels to meet the RFP requirement for direct $PM_{2.5}$ and NO_X emissions for each of these milestone years,[152] and State and District control measures that will achieve emission reductions in the years leading up to each of the milestones, in accordance with the control strategy in the Plan.[153]

The Plan includes quantitative milestones for mobile, stationary, and area sources. For mobile sources, CARB has developed quantitative milestones that provide for an evaluation of RFP based on the implementation of specific control measures by the relevant three-year milestones. For each quantitative milestone year, the Plan provides for evaluating RFP by tracking State and District implementation of regulatory measures and SIP commitments during the three-year period leading to each milestone date, consistent with the control strategy in the SJV $PM_{2.5}$ Plan.[154] The identified regulatory measures include State measures for light-duty vehicles and non-road vehicles and several District measures for stationary and area sources.[155]

CARB submitted its 2017 Quantitative Milestone Report for the San Joaquin Valley to the EPA on December 20, 2018.[156] The report includes a certification that CARB and the District met the 2017 quantitative milestones identified in the SJV $PM_{2.5}$ Plan for the 1997 $PM_{2.5}$ NAAQS and discusses the State's and District's progress on implementing the three CARB measures and six District measures identified in Appendix H as quantitative milestones for the 2017 milestone year. On February 15, 2021, the EPA determined that the 2017 Quantitative Milestone Report was adequate.[157] In our evaluation of the 2017 Quantitative Milestone Report, we found that the control measures in the Plan are in effect, consistent with the RFP demonstration in the SJV $PM_{2.5}$ Plan for the 1997 annual $PM_{2.5}$ NAAQS, but we noted that the determination of adequacy did not constitute approval of any component of the SJV $PM_{2.5}$ Plan.[158]

3. The EPA's Evaluation and Proposed Action

As discussed in section IV.D, we are proposing to disapprove the attainment demonstration for the 1997 annual $PM_{2.5}$ NAAQS in the SJV $PM_{2.5}$ Plan because the area did not attain by the State's projected attainment date, which was December 31, 2020. As a result, the RFP

[142] 70 FR 944 (January 5, 2005).

[143] 40 CFR 51.1013(a)(4).

[144] As discussed in footnote 32, all references to Appendix H in this proposed rule are to the revised version submitted on February 11, 2020, which replaces the version submitted with the 2018 $PM_{2.5}$ Plan on May 10, 2019.

[145] Valley State SIP Strategy, Table 7 (identifying State measures scheduled for action between 2017 and 2020, inter alia) and CARB Resolution 18–49, ''San Joaquin Valley Supplement to the 2016 State Strategy for the State Implementation Plan'' (October 25, 2018), 5 (adopting State commitment to begin public processes and propose for Board consideration the list of proposed SIP measures outlined in the Valley State SIP Strategy and included in Attachment A, according to the schedule set forth therein).

[146] 2018 $PM_{2.5}$ Plan, Appendix H, H–1.

[147] Id. at H–18 and H–19 (District milestones), and H–21 and H–22 (State milestones).

[148] Id. at tables H–3 to H–5.

[149] Id. at Table H–6.

[150] Id. at Table H–7.

[151] Id. at Table H–12.

[152] Id. at Table H–8.

[153] Id. at H–18 and H–19 (District milestones), and H–21 and H–22 (State milestones).

[154] Id. We note that the District's identified quantitative milestones for 2023 appear to contain a typographical error, as they include a District report on ''[t]he status of SIP measures adopted between 2017 and 2020 as per the schedule included in the adopted Plan.'' Id. at H–18 and H–19. We understand that the District intended to refer here to the status of SIP measures adopted between 2020 and 2023, consistent with the schedule in the 2018 $PM_{2.5}$ Plan.

[155] Id. at H–18 and H–19 (District milestones), and H–21 and H–22 (State milestones).

[156] Letter dated December 20, 2018, from Richard W. Corey, Executive Officer, CARB, to Michael Stoker, Regional Administrator, EPA Region 9, with attachment ''2017 Quantitative Milestone Report for the 1997 and 2006 NAAQS.''

[157] Letter dated February 15, 2021, from Deborah Jordan, Acting Regional Administrator, EPA Region IX, to Richard W. Corey, Executive Officer, CARB, with enclosure titled ''EPA Evaluation of 2017 Quantitative Milestone Report.''

[158] Id.

demonstration in the Plan does not achieve the statutory purpose of RFP to ''ensure attainment'' under CAA section 171(l) and the quantitative milestones do not ''demonstrate [RFP] toward attainment by the applicable date'' under CAA section 189(c). We are, therefore, proposing to disapprove the RFP and quantitative milestone elements of the SJV $PM_{2.5}$ Plan for the 1997 annual $PM_{2.5}$ NAAQS for failure to meet the requirements of CAA sections 172(c)(2), 171(1), and 189(c) and 40 CFR 51.1012 and 51.1013.

F. Contingency Measures

1. Requirements for Contingency Measures

Under CAA section 172(c)(9), each state required to make a nonattainment plan SIP submission must include, in such plan, contingency measures to be implemented if an area fails to meet RFP (''RFP contingency measures'') or fails to attain the NAAQS by the applicable attainment date (''attainment contingency measures''). Under the $PM_{2.5}$ SIP Requirements Rule, states must include contingency measures that will be implemented following a determination by the EPA that the state has failed: (1) To meet any RFP requirement in the approved SIP; (2) to meet any quantitative milestone in the approved SIP; (3) to submit a required quantitative milestone report; or (4) to attain the applicable $PM_{2.5}$ NAAQS by the applicable attainment date.[159] Contingency measures must be fully adopted rules or control measures that are ready to be implemented quickly upon failure to meet RFP or failure of the area to meet the relevant NAAQS by the applicable attainment date.[160]

The purpose of contingency measures is to continue progress in reducing emissions while a state revises its SIP to meet the missed RFP requirement or to correct ongoing nonattainment. Neither the CAA nor the EPA's implementing regulations establish a specific level of emission reductions that implementation of contingency measures must achieve, but the EPA recommends that contingency measures should provide for emission reductions equivalent to approximately one year of reductions needed for RFP in the nonattainment area at issue, calculated as the overall level of reductions needed to demonstrate attainment divided by the number of years from the base year to the attainment year. In general, we expect all actions needed to effect full implementation of the measures to occur within 60 days after the EPA notifies the state of a failure to meet RFP or to attain.[161]

To satisfy the requirements of 40 CFR 51.1014, the contingency measures adopted as part of a $PM_{2.5}$ attainment plan must consist of control measures for the area that are not otherwise required to meet other nonattainment plan requirements (*e.g.,* to meet RACM/RACT requirements) and must specify the timeframe within which their requirements become effective following any of the EPA determinations specified in 40 CFR 51.1014(a). In a 2016 decision called *Bahr* v. *EPA* (''*Bahr*''),[162] the Ninth Circuit Court of Appeals rejected the EPA's interpretation of CAA section 172(c)(9) to allow approval of already-implemented control measures as contingency measures. In *Bahr,* the Ninth Circuit concluded that contingency measures must be measures that are triggered and implemented only after the EPA determines that an area failed to meet RFP requirements or to attain by the applicable attainment date. Thus, within the geographic jurisdiction of the Ninth Circuit, already implemented measures cannot serve as contingency measures under CAA section 172(c)(9). To comply with section 172(c)(9), a state must develop, adopt, and submit a contingency measure to be triggered upon a failure to meet an RFP milestone, failure to meet a quantitative milestone requirement, or failure to attain the NAAQS by the applicable attainment date.

2. Summary of the State's Submission

The SJV $PM_{2.5}$ Plan addresses the contingency measure requirement for the 1997 annual $PM_{2.5}$ NAAQS in section 5.6 and Appendix H (specifically, section H.3 (''Contingency Measures'')) of the 2018 $PM_{2.5}$ Plan. The Plan relies on revisions to the District's wood-burning rule (Rule 4901) and refers to a SIP revision submitted by CARB on October 23, 2017, titled ''State Implementation Plan Attainment Contingency Measures for the San Joaquin Valley 15 $\mu g/m^3$ Annual $PM_{2.5}$ NAAQS'' (''2017 Contingency Measure SIP'').[163] On March 19, 2021, CARB withdrew the 2017 Contingency Measure SIP submission.[164] Therefore, we are not evaluating the 2017 Contingency Measure SIP as part of this action.

With respect to the District contingency measure, the 2018 $PM_{2.5}$ Plan states that the District will amend Rule 4901 to include a requirement that would be triggered upon a determination by the EPA that the San Joaquin Valley failed to meet a regulatory requirement necessitating implementation of a contingency measure.[165] As discussed in section II.C, the District adopted amendments to Rule 4901 on June 20, 2019, including a contingency measure in section 5.7.3 of the amended rule. In the EPA's July 22, 2020 final action to approve Rule 4901, as amended June 20, 2019, we did not evaluate section 5.7.3 of the amended rule for compliance with CAA requirements for contingency measures.[166] We are now evaluating section 5.7.3 of Rule 4901 for compliance with the requirements for contingency measures for purposes of the 1997 annual $PM_{2.5}$ NAAQS.

Rule 4901 is designed to limit emissions generated by the use of wood burning fireplaces, wood burning heaters, and outdoor wood burning devices. The rule establishes requirements for the sale/transfer, operation, and installation of wood burning devices and for advertising the sale of seasoned wood consistent with a moisture content limit within the San Joaquin Valley. The rule includes a two-tiered, episodic wood burning curtailment requirement that applies during four winter months, November through February. During a level one episodic wood burning curtailment, section 5.7.1 prohibits any person from operating a wood burning fireplace or unregistered wood burning heater, but permits the use of a properly operated wood burning heater that meets certification requirements and has a current registration with the District. Sections 5.9 through 5.11 impose specific registration requirements on any person operating a wood burning fireplace or wood burning heater and section 5.12 imposes specific certification requirements on wood burning heater professionals. During a level two episodic wood burning curtailment, operation of any wood burning device is prohibited by section 5.7.2.

Prior to the 2019–2020 wood burning season, the District imposed a level one

[159] 40 CFR 51.1014(a).

[160] 81 FR 58010, 58066 and General Preamble Addendum, 42015.

[161] 81 FR 58010, 58066. See also General Preamble, 13512, 13543–13544, and General Preamble Addendum, 42014–42015.

[162] *Bahr* v. *EPA,* 836 F.3d 1218, 1235–1237 (9th Cir. 2016).

[163] Letter dated October 23, 2017, from Richard W. Corey, Executive Officer, CARB, to Alexis Strauss, Acting Regional Administrator, EPA Region 9.

[164] Letter dated March 19, 2021, from Richard W. Corey, Executive Officer, CARB, to Deborah Jordan, Acting Regional Administrator, EPA Region 9, transmitting CARB Executive Order S–21–004.

[165] 2018 $PM_{2.5}$ Plan, Appendix H, H–25.

[166] 85 FR 44206 (July 22, 2020) (final approval of Rule 4901); 85 FR 1131, 1132–1133 (January 9, 2020) (proposed approval of Rule 4901).

curtailment when the $PM_{2.5}$ concentration was forecasted to be between 20 μg/m³ and 65 μg/m³ and imposed a level two curtailment when the $PM_{2.5}$ concentration was forecasted to be above 65 μg/m³ or the PM_{10} concentration was forecasted to be above 135 μg/m³. In 2019 the District adopted revisions to Rule 4901 to lower the wood burning curtailment thresholds in the ''hot spot'' counties of Madera, Fresno, and Kern. The District lowered the level one $PM_{2.5}$ threshold for these three counties from 20 μg/m³ to 12 μg/m³, and the level two $PM_{2.5}$ threshold from 65 μg/m³ to 35 μg/m³. The District did not modify the curtailment thresholds for other counties in the San Joaquin Valley—those levels remain at 20 μg/m³ for level one and 65 μg/m³ for level two.

The District's 2019 revision to Rule 4901 also included the addition of a contingency measure in section 5.7.3 of the rule, requiring that 60 days following the effective date of an EPA determination that the San Joaquin Valley has failed to attain the 1997, 2006, or 2012 $PM_{2.5}$ NAAQS by the applicable attainment date, the $PM_{2.5}$ curtailment levels of any county that has failed to attain the applicable standard will be lowered to the curtailment levels in place for hot spot counties. The District estimates that the potential emissions reduction of direct $PM_{2.5}$ would be in the range of 0.014 tpd (if the contingency measure is triggered in Kings County but not the other non-hot spot counties) to 0.387 tpd (if the contingency measure is triggered in all five of the non-hot spot counties), but there would be no emissions reduction if, at the time of the determination of failure to attain the 1997 annual $PM_{2.5}$ NAAQS by the attainment date, violations of the 1997 annual $PM_{2.5}$ NAAQS are observed only at monitors in the hot spot counties.[167] The corresponding potential NO_X emissions reduction would be in the range of 0.002 tpd to 0.060 tpd, respectively, but once again, there would be no emissions reduction if the violations are monitored in the hot spot counties only.[168] The EPA has already approved Rule 4901, as amended in 2019, as a revision to the California SIP.[169]

Appendix H of the 2018 $PM_{2.5}$ Plan also provides updated emissions estimates for the year following the State's projected attainment year (*i.e.,* 2021) to evaluate whether the emission reductions from the contingency measures are sufficient. Table H–3 in Appendix H of the 2018 $PM_{2.5}$ Plan shows that the emission reductions between 2020 and 2021 are estimated to be 0.5 tpd of direct $PM_{2.5}$ and 12.3 tpd of NO_X (based on the annual average inventory).

3. The EPA's Evaluation and Proposed Action

We have evaluated the contingency provision in Rule 4901 (*i.e.,* section 5.7.3 of the rule) for compliance with the requirements of CAA section 172(c)(9) and 40 CFR 51.1014 and find that the measure meets some, but not all, of the applicable requirements for contingency measures. The contingency provision in Rule 4901 is structured to be undertaken if the area fails to attain the 1997 $PM_{2.5}$ NAAQS, not before, and therefore is consistent with the *Bahr* decision disallowing already-implemented measures for contingency measure purposes under CAA section 172(c)(9). Furthermore, the contingency provision in Rule 4901 would achieve emission reductions above and beyond those that are projected to be achieved if the EPA finds that monitoring locations in counties outside of Fresno, Kern, or Madera counties (*i.e.,* the ''hot spot'' counties listed in the rule) are violating the 1997 annual $PM_{2.5}$ NAAQS as of the attainment date. In accordance with 40 CFR 51.1014, the contingency provision in Rule 4901 identifies a specific triggering mechanism. In this case, the triggering mechanism in the rule is the EPA's final determination that San Joaquin Valley has failed to attain the 1997 annual $PM_{2.5}$ NAAQS by the applicable attainment date.[170] The rule also specifies a timeframe within which its requirements become effective after a failure-to-attain determination (*i.e.,* 60 days from the effective date of the EPA's final determination), and would take effect with minimal further action by the State or the EPA.

Conversely, we have identified several deficiencies with respect to the contingency measure element of the SJV $PM_{2.5}$ Plan. First, the contingency provisions of Rule 4901 do not address the potential for State failures to meet RFP, to meet a quantitative milestone, or to submit a quantitative milestone report. In addition, the contingency measure provisions of Rule 4901 are not structured to achieve any additional emissions reductions if the EPA finds that the monitoring locations in the ''hot spot'' counties (*i.e.,* Fresno, Kern, or Madera) are the only counties in the San Joaquin Valley that are violating the 1997 annual $PM_{2.5}$ NAAQS as of the attainment date. To qualify as a contingency measure, a measure must be structured to achieve emissions reductions if triggered; however, the contingency provisions of Rule 4901 provide for such reductions only under certain circumstances. Thus, the contingency provisions of Rule 4901 should be revised to provide for additional emissions reductions in the San Joaquin Valley (if triggered) regardless of which monitoring site(s) is determined to be violating the 1997 annual $PM_{2.5}$ NAAQS as of the attainment date.

Furthermore, CAA section 172(c)(9) requires that the plan provide for the implementation of contingency measures to be undertaken if the area fails to attain the 1997 annual $PM_{2.5}$ NAAQS by the applicable attainment date. Given our proposed disapproval of the State's attainment demonstration for the 1997 annual $PM_{2.5}$ NAAQS, as described in section IV.D.3 of this proposed rule, it is not possible to determine whether emission reductions from contingency measures in the SJV $PM_{2.5}$ Plan that are intended to take effect upon an EPA finding that the area failed to attain the standards are in fact surplus to the attainment demonstration, as required by section 172(c)(9).

For these reasons, we are proposing to disapprove the contingency measure element of the SJV $PM_{2.5}$ Plan for the 1997 annual $PM_{2.5}$ NAAQS. If we finalize this proposal, we will remove from the California SIP the contingency provision in Rule 4901 (section 5.7.3) because this provision does not satisfy CAA requirements for contingency measures and is severable from the remainder of Rule 4901. The disapproval of section 5.7.3 of Rule 4901 would have no effect on our prior approval of the rule for purposes of meeting the BACM and MSM requirements for the 2006 $PM_{2.5}$ NAAQS in the San Joaquin Valley,[171] which

[167] See Table B–13 in Appendix B from the District's Final Staff Report (June 20, 2019) for revisions to Rule 4901.

[168] NO_X emissions reductions from the contingency measure are based on the District's estimates for direct $PM_{2.5}$ emissions using the ratio of direct $PM_{2.5}$ to NO_X in Table 1, page 8, of the District's Final Staff Report (June 20, 2019) for revisions to Rule 4901.

[169] 85 FR 44206 (July 22, 2020).

[170] Section 5.7.3 of Rule 4901 states that ''the District shall notify the public of an Episodic Curtailment for the $PM_{2.5}$ curtailment levels described in Sections 5.7.1.2 and 5.7.2.2 *for any county that has failed to attain the applicable standard.*'' (emphasis added) We interpret this to mean that the District would apply the more stringent curtailment provisions for any county identified in the EPA's final rule making the determination that the San Joaquin Valley failed to attain the applicable $PM_{2.5}$ NAAQS.

[171] 85 FR 44206 (final approval of Rule 4901) and 85 FR 44192 (determination that Rule 4901

Continued

would remain in effect for all but section 5.7.3 of Rule 4901.

G. Motor Vehicle Emission Budgets

1. Statutory and Regulatory Requirements

Section 176(c) of the CAA requires federal actions in nonattainment and maintenance areas to conform to the goals of the state's SIP to eliminate or reduce the severity and number of violations of the NAAQS and achieve timely attainment of the standards. Conformity to the SIP's goals means that such actions will not: (1) Cause or contribute to violations of a NAAQS, (2) worsen the severity of an existing violation, or (3) delay timely attainment of any NAAQS or any interim milestone.

Actions involving Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) funding or approval are subject to the EPA's transportation conformity rule, codified at 40 CFR part 93, subpart A. Under this rule, metropolitan planning organizations (MPOs) in nonattainment and maintenance areas coordinate with state and local air quality and transportation agencies, the EPA, the FHWA, and the FTA to demonstrate that an area's regional transportation plans (RTPs) and transportation improvement programs conform to the applicable SIP. This demonstration is typically done by showing that estimated emissions from existing and planned highway and transit systems are less than or equal to the motor vehicle emissions budgets (MVEBs or ''budgets'') contained in all control strategy SIPs. Budgets are generally established for specific years and specific pollutants or precursors and must reflect all of the motor vehicle control measures contained in the attainment and RFP demonstrations.[172]

Under the $PM_{2.5}$ SIP Requirements Rule, Serious area $PM_{2.5}$ attainment plans must include appropriate quantitative milestones and projected RFP emission levels for direct $PM_{2.5}$ and all $PM_{2.5}$ plan precursors in each milestone year.[173] For an area designated nonattainment for the 1997 $PM_{2.5}$ NAAQS before January 15, 2015, the attainment plan must contain quantitative milestones to be achieved no later than three years after December 31, 2014, and every three years thereafter until the milestone date that falls within three years after the applicable attainment date.[174] As the EPA explained in the preamble to the $PM_{2.5}$ SIP Requirements Rule, it is important to include a post-attainment year quantitative milestone to ensure that, if the area fails to attain by the attainment date, the EPA can continue to monitor the area's progress toward attainment while the state develops a new attainment plan.[175] Although the post-attainment year quantitative milestone is a required element of a Serious area plan, it is not necessary to demonstrate transportation conformity for 2023 or to use the 2023 budgets in transportation conformity determinations until such time as the area fails to attain the 1997 annual $PM_{2.5}$ NAAQS.

$PM_{2.5}$ plans should identify budgets for direct $PM_{2.5}$, NO_X, and all other $PM_{2.5}$ precursors for which on-road emissions are determined to significantly contribute to $PM_{2.5}$ levels in the area for each RFP milestone year and the attainment year, if the plan demonstrates attainment. All direct $PM_{2.5}$ SIP budgets should include direct $PM_{2.5}$ motor vehicle emissions from tailpipes, brake wear, and tire wear. With respect to $PM_{2.5}$ from re-entrained road dust and emissions of VOC, SO_2, and/or ammonia, the transportation conformity provisions of 40 CFR part 93, subpart A, apply only if the EPA Regional Administrator or the director of the state air agency has made a finding that emissions of these pollutants within the area are a significant contributor to the $PM_{2.5}$ nonattainment problem and has so notified the MPO and Department of Transportation (DOT), or if the applicable implementation plan (or implementation plan submission) includes any of these pollutants in the approved (or adequate) budget as part of the RFP, attainment, or maintenance strategy.[176]

By contrast, transportation conformity requirements apply with respect to emissions of NO_X unless both the EPA Regional Administrator and the director of the state air agency have made a finding that transportation-related emissions of NO_X within the nonattainment area are not a significant contributor to the $PM_{2.5}$ nonattainment problem and have so notified the MPO and DOT, or the applicable implementation plan (or implementation plan submission) does not establish an approved (or adequate) budget for such emissions as part of the RFP, attainment, or maintenance strategy.[177]

It is not always necessary for states to establish motor vehicle emissions budgets for all $PM_{2.5}$ precursors. The $PM_{2.5}$ SIP Requirements Rule allows a state to demonstrate that emissions of certain precursors do not contribute significantly to $PM_{2.5}$ levels that exceed the NAAQS in a nonattainment area, in which case the state may exclude such precursor(s) from its control evaluations for the specific NAAQS at issue. If a state successfully demonstrates that the emissions of one or more of the $PM_{2.5}$ precursors from all sources do not contribute significantly to $PM_{2.5}$ levels in the subject area, then it is not necessary to establish motor vehicle emissions budgets for such precursor(s).

Alternatively, the transportation conformity regulations contain criteria for determining whether emissions of one or more $PM_{2.5}$ precursors are insignificant for transportation conformity purposes.[178] For a pollutant or precursor to be considered an insignificant contributor based on the transportation conformity rule's criteria, the control strategy SIP must demonstrate that it would be unreasonable to expect that such an area would experience enough motor vehicle emissions growth in that pollutant and/or precursor for a NAAQS violation to occur. Insignificance determinations are based on factors such as air quality, SIP motor vehicle control measures, trends and projections of motor vehicle emissions, and the percentage of the total attainment plan emissions inventory for the NAAQS at issue that is comprised of motor vehicle emissions. The EPA's rationale for providing for insignificance determinations is described in the July 1, 2004 revision to the Transportation Conformity Rule.[179]

Transportation conformity trading mechanisms are allowed under 40 CFR 93.124 where a state establishes appropriate mechanisms for such trades. The basis for the trading mechanism is the SIP attainment modeling that establishes the relative contribution of each $PM_{2.5}$ precursor pollutant. The applicability of emission trading between conformity budgets for conformity purposes is described in 40 CFR 93.124(c).

The EPA's process for determining the adequacy of a budget consists of three

implements BACM and MSM for residential wood burning).

[172] 40 CFR 93.118(e)(4)(v).

[173] 40 CFR 51.1012(a), 51.1013(a)(1).

[174] 40 CFR 51.1013(a)(4) and 81 FR 58010, 58058 and 58063–58064 (August 24, 2016).

[175] 81 FR 58010, 58063–58064.

[176] 40 CFR 93.102(b)(3), 93.102(b)(2)(v), and 93.122(f); see also Conformity Rule preambles at 69 FR 40004, 40031–40036 (July 1, 2004), 70 FR 24280, 24283–24285 (May 6, 2005) and 70 FR 31354 (June 1, 2005).

[177] 40 CFR 93.102(b)(2)(iv).

[178] 40 CFR 93.109(f).

[179] 69 FR 40004.

basic steps: (1) Notifying the public of a SIP submittal; (2) providing the public the opportunity to comment on the budget during a public comment period; and, (3) making a finding of adequacy or inadequacy. The EPA can notify the public by either posting an announcement that the EPA has received SIP budgets on the EPA's adequacy website,[180] or through a **Federal Register** notice of proposed rulemaking when the EPA reviews the adequacy of an implementation plan budget simultaneously with its review and action on the SIP itself.[181]

2. Summary of the State's Submission

The 2018 $PM_{2.5}$ Plan includes budgets for direct $PM_{2.5}$ and NO_X emissions, calculated using annual average daily emissions, for 2017, 2020, and 2023 (RFP milestone year, attainment year, and post-attainment quantitative milestone year, respectively).[182] The Plan establishes separate direct $PM_{2.5}$ and NO_X subarea budgets for each county, or partial county (for Kern County), in the San Joaquin Valley.[183] CARB calculated the budgets using EMFAC2014, CARB's latest version of the EMFAC model for estimating emissions from on-road vehicles operating in California that was available at the time of Plan development, and the latest modeled vehicle miles traveled and speed distributions from the San Joaquin Valley MPOs from the Final 2017 Federal Transportation Improvement Program, adopted in September 2016. The budgets reflect annual average emissions because those emissions are linked with the District's attainment demonstration for the 1997 annual $PM_{2.5}$ NAAQS.

The direct $PM_{2.5}$ budgets include tailpipe, brake wear, and tire wear emissions but do not include paved road dust, unpaved road dust, and road construction dust emissions.[184] The State is not required to include re-entrained road dust in the budgets under section 93.103(b)(3) unless the EPA or the State has made a finding that these emissions are significant. Neither the State nor the EPA has made such a finding, but the Plan does include a discussion of the significance/insignificance factors for re-entrained road dust.[185] The budgets included in the 2018 $PM_{2.5}$ Plan for purposes of the 1997 annual $PM_{2.5}$ NAAQS are shown in Table 6.

TABLE 6—MOTOR VEHICLE EMISSION BUDGETS FOR THE SAN JOAQUIN VALLEY FOR THE 1997 ANNUAL $PM_{2.5}$ NAAQS

[Annual average, tpd]

County	2017 (RFP year)		2020 (Attainment year)		2023 (Post-attainment year)	
	$PM_{2.5}$	NO_X	$PM_{2.5}$	NO_X	$PM_{2.5}$	NO_X
Fresno	0.9	28.5	0.9	25.3	0.8	15.1
Kern	0.8	28.0	0.8	23.3	0.7	13.3
Kings	0.2	5.8	0.2	4.8	0.2	2.8
Madera	0.2	5.3	0.2	4.2	0.2	2.5
Merced	0.3	10.7	0.3	8.9	0.3	5.3
San Joaquin	0.7	14.9	0.6	11.9	0.6	7.6
Stanislaus	0.4	11.9	0.4	9.6	0.4	6.1
Tulare	0.4	10.8	0.4	8.5	0.4	5.2

Source: 2018 $PM_{2.5}$ Plan, Appendix D, Table 3–1. Budgets are rounded to the nearest tenth of a ton.

The State did not include budgets for VOC, SO_2, or ammonia. As discussed in section IV.B of this proposed rule, the State submitted a $PM_{2.5}$ precursor demonstration documenting its conclusion that control of these precursors would not significantly contribute to attainment of the 1997 annual $PM_{2.5}$ NAAQS. The State also included a discussion of the significance/insignificance factors for ammonia, SO_2, and VOC to demonstrate a finding of insignificance under the transportation conformity rule.[186]

In the submittal letter for the 2018 $PM_{2.5}$ Plan, CARB requested that the EPA limit the duration of the approval of the budgets to the period before the effective date of the EPA's adequacy finding for any subsequently submitted budgets.[187]

Conformity Trading Mechanism

The 2018 $PM_{2.5}$ Plan also includes a proposed trading mechanism for transportation conformity analyses that would allow future decreases in NO_X emissions from on-road mobile sources to offset any on-road increases in direct $PM_{2.5}$ emissions. The State is proposing to use a 6.5 to 1 NO_X to $PM_{2.5}$ ratio for the 1997 annual $PM_{2.5}$ NAAQS. This ratio was derived by performing a sensitivity analysis based on a 30 percent reduction of NO_X or $PM_{2.5}$ emissions and calculating the corresponding effect on design values at sites in Bakersfield and Fresno.

To ensure that the trading mechanism does not affect the ability of the San Joaquin Valley to meet the NO_X budget, the NO_X emissions reductions available to supplement the $PM_{2.5}$ budget would be only those remaining after the NO_X budget has been met.[188] The Plan also provides that the San Joaquin Valley MPOs shall clearly document the calculations used in the trading, along with any additional reductions of NO_X and $PM_{2.5}$ emissions in the conformity analysis.

3. The EPA's Evaluation and Proposed Action

The EPA generally first conducts a preliminary review of budgets submitted with an attainment or maintenance plan for $PM_{2.5}$ for adequacy, prior to taking action on the plan itself, and did so with respect to the $PM_{2.5}$ budgets in the 2018 $PM_{2.5}$ Plan. On June 18, 2019, the EPA announced the availability of the 2018 $PM_{2.5}$ Plan with MVEBs and a 30-day public comment period. This announcement was posted on the EPA's Adequacy website at: *https://www.epa.gov/state-and-local-*

[180] 40 CFR 93.118(f)(1).

[181] 40 CFR 93.118(f)(2).

[182] 2018 $PM_{2.5}$ Plan, Appendix D, Table 3–1.

[183] 40 CFR 93.124(c) and (d).

[184] 2018 $PM_{2.5}$ Plan, Appendix D, D–122 to D–123.

[185] 2018 $PM_{2.5}$ Plan, Appendix D, D–121 and D–122.

[186] 40 CFR 93.109(f).

[187] Letter dated May 9, 2019, from Richard W. Corey, Executive Officer, CARB, to Mike Stoker, Regional Administrator, EPA Region 9, 3.

[188] 2018 $PM_{2.5}$ Plan, Appendix D, D–126 and D–127.

transportation/state-implementation-plans-sip-submissions-currently-under-epa. The comment period for this notification ended on July 18, 2019. We did not receive any comments during this comment period.

We have reviewed the motor vehicle emissions budgets in the 2018 $PM_{2.5}$ Plan and find that, because we are proposing to disapprove the attainment demonstration and related elements of the SJV $PM_{2.5}$ Plan for purposes of the 1997 annual $PM_{2.5}$ NAAQS based on the area's failure to attain by the State's projected attainment date, the budgets cannot be consistent with the applicable requirements for RFP and attainment of the 1997 annual $PM_{2.5}$ NAAQS. Therefore, we are proposing to find that the motor vehicle emissions budgets do not meet applicable statutory and regulatory requirements, including the adequacy criteria specified in the transportation conformity rule.[189] As discussed earlier in sections IV.C, IV.D, and IV.E, we are proposing to disapprove the Plan's five percent, attainment, and RFP demonstrations. In addition, because we are proposing to disapprove the five percent and RFP demonstrations, the budgets are not consistent with the applicable requirements for the five percent annual reductions and RFP. Therefore, we are proposing to disapprove the budgets in the SJV $PM_{2.5}$ Plan. Our proposed disapproval relates only to the 1997 annual $PM_{2.5}$ NAAQS, and does not affect the status of the budgets for the 1997 24-hour $PM_{2.5}$ NAAQS or the previously-approved budgets for the 2006 $PM_{2.5}$ NAAQS and related trading mechanism, which remain in effect for those $PM_{2.5}$ NAAQS. Because we are disapproving the attainment and RFP demonstrations, the budgets are not eligible for a protective finding.[190]

If our proposed disapproval of the budgets is finalized, upon the effective date of our final rule, the area would be subject to a conformity freeze under 40 CFR 93.120 of the transportation conformity rule. No new transportation plan, transportation improvement program (TIP), or project may be found to conform until the State submits another control strategy implementation plan revision fulfilling the same CAA requirements, the EPA finds the budgets in the revised plan adequate or approves the budgets, the MPO makes a conformity determination for the new budgets, and the U.S. Department of Transportation makes a conformity determination.[191] In addition, only transportation projects outside of the first four years of the current conforming transportation plan and TIP or that meets the requirements of 40 CFR 93.104(f) during the resulting conformity freeze may be found to conform until California submits a new attainment plan for the 1997 annual $PM_{2.5}$ NAAQS and (1) the EPA finds the submitted budgets adequate per 40 CFR 93.118 or (2) the EPA approves the new attainment plan and conformity to the new plan is determined.[192] Furthermore, if, as a result of our final disapproval action, the EPA imposes highway sanctions under section 179(b)(1) of the Act two years from the effective date of our final rule, then the conformity status of the transportation plan and TIP will lapse on that date and no new transportation plan, TIP, or project may be found to conform until California submits a new plan for the 1997 annual $PM_{2.5}$ NAAQS, and conformity to the plan is determined.[193]

H. Nonattainment New Source Review Requirements Under CAA Section 189(e)

CAA section 189(e) specifically requires that the control requirements applicable to major stationary sources of direct $PM_{2.5}$ also apply to major stationary sources of $PM_{2.5}$ precursors, except where the Administrator determines that such sources do not contribute significantly to $PM_{2.5}$ levels that exceed the standards in the area.[194] The control requirements applicable to major stationary sources of direct $PM_{2.5}$ in a Serious $PM_{2.5}$ nonattainment area include, at minimum, the requirements of a nonattainment NSR permit program meeting the requirements of CAA sections 172(c)(5) and 189(b)(3). As part of our April 7, 2015 final action to reclassify the San Joaquin Valley area as Serious nonattainment for the 1997 $PM_{2.5}$ standards, we established a May 7, 2016 deadline for the State to submit nonattainment NSR SIP revisions addressing the requirements of CAA sections 189(b)(3) and 189(e) of the Act for the 1997 $PM_{2.5}$ NAAQS.

California submitted nonattainment NSR SIP revisions to address the subpart 4 requirements for the San Joaquin Valley Serious $PM_{2.5}$ nonattainment area on November 20, 2019. We are not proposing any action on this submission at this time. We will act on this submission through a separate rulemaking, as appropriate.

V. Proposed Action

For the reasons discussed in this proposed rule, under CAA section 110(k)(3), the EPA is proposing to approve in part and disapprove in part the portions of the SJV $PM_{2.5}$ Plan that pertain to the 1997 annual $PM_{2.5}$ NAAQS for the San Joaquin Valley nonattainment area as follows:

(1) We are proposing to approve the 2013 base year emissions inventories as meeting the requirements of CAA section 172(c)(3) and 40 CFR 51.1008; and

(2) We are proposing to disapprove the following elements:

(a) The precursor demonstration as not meeting the requirements of 40 CFR 51.1006,

(b) The BACM/BACT demonstration as not meeting the requirements of CAA section 189(b)(1)(B) and 40 CFR 51.1010,

(c) The five percent demonstration as not meeting the requirements of CAA section 189(d) and 40 CFR 51.1010(c),

(d) The attainment demonstration as not meeting the requirements of CAA sections 189(d) and 179(d) and 40 CFR 51.1011(b),

(e) The RFP demonstration as not meeting the requirements of CAA sections 172(c)(2) and 171(1) and 40 CFR 51.1012,

(f) The quantitative milestone demonstration as not meeting the requirements of CAA section 189(c) and 40 CFR 51.1013,

(g) The contingency measures as not meeting the requirements of CAA section 172(c)(9) and 40 CFR 51.1014, and

(h) The motor vehicle emissions budgets as not meeting the requirements of CAA section 176(c) and 40 CFR 93.118(e)(4).

A. Effect of Finalizing the Proposed Disapproval Actions

If we finalize disapprovals of the precursor demonstration, BACM/BACT demonstration, five percent demonstration, attainment demonstration, RFP and milestone demonstrations, motor vehicle emission budgets, or contingency measures, the offset sanction in CAA section 179(b)(2) will be applied in the San Joaquin Valley area 18 months after the effective date of such final disapproval. For new or modified major stationary sources in the area, the ratio of emission reductions to increased emissions shall be at least 2 to 1. The highway funding sanctions in CAA section 179(b)(1) will apply in the area six months after the offset sanction is imposed. Neither sanction will be imposed if California

[189] 40 CFR 93.118(e)(4).

[190] 40 CFR 93.120(a)(3).

[191] 40 CFR 93.120(a)(2).

[192] Id.

[193] 40 CFR 93.120(a)(1).

[194] General Preamble, 13539 and 13541–13542.

submits and we approve SIP revisions meeting the applicable CAA requirements prior to the implementation of the sanctions.[195]

In addition to the sanctions, CAA section 110(c)(1) provides that the EPA must promulgate a federal implementation plan (FIP) addressing any disapproved elements of the plan two years after the effective date of disapproval unless the State submits, and the EPA approves, the required SIP submittal. As a result of the EPA's December 6, 2018 determination that California had failed to submit the required attainment plan for the 1997 $PM_{2.5}$ NAAQS, among other required SIP submissions for the San Joaquin Valley,[196] the EPA is already subject to a statutory deadline to promulgate a FIP for this purpose no later than two years after the effective date of that determination.[197]

Furthermore, if we take final action disapproving the SJV $PM_{2.5}$ Plan, a conformity freeze will take effect upon the effective date of any final disapproval (usually 30 days after publication of the final action in the **Federal Register**). A conformity freeze means that only projects in the first four years of the most recent RTP and TIP can proceed. During a freeze, no new RTPs, TIPs, or RTP/TIP amendments can be found to conform.[198]

Finally, if the EPA takes final action on the SJV $PM_{2.5}$ Plan as proposed, California will be required to develop and submit a revised plan for the San Joaquin Valley area that addresses the applicable CAA requirements, including the requirements of CAA section 189(d). In accordance with sections 179(d)(3) and 172(a)(2) of the CAA, the revised plan must demonstrate attainment as expeditiously as practicable and no later than five years from the date of the EPA's determination that the area failed to attain (*i.e.,* by November 23, 2021), except that the EPA may extend the attainment date to a date no later than 10 years from the date of this determination (*i.e.,* to November 23, 2026), considering the severity of nonattainment and the availability and feasibility of pollution control measures.[199]

The EPA is soliciting public comments on the issues discussed in this proposed rule. We will accept comments from the public on this proposal for the next 30 days.

VI. Incorporation by Reference

In this document, the EPA is proposing to amend regulatory text that includes incorporation by reference. As explained in section IV.F.3 of this preamble, the EPA is proposing to remove section 5.7.3 of SJVUAPCD Rule 4901 from the California State Implementation Plan, which is incorporated by reference in accordance with the requirements of 1 CFR part 51.

VII. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

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

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because this proposed SIP disapproval, if finalized, will not in-and-of itself create any new information collection burdens but will simply disapprove certain State requirements for inclusion in the SIP.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This proposed SIP disapproval, if finalized, will not in-and-of itself create any new requirements but will simply disapprove certain state requirements for inclusion in the SIP.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action proposes to disapprove pre-existing requirements under state or local law and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP revision that the EPA is proposing to disapprove would not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because this proposed SIP disapproval, if finalized, will not in-and-of itself create any new regulations but will simply disapprove certain state requirements for inclusion in the SIP.

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

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

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

[195] See 40 CFR 52.31, which sets forth in detail the sanctions consequences of a final disapproval.

[196] 83 FR 62720.

[197] Id.

[198] See 40 CFR 93.120(a).

[199] 81 FR 84481, 84482 (November 23, 2016) (final EPA action determining that the San Joaquin Valley had failed to attain the 1997 $PM_{2.5}$ NAAQS by the December 31, 2015 Serious area attainment date).

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

The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

List of Subjects in 40 CFR Part 52

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

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

Dated: July 12, 2021.

Deborah Jordan,

Acting Regional Administrator, Region IX.

[FR Doc. 2021–15551 Filed 7–21–21; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 86, No. 138

Thursday, July 22, 2021

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Competitive Enhancement Needs Assessment Survey Program

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 March 23, 2021, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: Bureau of Industry and Security, Department of Commerce.

Title: Competitive Enhancement Needs Assessment Survey Program.

OMB Control Number: 0694–0083.

Form Number(s): None.

Type of Request: Regular submission. Extension of a current information collection.

Number of Respondents: 2,400.

Average Hours per Response: 1 hour.

Burden Hours: 2,400.

Needs and Uses: The Defense Production Act of 1950, as amended, and Executive Order 12919, authorizes the Secretary of Commerce to assess the capabilities of the defense industrial base to support the national defense. They also develop policy alternatives to improve the international competitiveness of specific domestic industries and their abilities to meet defense program needs. The information collected from voluntary surveys will be used to assist small- and medium-sized firms in defense transition and in gaining access to advanced technologies and manufacturing processes available from Federal Laboratories. The goal is to improve regions of the country adversely affected by cutbacks in defense spending and military base closures.

Frequency: On Occasion.

Respondent's Obligation: Voluntary.

Legal Authority: Pub. L. 81–774 Sec 2151, DPA 1950, E.O. 12919.

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 0694–0083.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021–15561 Filed 7–21–21; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–909]

Certain Steel Nails From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Scope Ruling and Notice of Amended Final Scope Ruling Pursuant to Court Decision

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On July 12, 2021, the U.S. Court of International Trade (CIT) issued its final judgment in *Fastenal Company Purchasing* v. *United States,* Court No. 17–00269, sustaining the Department of Commerce (Commerce)'s remand redetermination pertaining to a scope ruling in which Commerce found Fastenal Company Purchasing's (Fastenal's) zinc and nylon anchors to be outside the scope of the antidumping duty (AD) order on certain steel nails (nails) from the People's Republic of China (China). Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's scope ruling, and that Commerce is amending the scope ruling to find that zinc and nylon anchors are not covered by the order.

DATES: Applicable July 22, 2021.

FOR FURTHER INFORMATION CONTACT: Kelsie Hohenberger, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2517.

Background

On October 13, 2017, Commerce found Fastenal's zinc and nylon anchors, which consist of a zinc, steel, or nylon body component and a steel pin component, to be within the scope of the AD order on nails from China.[1]

Fastenal appealed Commerce's *Final Scope Ruling.* On June 11, 2018, the CIT stayed the case pending a final and conclusive determination from the U.S. Court of Appeals for the Federal Circuit (CAFC) in *OMG.*[2] In light of the CAFC's decision, Commerce requested that the CIT remand this matter for further consideration. On November 12, 2020, the CIT remanded the *Final Scope Ruling* to Commerce.[3]

In its final remand redetermination, issued in February 2021, Commerce found Fastenal's zinc and nylon anchors to be outside the scope of the AD order

[1] *See* Memorandum, ''Antidumping and Countervailing Duty Orders on Certain Steel Nails from the People's Republic of China: Final Scope Ruling on Fastenal Company Purchasing's Anchors,'' dated October 13, 2017 (*Final Scope Ruling*).

[2] *See OMG, Inc.* v. *United States,* 972 F.3d 1358 (Fed. Cir. 2020) (*OMG*).

[3] *See Fastenal Company Purchasing* v. *United States,* Court No. 17–00269, ECF No. 41 (CIT November 12, 2020).

on nails from China.[4] The CIT sustained Commerce's final redetermination.[5]

Timken Notice

In its decision in *Timken,*[6] as clarified by *Diamond Sawblades,*[7] the CAFC held that, pursuant to section 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of court decision that is not ''in harmony'' with a Commerce determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's July 12, 2021, judgment constitutes a final decision of the CIT that is not in harmony with Commerce's *Final Scope Ruling.* Thus, this notice is published in fulfillment of the publication requirements of *Timken.*

Amended Final Scope Ruling

In accordance with the CIT's July 12, 2021, final judgment, Commerce is amending its *Final Scope Ruling* and finds that the scope of the AD order on nails from China does not cover the products addressed in the *Final Scope Ruling.*

Liquidation of Suspended Entries

Commerce will instruct U.S. Customs and Border Protection (CBP) that, pending any appeals, Fastenal's zinc and nylon anchors will not be subject to a cash deposit requirement. In the event that the CIT's final judgment is not appealed or is upheld on appeal, Commerce will instruct CBP to liquidate entries of Fastenal's zinc and nylon anchors without regard to antidumping duties and to lift suspension of liquidation of such entries.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e) of the Act.

Dated: July 16, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2021–15584 Filed 7–21–21; 8:45 am]

BILLING CODE 3510–DS–P

[4] *See* Final Results of Redetermination Pursuant to *Fastenal Company Purchasing* v. *United States,* Court No. 17–00269, ECF No. 41 (CIT November 12, 2020), dated February 9, 2021.

[5] *See Fastenal Company Purchasing* v. *United States,* Slip Op. 21–85, Court No. 17–00269 (CIT 2021).

[6] *See Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

[7] See *Diamond Sawblades Manufacturers Coalition* v. United States, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

DEPARTMENT OF COMMERCE

International Trade Administration

Rutgers, The State University of New Jersey, et. al.; Notice of Decision on Application for Duty-Free Entry of Scientific Instruments

This is a decision pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301). On June 24, 2021,the Department of Commerce published a notice in the **Federal Register** requesting public comment on whether instruments of equivalent scientific value, for the purposes for which the instruments identified in the docket(s) below are intended to be used, are being manufactured in the United States. *See Application(s) for Duty-Free Entry of Scientific Instruments, 86 FR33223–24, June 24, 2021* (*Notice).* We received no public comments.

Docket Number: 19–018. *Applicant:* Rutgers, The State University of New Jersey, Physics and Astronomy Department, 136 Frelinghuysen Road, Piscataway, NJ 08854. *Instrument:* Tube Furnace, Box furnace, Sic Heater, MoSi2 Heater. *Manufacturer:* He Nan Nobody Materials Science and Technology, China. Intended Use: According to the applicant, the instrument will be used to study various physical properties in strongly correlated materials such as high-temperature superconductors, topological insulators or multiferroics. New materials will be conducted that have unique electric and magnetic properties using various crystal growth techniques such as flux, solid reaction, or chemical vapor transport. To identify grown materials X-ray diffraction and Laue diffraction will be employed. High-quality crystals will be further investigated with a physical property measurement system and a magnetic property measurement system to obtain their electric and magnetic properties in varying conditions of temperature, electric and magnetic fields.

Docket Number: 20–001. *Applicant:* Rutgers, The State University of New Jersey, Physics and Astronomy Department, 136 Frelinghuysen Road, Piscataway, NJ 00854. *Instrument:* CZekalski furnace (Crystal grower). *Manufacturer:* Sipat Co., Ltd., China. *Intended Use:* According to the applicant, the instrument will be used to study the physical properties of oxide and/or metallic materials and various physical phenomena based on strongly correlated materials such as high temperature superconductors, topological insulators or multiferroics. Electronic and/or magnetic properties of new oxide and/or metallic materials will be investigated. The growth of new materials will be conducted which have unique electric and magnetic properties using purchased crystal grower. To identify grown materials X-ray diffraction and Laue diffraction will be employed. The magnetic property measurement system obtains its electric and magnetic properties in varying conditions of temperature, electric and magnetic fields.

Docket Number: 20–013. *Applicant:* Fermi Research Alliance, FRA. *Instrument:* Linac Coherent Light Source (LCLS–II) Upper Cold Mass Assemblies and Vacuum Vessels. *Manufacturer:* Wuxi Creative Technologies Company LTD WXCX, China. Intended Use: According to the applicant, the instrument will be used to study the cryomodules that will be used for scientific research, including the studies of elementary particles. Each assembly is an essential component necessary to build a cryomodule. LCLS–II upgrade includes three types of components (1) vacuum vessels for the 1.2 GHz cryomodules; (2) cold-mass assemblies for the 1.3 GHz; and (3) cold-mass assemblies for the cryomodules. These components will also be included in the complete assembly of the LCLS–II cryogenic cooling system, which insulates, provides and refreshes liquified helium gas. LCLS–II is a planned upgrade project for the free-electron laser facility located at SLAC. LCLS–II will consist of thirty-five (35) 1.3 GHz and two (2) 3.9 GHz superconducting radio frequency (RF) continuous wave (CW) cryomodules that Fermilab and Jefferson Lab are producing in collaboration with SLAC. The LCLS–II will enable new experiments and research in six broad areas: (1) Fundamental dynamics of energy and charge in atoms and molecules; (2) catalysis, photo-catalysis, environmental, and coordination chemistry; (3) quantum materials; (4) non-scale heterogeneity, fluctuations, and dynamics of functional materials; (5) matter in extreme environments; and (6) biological function on natural length and time scales.

Dated: July 16, 2021.

Richard Herring,

Director, Subsidies Enforcement, Enforcement and Compliance.

[FR Doc. 2021–15581 Filed 7–21–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–301–803]

Citric Acid and Certain Citrate Salts From Colombia: Preliminary Results of Antidumping Duty Administrative Review; 2019–2020

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that Sucroal S.A. (Sucroal) sold subject merchandise in the United States at prices below normal value during the July 1, 2019, through June 30, 2020 period of review (POR). We invite interested parties to comment on these preliminary results.

DATES: Applicable July 22, 2021.

FOR FURTHER INFORMATION CONTACT: David Lindgren, 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) 482–1671.

SUPPLEMENTARY INFORMATION:

Background

On July 25, 2018, Commerce published the antidumping duty (AD) order on citric acid and certain citrate salts (citric acid) from Colombia in the **Federal Register**.[1] On September 3, 2020, pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), Commerce initiated an AD administrative review of the *Order*.[2] During the course of this administrative review, Sucroal responded to Commerce's questionnaire and supplemental questionnaires. On March 4, 2021, Commerce extended the deadline for issuing the preliminary results of this review.[3] For further details, *see* the accompanying Preliminary Decision Memorandum.[4]

Scope of the Order

The merchandise covered by this *Order* includes all grades and granulation sizes of citric acid, sodium citrate, and potassium citrate in their unblended forms, whether dry or in solution, and regardless of packaging type. The scope also includes blends of citric acid, sodium citrate, and potassium citrate; as well as blends with other ingredients, such as sugar, where the unblended form(s) of citric acid, sodium citrate, and potassium citrate constitute 40 percent or more, by weight, of the blend.

Citric acid and sodium citrate are classifiable under 2918.14.0000 and 2918.15.1000 of the Harmonized Tariff Schedule of the United States (HTSUS), respectively. Potassium citrate and crude calcium citrate are classifiable under 2918.15.5000 and, if included in a mixture or blend, 3824.99.9295 of the HTSUS. Blends that include citric acid, sodium citrate, and potassium citrate are classifiable under 3824.99.9295 of the HTSUS. Although the HTSUS sub-headings are provided for convenience and customs purposes, the written description of the merchandise is dispositive. For a full description of the scope of the *Order, see* the Preliminary Decision Memorandum.[5]

Methodology

Commerce is conducting this review in accordance with section 751(a) of the Act. Export price has been calculated in accordance with section 772 of the Act and normal value was calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. A list of the topics discussed in the Preliminary Decision Memorandum is attached as an appendix to this notice. The Preliminary 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 Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.*

Preliminary Results of the Review

Commerce preliminarily determines that the following weighted-average dumping margin exists for the period July 1, 2019 through June 30, 2020:

Exporter/producer	Estimated weighted-average dumping margin (percent)
Sucroal S.A	2.50

Disclosure and Public Comment

Commerce intends to disclose the calculations performed in these preliminary results to parties in this proceeding within five days of the date of publication of this notice.[6] Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the date for filing case briefs.[7] Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities.[8] Executive Summaries should be limited to five pages total, including footnotes. Case and rebuttal briefs should be filed using ACCESS[9] and must be served on interested parties.[10]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. An electronically-filed request must be received successfully in its entirely by 5:00 p.m. Eastern Time within 30 days of the date of publication of this notice in the **Federal Register**.[11] Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined.[12] Parties should confirm the date, time and location of the hearing by telephone two days before the scheduled date.

Commerce intends to issue the final results of this administrative review, including the results of our analysis of

[1] *See Citric Acid and Certain Citrate Salts from Belgium, Colombia and Thailand: Antidumping Duty Orders,* 83 FR 35214 (July 25, 2018) (*Order*).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 54983 (September 3, 2020).

[3] *See* Memorandum, ''Citric Acid and Certain Citrate Salts from Colombia: Antidumping Duty Administrative Review; 2019–2020 Extension of Deadline for Preliminary Results,'' dated March 4, 2021.

[4] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the 2019–2020 Antidumping Duty Administrative Review: Citric Acid and Certain Citrate Salts from Colombia,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[5] *Id.*

[6] *See* 19 CFR 351.224(b).

[7] *See* 19 CFR 351.309(d); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006, 17007 (March 26, 2020) (''To provide adequate time for release of case briefs via ACCESS, E&C intends to schedule the due date for all rebuttal briefs to be 7 days after case briefs are filed (while these modifications remain in effect)''); and *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[8] *See* 19 CFR 351.309(c)(2) and (d)(2).

[9] *See generally* 19 CFR 351.303.

[10] *See* 19 CFR 351.303(f).

[11] *See* 19 CFR 351.310(c).

[12] *See* 19 CFR 351.310(d).

the issues raised in any of the written briefs, no later than 120 days after the date of publication of this notice, unless otherwise extended.[13]

Assessment Rates

Upon completion of the administrative review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. If the weighted-average dumping margin for Sucroal (*i.e.,* the sole individually-examined respondent in this review) is not zero or *de minimis* (*i.e.,* greater than or equal to 0.5 percent) in the final results of this review, we will calculate importer-specific *ad valorem* assessment rates for the merchandise based on the ratio of the total amount of dumping calculated for the examined sales made during the POR to each importer and the total entered value of those same sales, in accordance with 19 CFR 351.212(b)(1). Where an importer-specific *ad valorem* assessment rate is zero or *de minimis* in the final results of the review, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.[14] If a respondent's weighted-average dumping margin is zero or *de minimis* in the final results of the review, we will instruct CBP not to assess duties on any of its entries in accordance with the *Final Modification for Reviews, i.e.,* ''{w}here the weighted-average margin of dumping for the exporter is determined to be zero or *de minimis,* no antidumping duties will be assessed.'' [15]

For entries of subject merchandise during the POR produced by Sucroal for which the producer did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company (or companies) involved in the transaction.[16]

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 upon publication of the final results of this administrative review 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 Sucroal will be equal to the weighted-average dumping margin established in the final results of this administrative review, except if the rate is less than 0.50 percent, and therefore *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, a prior review, or in the 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 merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be the all-others rate of 28.48 percent, the rate established in the investigation of this proceeding.[17] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.213(h)(1).

Dated: July 16, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Duty Absorption
V. Discussion of the Methodology
VI. Recommendation

[FR Doc. 2021–15585 Filed 7–21–21; 8:45 am]

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[13] *See* section 751(a)(3)(A) of the Act and 19 CFR 351.213(h).

[14] *See* 19 CFR 351.106(c)(2).

[15] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification,* 77 FR 8101, 8102 (February 14, 2012) (*Final Modification for Reviews*).

[16] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[17] *See Order,* 83 FR at 35215.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–826]

Monosodium Glutamate From the Republic of Indonesia: Final Results of Antidumping Duty Administrative Review; 2018–2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that PT. Miwon Indonesia (Miwon) made sales of subject merchandise below normal value, and that PT. Cheil Jedang Indonesia (CJ Indonesia) did not. The period of review (POR) is November 1, 2018, through October 31, 2019.

DATES: Applicable July 22, 2021.

FOR FURTHER INFORMATION CONTACT: Andrew Huston, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4261.

SUPPLEMENTARY INFORMATION:

Background

On March 25, 2021, Commerce published the *Preliminary Results* of the administrative review of the antidumping duty (AD) order on monosodium glutamate (MSG) from the Republic of Indonesia (Indonesia).[1] For a history of events that have occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[2]

[1] *See Monosodium Glutamate from the Republic of Indonesia: Preliminary Results of Antidumping Duty Administrative Review; 2018–2019,* 86 FR 15919 (March 25, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review: Monosodium Glutamate from the Republic of

Scope of the Order

The merchandise covered by the antidumping duty order is MSG, whether or not blended or in solution with other products. For a complete description of the scope of the order, *see* the Issues and Decision Memorandum.

Analysis of Comments Received

Commerce addressed all issues raised in the case and rebuttal briefs in the Issues and Decision Memorandum. These issues are identified in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/index.html.*

Changes Since the Preliminary Results

Based on our analysis of the comments received, we have made certain changes to the margin calculation for Miwon since the *Preliminary Results.* We have recalculated Miwon's general and administrative expense ratio and corrected a clerical error in Miwon's home market program.[3] We have made no changes to the margin calculation for CJ Indonesia.

Final Results of Review

As a result of this administrative review, we determine the following weighted-average dumping margins for the period November 1, 2018, through October 31, 2019:

Manufacturer/exporter	Weighted-average margin (percent)
PT. Cheil Jedang Indonesia	* 0.00
PT. Miwon Indonesia	6.75

* De minimis.

Disclosure

Commerce intends to disclose the calculations performed for Miwon in these final results to interested parties within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b). No changes were made to CJ Indonesia's calculations since the *Preliminary Results,* therefore we will not release the calculations for CJ Indonesia.

Assessment

Pursuant to section 751(a)(2)(C) of the Tariff Act of 1930, as amended (the Act), Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this administrative review. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Where the respondent reported reliable entered values, Commerce calculated importer- (or customer-) specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to each importer (or customer).[4] Where Commerce calculated a weighted-average dumping margin by dividing the total amount of dumping for reviewed sales to that party by the total sales quantity associated with those transactions, Commerce will direct CBP to assess importer- (or customer-) specific assessment rates based on the resulting per-unit rates.[5] Where an importer- (or customer-) specific *ad valorem* or per-unit rate is greater than *de minimis* (*i.e.,* 0.50 percent), Commerce will instruct CBP to collect the appropriate duties at the time of liquidation.[6] Where an importer- (or customer-) specific *ad valorem* or per-unit rate is zero or *de minimis,* Commerce will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[7]

In accordance with Commerce's ''automatic assessment'' practice, for entries of subject merchandise that entered the United States during the POR that were produced by CJ Indonesia or Miwon for which the respondent did not know that its merchandise was destined to the United States, Commerce will instruct CBP to liquidate unreviewed entries at the all-others rate of 6.19 percent,[8] if there is no rate for the intermediate company(ies) involved in the transaction.[9]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of the final results of this administrative review for all shipments of MSG from Indonesia entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results in the **Federal Register**, as provided by section 751(a)(2)(C) of the Act: (1) For the companies covered by this review, the cash deposit rate will be the rates listed above in the section ''Final Results of 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 in a completed segment for the most recent period of review; (3) if the exporter is not a firm covered in this review or in the original 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 merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 6.19 percent, the all-others rate established in the investigation.[10] 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 prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the

Indonesia; 2018–2019,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See* Issues and Decision Memorandum.

[4] *See* 19 CFR 351.212(b)(1).

[5] *Id.*

[6] *Id.*

[7] *See* 19 CFR 351.106(c)(2).

[8] *See Monosodium Glutamate from the Republic of Indonesia: Final Determination of Sales at Less Than Fair Value,* 79 FR 58329 (September 29, 2014) (*MSG Investigation Final Determination*).

[9] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[10] *See MSG Investigation Final Determination.*

destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

Commerce is issuing and publishing these final results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5).

Dated: July 16, 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. Changes Since the Preliminary Results
V. Discussion of the Issues
  Comment 1: Miwon's General and Administrative (G&A) Expense Ratio
  Comment 2: Net Price Calculation for Miwon's Home Market Downstream Sales
  Comment 3: Level of Trade (LOT) Adjustment or Constructed Export Price (CEP) Offset for Miwon
VI. Recommendation

[FR Doc. 2021–15597 Filed 7–21–21; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–878]

Corrosion-Resistant Steel Products From the Republic of Korea: Amended Final Results of Antidumping Duty Administrative Review; 2018–2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is amending the final results of the antidumping duty administrative review of the antidumping duty order on certain corrosion resistant steel products (CORE) from the Republic of Korea (Korea) to correct a ministerial error with respect to Dongkuk Steel Mill Co., Ltd. (Dongkuk)'s final margin rate. The period of review is July 1, 2018, through June 30, 2019.

DATES: Applicable July 22, 2021.

FOR FURTHER INFORMATION CONTACT: Leo Ayala, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3945.

SUPPLEMENTARY INFORMATION:

Background

On May 27, 2021, Commerce published its *Final Results.*[1] On June 1, 2021, we received timely-filed ministerial error comments from Dongkuk alleging that Commerce made a ministerial error in the *Final Results.*[2] No other party made an allegation of ministerial errors. After reviewing the allegation, we determine that the *Final Results* included a ministerial error with respect Dongkuk's final margin rate calculation. Therefore, we made a change, as described below, to the *Final Results.*

Scope of the Order

The products covered by this order is CORE from Korea. For a complete description of the scope of the order, *see* the *Final Results.*

Legal Framework

A ministerial error, as defined in section 751(h) of the Tariff Act of 1930, as amended (the Act), includes ''errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considers ministerial.''[3] With respect to final results of administrative reviews, 19 CFR 351.224(e) provides that Commerce ''will analyze any comments received and, if appropriate, correct any ministerial error by amending . . . the final results of review.''

Ministerial Error

Dongkuk alleged that Commerce made a ministerial error in the *Final Results* within the meaning of section 751(h) of the Act and 19 CFR 351.224(f) by incorrectly calculating Dongkuk's total cost of manufacturing. We agree. Therefore, pursuant to 19 CFR 351.224(e), we are amending the *Final Results* to correct this error. This correction results in a change to Dongkuk's weighted-average dumping margin and also changes the rate calculated for the non-individually-examined companies. For a detailed discussion of the ministerial error allegation, as well as Commerce's analysis, *see* the Ministerial Error Memorandum.[4]

Amended Final Results of the Review

We are assigning the following weighted-average dumping margins to the firms listed below for the period July 1, 2018, through June 30, 2019:

Exporter/producer	Estimated weighted-average dumping margin (percent)
Dongkuk Steel Mill Co., Ltd. (Dongkuk)	0.66
Non-individually Examined Companies:	
POSCO	0.74
POSCO Coated & Color Steel Co., Ltd	0.74
POSCO Daewoo Corporation	0.74
POSCO International Corporation	0.74

[1] *See Corrosion-Resistant Steel Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2018–2019,* 86 FR 28571 (May 27, 2021) (*Final Results*).

[2] *See* Dongkuk's Letter, ''Certain Corrosion-Resistant Steel Products from the Republic of Korea: Ministerial Error Comments,'' dated June 1, 2021 (Dongkuk Ministerial Allegation).

[3] *See* 19 CFR 351.224(f).

[4] *See* Memorandum, ''Corrosion-Resistant Steel Products from the Republic of Korea: Amended Final Results—Ministerial Error Allegation in Final of Antidumping Duty Administrative Review,'' dated concurrently with this **Federal Register** notice (Ministerial Error Memorandum).

Disclosure

We intend to disclose the calculations performed for these amended final results in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(1), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the amended final results of this review.

In accordance with 19 CFR 351.212(b)(1), where Dongkuk reported the entered value of its U.S. sales, we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of the sales for which entered value was reported. Where Dongkuk did not report entered value, we calculated the entered value in order to calculate the assessment rate. Where either Dongkuk's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For the companies which were not selected for individual review, we will assign an assessment rate based on the average of the cash deposit rates calculated for Dongkuk and Dongbu Steel Co., Ltd.[5] The amended final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the amended final results of this review and for future deposits of estimated duties, where applicable.

Commerce's ''automatic assessment'' practice will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

We intend to issue liquidation instructions for Dongkuk and the companies covered by the non-reviewed companies' rate to CBP 35 days after publication of these amended final results of this administrative review. 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 May 27, 2021, the date of 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 each specific company listed above will be that established in the amended final results; (2) for previously reviewed or investigated companies, including those for which Commerce may have determined had no shipments during the POR, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this or an earlier review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previously completed segment of this proceeding, then the cash deposit rate will be the all-others rate of 8.31 percent established in the LTFV investigation.[6] These 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 prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Orders

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 or destruction of APO materials, or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing these amended final results of review in accordance with sections 751(h) and 777(i) of the Act, and 19 CFR 351.224(e).

Dated: July 15, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2021–15586 Filed 7–21–21; 8:45 am]

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[5] *See* Memorandum, ''Antidumping Duty Administrative Review of Certain Corrosion-Resistant Steel Products from the Republic of Korea: Amended Final Results Calculation for All Others,'' dated concurrently with this **Federal Register** notice.

[6] *See Certain Corrosion-Resistant Steel Products From the Republic of Korea: Notice of Court Decision Not in Harmony With Final Determination of Investigation and Notice of Amended Final Results,* 83 FR 39054 (August 8, 2018).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–423–813]

Citric Acid and Certain Citrate Salts From Belgium: Preliminary Results of Antidumping Duty Administrative Review; 2019–2020

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that S.A. Citrique Belge N.V. (Citrique Belge) did not sell subject merchandise in the United States at prices below normal value during the July 1, 2019, through June 30, 2020 period of review (POR). We invite interested parties to comment on these preliminary results.

DATES: Applicable July 22, 2021.

FOR FURTHER INFORMATION CONTACT: David Lindgren, 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) 482–1671.

SUPPLEMENTARY INFORMATION:

Background

On July 25, 2018, Commerce published the antidumping duty (AD) order on citric acid and certain citrate salts (citric acid) from Belgium in the **Federal Register**.[1] On September 3, 2020, pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), Commerce initiated an AD administrative review of the *Order*.[2] During the course of this administrative review, Citrique Belge responded to Commerce's questionnaire and supplemental questionnaires. On March 13, 2021, Commerce extended the deadline for issuing the preliminary results of this review.[3] For further details, *see* the accompanying Preliminary Decision Memorandum.[4]

Scope of the Order

The merchandise covered by this *Order* includes all grades and granulation sizes of citric acid, sodium citrate, and potassium citrate in their unblended forms, whether dry or in solution, and regardless of packaging type. The scope also includes blends of citric acid, sodium citrate, and potassium citrate; as well as blends with other ingredients, such as sugar, where the unblended form(s) of citric acid, sodium citrate, and potassium citrate constitute 40 percent or more, by weight, of the blend.

Citric acid and sodium citrate are classifiable under 2918.14.0000 and 2918.15.1000 of the Harmonized Tariff Schedule of the United States (HTSUS), respectively. Potassium citrate and crude calcium citrate are classifiable under 2918.15.5000 and, if included in a mixture or blend, 3824.99.9295 of the HTSUS. Blends that include citric acid, sodium citrate, and potassium citrate are classifiable under 3824.99.9295 of the HTSUS. Although the HTSUS sub-headings are provided for convenience and customs purposes, the written description of the merchandise is dispositive. For a full description of the scope of the *Order, see* the Preliminary Decision Memorandum.[5]

Methodology

Commerce is conducting this review in accordance with section 751(a) of the Act. Export price has been calculated in accordance with section 772 of the Act and normal value was calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. A list of the topics discussed in the Preliminary Decision Memorandum is attached as an appendix to this notice. The Preliminary 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 Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.*

Preliminary Results of the Review

Commerce preliminarily determines that the following weighted-average dumping margin exists for the period July 1, 2019, through June 30, 2020:

Exporter/producer	Estimated weighted-average dumping margin (percent)
S.A. Citrique Belge N.V	0.00

Disclosure and Public Comment

Commerce intends to disclose the calculations performed in these preliminary results to parties in this proceeding within five days of the date of publication of this notice.[6] Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the date for filing case briefs.[7] Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities.[8] Executive Summaries should be limited to five pages total, including footnotes. Case and rebuttal briefs should be filed using ACCESS[9] and must be served on interested parties.[10]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. An electronically-filed request must be received successfully in its entirely by 5:00 p.m. Eastern Time within 30 days of the date of publication of this notice in the **Federal Register**.[11] Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined.[12] Parties should confirm the date, time and location of the hearing by telephone two days before the scheduled date.

Commerce intends to issue the final results of this administrative review, including the results of our analysis of the issues raised in any the written briefs, no later than 120 days after the date of publication of this notice, unless otherwise extended.[13]

Assessment Rates

Upon completion of the administrative review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. If the weighted-average dumping margin for Citrique Belge (*i.e.,* the sole individually-examined respondent in this review) is not zero or *de minimis* (*i.e.,* greater than or equal to 0.5 percent) in the final results of this review, we will calculate importer-specific *ad valorem* assessment rates for the merchandise based on the ratio of the total amount of dumping calculated for the examined sales made during the POR to each importer and the total entered value of those same sales, in accordance with 19 CFR 351.212(b)(1). Where an importer-specific *ad valorem* assessment rate is zero or *de minimis* in the final results of the review, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.[14] If a respondent's weighted-average dumping margin is zero or *de*

[1] *See Citric Acid and Certain Citrate Salts from Belgium, Colombia and Thailand: Antidumping Duty Orders,* 83 FR 35214 (July 25, 2018) (*Order*).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 54983 (September 3, 2020).

[3] *See* Memorandum, ''Citric Acid and Certain Citrate Salts from Belgium: Antidumping Duty Administrative Review; 2019–2020 Extension of Deadline for Preliminary Results,'' dated March 4, 2021.

[4] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the 2019–2020 Antidumping Duty Administrative Review: Citric Acid and Certain Citrate Salts from Belgium,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[5] *Id.*

[6] *See* 19 CFR 351.224(b).

[7] *See* 19 CFR 351.309(d); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006, 17007 (March 26, 2020) (''To provide adequate time for release of case briefs via ACCESS, E&C intends to schedule the due date for all rebuttal briefs to be 7 days after case briefs are filed (while these modifications remain in effect)''); and *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[8] *See* 19 CFR 351.309(c)(2) and (d)(2).

[9] *See generally* 19 CFR 351.303.

[10] *See* 19 CFR 351.303(f).

[11] *See* 19 CFR 351.310(c).

[12] *See* 19 CFR 351.310(d).

[13] *See* section 751(a)(3)(A) of the Act and 19 CFR 351.213(h).

[14] *See* 19 CFR 351.106(c)(2).

minimis in the final results of the review, we will instruct CBP not to assess duties on any of its entries in accordance with the *Final Modification for Reviews, i.e.,* ''{w}here the weighted-average margin of dumping for the exporter is determined to be zero or *de minimis,* no antidumping duties will be assessed.'' [15]

For entries of subject merchandise during the POR produced by Citrique Belge for which the producer did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company (or companies) involved in the transaction.[16]

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 upon publication of the final results of this administrative review 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 Citrique Belge will be equal to the weighted-average dumping margin established in the final results of this administrative review, except if the rate is less than 0.50 percent, and therefore *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, a prior review, or in the 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 merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be the all-others rate of 19.30 percent, the rate established in the investigation of this proceeding.[17] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.213(h)(1).

Dated: July 16, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Duty Absorption
V. Discussion of the Methodology
VI. Recommendation

[FR Doc. 2021–15583 Filed 7–21–21; 8:45 am]

BILLING CODE 3510–DS–P

[15] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification,* 77 FR 8101, 8102 (February 14, 2012) (*Final Modification for Reviews*).

[16] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[17] *See Order,* 83 FR at 35215.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–875]

Fine Denier Polyester Staple Fiber From India: Preliminary Results of Antidumping Duty Administrative Review; 2019–2020

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) has preliminarily assigned Reliance Industries Limited (RIL), the sole respondent subject to this antidumping duty (AD) administrative review, an AD margin based upon the application of total adverse facts available (AFA). The period of review (POR) is July 1, 2019, through June 30, 2020.

DATES: Applicable July 22, 2021.

FOR FURTHER INFORMATION CONTACT: Paola Aleman Ordaz, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4031.

SUPPLEMENTARY INFORMATION:

Background

On September 3, 2020, Commerce published in the **Federal Register** the notice of initiation of an AD administrative review of fine denier polyester staple fiber (fine denier PSF) from India, covering RIL.[1]

On March 24, 2021, Commerce extended the deadline for issuing the preliminary results of this review from to April 2, 2021, to July 30, 2021.[2]

For a complete description of the events that followed the initiation of this administrative review, *see* the Preliminary Decision Memorandum.[3]

Scope of the Order

The product covered by this review is fine denier polyester staple fiber from India. For a complete description of the scope, *see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act). For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. A list of the topics included in the Preliminary Decision Memorandum is included as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 54983 (September 3, 2020).

[2] *See* Memorandum, ''Fine Denier Polyester Staple Fiber from India: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated March 24, 2021.

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the 2019–2020 Antidumping Duty Administrative Review of Fine Denier Polyester Staple Fiber from India,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

at *http://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.*

Adverse Facts Available

Pursuant to sections 776(a) and (b) of the Act, Commerce has preliminarily assigned RIL an AD margin of 21.43 percent, as AFA, because it withheld information regarding its sales and cost reconciliations, affiliates, incorrectly reported its control numbers, and provided unreliable and unusable sales and cost databases. For details regarding this determination, *see* the Preliminary Decision Memorandum.

Preliminary Results of Review

Commerce preliminarily determines that the following estimated weighted-average dumping margin exists:

Exporter/producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate adjusted for subsidy offset (percent)
Reliance Industries Limited	21.43	19.89

Assessment Rates

Upon completion of the administrative review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.[4] The final results of this administrative review shall be the basis for the assessment of antidumping duties on entries of merchandise under review and for future deposits of estimated duties, where applicable.[5] If the preliminary results are unchanged for the final results, we will instruct CBP to apply an *ad valorem* assessment rate equal to RIL's weighted-average dumping margin in the final results of this review to all entries of subject merchandise during the POR from RIL.

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 fine denier PSF from India entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for RIL will be equal to the weighted-average dumping margin established in the final results of this review (except, if the weighted-average dumping margin is zero or *de minimis,* no cash deposit will be required); (2) for merchandise exported by manufacturers or exporters not covered in this 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 in which the manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established in the most recently completed segment of the proceeding for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 14.67 percent *ad valorem,* the all-others rate established in the less-than-fair-value investigation, adjusted for subsidy offsets.[6] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure

Normally, Commerce discloses the calculations performed in connection with preliminary results to interested parties within five days after the date of public announcement or publication of this notice.[7] Because Commerce preliminarily applied a rate based entirely on AFA in accordance with section 776 of the Act, to the only mandatory respondent in this review, there are no calculations to disclose.

Public Comment

Pursuant to 19 CFR 351.309(c)(1)(ii), interested parties may submit case briefs to the Assistant Secretary for Enforcement and Compliance no later than 30 days after the date of publication of this notice, unless the Secretary alters the time limit. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the time limit for filing case briefs.[8] Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each brief: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities.[9] Executive summaries should be limited to five pages total, including footnotes.[10] Case and rebuttal briefs should be filed using ACCESS.[11] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information.[12]

Pursuant to 19 CFR 351.310(c), any interested party may request a hearing within 30 days of the publication of this notice in the **Federal Register**. If a hearing is requested, Commerce will notify interested parties of the hearing date and time. Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS within 30 days after the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of hearing participants; and (3) a list of the issues to be discussed in the hearing. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs.

Final Results of Review

Commerce intends to issue the final results of this administrative review, including the results of its analysis of issues raised by the parties in the

[4] *See* 19 CFR 351.212(b).

[5] *See* section 751(a)(2)(C) of the Act.

[6] *See Fine Denier Polyester Staple Fiber from India: Final Affirmative Antidumping Determination of Sales at Less Than Fair Value,* 83 FR 24737 (May 30, 2018).

[7] *See* 19 CFR 351.224(b).

[8] *See* 19 CFR 351.309(d)(1); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020) (*Temporary Rule*).

[9] *See* 19 CFR 351.309(c)(2) and (d)(2).

[10] *Id.*

[11] *See* 19 CFR 351.303.

[12] *See Temporary Rule.*

written comments, within 120 days of publication of these preliminary results in the **Federal Register**, unless otherwise extended.[13]

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

These preliminary results of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(h)(1).

Dated: July 16, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Application of Facts Available and Use of Adverse Inferences
V. Recommendation

[FR Doc. 2021–15608 Filed 7–21–21; 8:45 am]

BILLING CODE 3510–DS–P

[13] *See* section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Southeast Region Vessel and Gear Identification Requirements

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 February 19, 2021, (86 FR 10250) during a 60-day comment period. This notice allows for an additional 30 days for public comments.

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

Title: Southeast Region Vessel and Gear Identification Requirements.

OMB Control Number: 0648–0358.

Form Number(s): None.

Type of Request: Regular submission. Extension of a current information collection.

Estimated Number of Respondents: 10,031.

Estimated Time per Response: Vessel marking: 75 minutes. Gear marking: aquacultured live rocks, 10 seconds each; golden crab traps, 2 minutes each; spiny lobster traps, 7 minutes each; sea bass pots, 16 minutes each; and Spanish mackerel gillnets, 20 minutes each; and buoy gear, 10 minutes each.

Estimated Total Annual Burden Hours: 40,335.

Needs and Uses: The NMFS Southeast Region manages the U.S. fisheries in the exclusive economic zone of the U.S. Caribbean, Gulf of Mexico, and South Atlantic regions under multiple fishery management plans (FMPs). The regional fishery management councils and NMFS prepared the FMPs pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). NMFS implements the regulations for the FMPs that are located at 50 CFR part 622.

The recordkeeping and reporting regulations located at 50 CFR part 622 form the basis for the information collection requirements that are currently approved under OMB Control Number 0648–0358. NMFS proposes to extend to the information collections under 0648–0358 without change. Regulations at 50 CFR part 622 require that all federally permitted fishing vessels must be marked with the official identification number or some other form of identification. A vessel's official number, under most regulations, must be displayed on the port and starboard sides of the deckhouse or hull, and on the weather deck. In addition, regulations for certain fisheries also require the display of the assigned color code for the vessel. The official number and color code identify each vessel and should be visible at distance from the sea and in the air. These markings provide law enforcement personnel with a means to monitor fishing, at-sea processing, and other related activities, as well as to ascertain whether the vessel's observed activities are in accordance with those authorized for that vessel. The identifying official number is used by NMFS, the United States Coast Guard, and other marine agencies in issuing violations, prosecutions, and other enforcement actions. Vessels that are authorized for particular fisheries are readily identified, gear violations are more readily prosecuted, and this allows for more cost-effective enforcement.

In addition to vessel marking, requirements that fishing gear be marked are essential to facilitate enforcement. The ability to link fishing gear to the vessel owner is crucial to enforcement of regulations issued under the authority of the Magnuson-Stevens Act. The marking of fishing gear is also valuable in actions concerning damage, loss, and civil proceedings. The requirements imposed in the U.S. southeast region are for aquacultured live rock; golden crab traps; spiny lobster traps; black sea bass pots; Spanish mackerel gillnets; and buoy gear.

Affected Public: Business or other for-profit organizations, individuals or households.

Frequency: On occasion or as needed.

Respondent's Obligation: Mandatory.

Legal Authority: 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.

Submit written comments and recommendations for the proposed information collection 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 0648–0358.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021–15559 Filed 7–21–21; 8:45 am]

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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; National Marine Sanctuary Permits

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 February 19, 2021 (86 FR 10249) during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic & Atmospheric Administration (NOAA), Commerce.

Title: National Marine Sanctuary Permits.

OMB Control Number: 0648–0141.

Form Number(s): None.

Type of Request: Regular submission (revision and extension of a current information collection).

Number of Respondents: 424.

Average Hours per Response: General permits and authorizations, 1 hour and 30 minutes; special use permits, 8 hours; archaeological research permits, 13 hours; baitfish permits, 40 minutes; permit amendments and certifications, 30 minutes; voluntary registrations, 15 minutes; appeals, 24 hours; Tortugas access permits, 15 minutes.

Total Annual Burden Hours: 2149.25.

Needs and Uses: This request is for revision and extension of a currently approved information collection by the Office of National Marine Sanctuaries (ONMS). ONMS manages national marine sanctuaries pursuant to the purposes and policies of the National Marine Sanctuaries Act (NMSA, 16 U.S.C. 1431 *et seq.*).

National marine sanctuary regulations at 15 CFR part 922 list specific activities that are prohibited in national marine sanctuaries. These regulations also state that otherwise prohibited activities may be conducted if a permit is issued by ONMS. For most types of permits, persons desiring a permit must submit an application, and anyone obtaining a permit is generally required to submit one or more reports on the activity allowed under the permit. The recordkeeping and reporting requirements at 15 CFR part 922 form the basis for this collection of information.

This information is required by ONMS to protect and manage sanctuary resources. The permit application collects information about the proposed activities, the methods proposed to be used, the potential effects to sanctuary resources, and information on the regulatory review criteria at 15 CFR part 922. ONMS uses this information to evaluate whether the proposed activities are consistent with the purposes and policies of the NMSA, the purposes for which the sanctuary was designated, and the implementing regulations at 15 CFR part 922.

Changes to this information collection include revisions to the permit application and instructions to improve clarity. The estimated number of permits issued per year also changed from 555 to 424. This is based on an estimated five additional permits from the designation of the Mallows Bay—Potomac River National Marine Sanctuary (84 FR 50736; Sept. 26, 2019), five additional permits from the designation of Wisconsin Shipwreck Coast National Marine Sanctuary (WSCNMS) (86 FR 32737, June 23, 2021); the correction of a mathematical error that increased the total burden hours for baitfish permits; and a reduction of 141 permits per year because ONMS is no longer issuing lionfish removal permits in Florida Keys National Marine Sanctuary. Other revisions made to the application and applicant instructions were to improve the quality of information initially collected and to make the permit process more efficient.

Affected Public: Individuals; Business or other for-profit organizations; Not-for-profit institutions; State, Local, or Tribal government; Federal government.

Frequency: On occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

Legal Authority: National Marine Sanctuaries Act, 16 U.S.C. 1431 *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 0648–0141.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021–15560 Filed 7–21–21; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB235]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Seattle Multimodal Project at Colman Dock in Washington State

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

ACTION: Notice; issuance of Renewal incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA), as amended, notification is hereby given that NMFS has issued a Renewal incidental harassment authorization (IHA) to the Washington State Department of Transportation (WSDOT) to incidentally harass, by Level B harassment only, marine mammals incidental to construction activities associated with the Seattle Multimodal Project at Colman Dock in Seattle, Washington State.

DATES: This Renewal IHA is valid from August 1, 2021 through July 31, 2022.

FOR FURTHER INFORMATION CONTACT: Amy Fowler, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the original application, Renewal request, and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), 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 proposed or, if the taking is limited to harassment, a notice of a proposed incidental take authorization is 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 such species or stocks for taking for certain subsistence uses (referred to here as ''mitigation measures''). Monitoring and reporting of such takings are also required. The meaning of key terms such as ''take,'' ''harassment,'' and ''negligible impact'' can be found in section 3 of the MMPA (16 U.S.C. 1362) and the agency's regulations at 50 CFR 216.103.

NMFS' regulations implementing the MMPA at 50 CFR 216.107(e) indicate that IHAs may be renewed for additional periods of time not to exceed one year for each reauthorization. In the notice of proposed IHA for the initial authorization, NMFS described the circumstances under which we would consider issuing a Renewal for this activity, and requested public comment on a potential Renewal under those circumstances. Specifically, 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 activities as described in the ''Detailed Description of Specified Activities'' section of the initial IHA issuance notice is planned or (2) the activities as described in the ''Detailed Description of Specified Activities'' section of the initial IHA issuance notice would not be completed by the time the initial IHA expires and a Renewal would allow for completion of the activities beyond that described in the ''Dates'' section of the initial IHA issuance, provided all of the following conditions are met:

(1) 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).

(2) The request for renewal must include the following:

- 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).
- 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.

(3) 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.

An additional public comment period of 15 days (for a total of 45 days), with direct notice by email, phone, or postal service to commenters on the initial IHA, is provided to allow for any additional comments on the proposed Renewal. A description of the Renewal process may be found on our website at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals.*

History of Request

On September 3, 2020, NMFS issued an IHA to WSDOT to take marine mammals incidental to the fourth year of work associated with the Seattle Multimodal Project at Colman Dock in Seattle, Washington (85 FR 59737; September 23, 2020), effective from September 10, 2020 through September 9, 2021. The initial IHA covered one year of the larger project for which WSDOT obtained prior IHAs (82 FR 31579, July 7, 2017; 83 FR 35226, July 25, 2018; 84 FR 36581, July 29, 2019). On March 18, 2021, NMFS received an application for the Renewal of that initial IHA. As described in the application for Renewal, the activities for which incidental take is requested consist of activities that are covered by the initial authorization but will not be completed prior to its expiration. As required, the applicant also provided a preliminary monitoring report (available at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities*) which confirms that the applicant has implemented the required mitigation and monitoring, and which also shows that no impacts of a scale or nature not previously analyzed or authorized have occurred as a result of the activities conducted. The notice of the proposed Renewal incidental harassment authorization was published on June 23, 2021 (86 FR 32895).

Description of the Specified Activities and Anticipated Impacts

WSDOT has requested incidental take for construction activities related to the Seattle Multimodal Project at Colman Dock in Seattle, Washington State. The activities addressed in this request represent a subset of the activities analyzed in the initial IHA, consisting of vibratory pile removal only, and are identical to the activities described in the initial IHA.

Accordingly the authorized take is for the same 11 species authorized in the initial IHA (see Table 4), and the amount of take is reflective of the take estimation methods described in the initial IHA applied to the remaining work described below.

The following documents are referenced in this notice and include important supporting information:

- Initial 2020 final IHA (85 FR 59737; September 23, 2020);
- Initial 2020 proposed IHA (85 FR 40992; July 8, 2020); and
- Initial IHA application, references cited, marine mammal monitoring plan, preliminary monitoring report, and previous public comments received (available at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities*).

Detailed Description of the Activity

A detailed description of the pile installation and removal activities for which take was authorized in the initial IHA may be found in the **Federal Register** notices of the proposed and final IHA for the initial authorization (85 FR 40992, July 8, 2020; 85 FR 59737, September 23, 2020). Only a subset of the construction activities remain to be

conducted, and the location, timing, and nature of the activities, including the types of equipment planned for use, are identical to those described in the previous notices.

Below and in Table 1 we describe the specific in-water pile driving and pile removal activities that were planned and already occurred under the initial IHA and those that remain to be completed under this renewal IHA:

- Vibratory driving followed by impact proofing (driving) of 36-inch steel piles. A total of 73 piles were installed using the vibratory hammer over 9 days, with an average of approximately 8 piles installed per day. Vibratory pile driving and impact proofing occurred on different days;
- Vibratory driving and then removal of 24-inch temporary steel piles. A total of 30 piles were planned be installed and later removed, with an average of 8 piles installed/removed per day;
- Vibratory removal of 355 14-inch timber piles over 18 days, with approximately 20 piles removed per day; and
- Vibratory removal of 30 12-inch steel piles over 3 days, with 10 piles removed per day.

All vibratory and impact pile installation was completed. Only vibratory removal of timber and temporary steel piles remains to be completed (Table 1).

TABLE 1—SUMMARY OF PLANNED IN-WATER PILE DRIVING

Pile size and type	Method	Number of piles planned to be completed in initial IHA	Number of piles completed under initial IHA	Number of piles to be completed in IHA renewal
36-inch Steel	Impact drive (proof)	*73	73	0
36-inch Steel	Vibratory drive	*73	73	0
24-inch Steel (temporary)	Vibratory drive	*30	30	0
24-inch Steel (temporary)	Vibratory remove	*30	5	25
14-inch Timber	Vibratory remove	355	316	39
12-inch Steel	Vibratory remove	30	30	0

*These are same piles.

The total estimated duration of pile driving activities planned in the initial IHA was 47 days. In consideration of the time required to remove each pile using a vibratory hammer and the number of piles that may be removed per day, a total of 8 days of work remain to remove the rest of the timber piles and temporary steel piles (Table 2).

Due to NMFS and U.S. Fish and Wildlife Service (USFWS) in-water work timing restrictions to protect Endangered Species Act (ESA)-listed salmonids, planned WSDOT in-water construction is limited each year to July 15 through February 15 at this location. For this project, in-water construction is planned to take place between August 1, 2021 and February 15, 2022. This IHA Renewal is effective from August 1, 2021 through July 31, 2022.

TABLE 2—ESTIMATED DURATION OF REMAINING IN-WATER VIBRATORY PILE REMOVAL

Pile size and type	Number of piles remaining	Piles per day	Minutes per pile	Duration (days)
24-inch steel	25	8	20	4
14-inch timber	39	10	15	4

Description of Marine Mammals

A description of the marine mammals in the area of the activities for which authorization of take is authorized here, including information on abundance, status, distribution, and hearing, may be found in the **Federal Register** notice of proposed IHA for the initial authorization (85 FR 40992; July 8, 2020) and the **Federal Register** notice of proposed IHA for the Year 3 Seattle Multimodal Project at Colman Dock (84 FR 25757; June 4, 2019). NMFS has reviewed the monitoring data from the initial IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that neither this nor any other new information affects which species or stocks have the potential to be affected or the pertinent information in the ''Description of the Marine Mammals in the Area of Specified Activities'' contained in the supporting documents for the initial IHA.

Potential Effects on Marine Mammals and Their Habitat

A description of the potential effects of the specified activity on marine mammals and their habitat for the activities for which take is authorized here may be found in the **Federal Register** notice of proposed IHA for the initial authorization (85 FR 40992; July 8, 2020). NMFS has reviewed the monitoring data from the initial IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, other scientific literature, and the public comments, and determined that neither this nor any other new information affects our initial analysis of impacts on marine mammals and their habitat.

Estimated Take

A detailed description of the methods and inputs used to estimate take for the specified activity are found in the **Federal Register** notices of proposed IHA (85 FR 40992; July 8, 2020) and final IHA (85 FR 59737; September 23, 2020) for the initial authorization. Specifically, the source levels, corresponding Level A and Level B harassment zones (in m) and ensonified areas (in square kilometers (km^2); Table 3), and marine mammal density/occurrence data applicable to this authorization remain unchanged from the previously issued IHA. Similarly, the stocks taken, methods of take, and types of take remain unchanged from

the previously issued IHA. The only change from the methods used to estimate take in the initial IHA is the total duration (days) of pile driving activities, which has been reduced from a total of 47 days of activities, occurring over the course of 7 months, in the initial IHA to 8 days of remaining activities estimated to occur within one month.

TABLE 3—LEVEL A AND LEVEL B HARASSMENT ZONES AND ENSONIFIED AREAS

Pile type, size & pile driving method	Level A harassment distance (m)/area (km²)					Level B harassment distance (m)/area (km²)
	LF cetacean	MF cetacean	HF cetacean	Phocid	Otariid	
Vibratory drive/removal, 24 inch steel piles	96.6/0.03	8.6/0.00	142.8/0.06	58.7/0.01	4.1/0.00	8,690/40.53
Vibratory removal 14 inch timber pile	8.0/0.00	0.7/0.00	11.8/0.00	4.8/0.00	0.3/0.00	2,154/5.47

LF = low-frequency; MF = mid-frequency; HF = high-frequency.

Authorized takes are by Level B harassment only, as use of the vibratory hammer has the potential to result in disruption of behavioral patterns for individual marine mammals. The initial IHA authorized take of harbor seals and harbor porpoises by Level A harassment from impact pile driving. However, as described in the initial IHA, based on the nature of the activity remaining in this Renewal (vibratory pile driving) and the anticipated effectiveness of the mitigation measures (*i.e.,* shutdown, see Proposed Mitigation below), Level A harassment is neither anticipated from vibratory pile driving and is not authorized here.

As described in the initial IHA, the initial approach for take calculation was to use the information aggregated in the U.S. Navy Marine Species Density Database (U.S. Navy, 2019) with the following equation:

Total Take = marine mammal density × ensonified area × pile driving days

However, also as described in the initial IHA, adjustments were made to all of these initial estimates based on prior observation of marine mammals in the project area and account for group numbers, and in fact most estimates were based on a predicted number of individuals entering the Level B harassment zone per month, with several estimates also based on a predicted number entering per day. Take estimates for the activities remaining in this renewal IHA were developed using the identical methods as the initial IHA, in consideration of the remaining 8 days of work, and equated to one month where monthly estimates were used. Table 4 indicates the number of each species or stock proposed for authorization.

TABLE 4—AUTHORIZED TAKE BY SPECIES AND STOCK

Species	Total proposed take	Stock	Stock abundance	Percent of stock
Gray whale	1	Eastern North Pacific	26,960	0.004
Humpback whale	3	California/Oregon/Washington	2,900	0.103
Minke whale	1	California/Oregon/Washington	636	0.157
Killer whale	10	West Coast transient	349	2.865
Bottlenose dolphin	7	California/Oregon/Washington offshore	1,924	0.364
Harbor porpoise	100	Washington inland waters	11,233	0.890
Dall's porpoise	5	California/Oregon/Washington	25,750	0.019
Harbor seal	720	Washington northern inland waters	11,036	6.524
Northern elephant seal	1	California breeding	179,000	0.001
California sea lion	232	U.S.	257,606	0.090
Steller sea lion	8	Eastern U.S.	43,201	0.019

We have reviewed the preliminary monitoring report submitted by WSDOT and the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized and, therefore, these estimates are appropriate.

Description of Mitigation, Monitoring and Reporting Measures

The mitigation, monitoring, and reporting measures included as requirements in this authorization are identical to those included in the **Federal Register** notice announcing the issuance of the initial IHA (85 FR 59737; September 23, 2020), with the exception of mitigation measures specific to impact pile driving, which will not occur under this IHA. The discussion of the least practicable adverse impact included in that document remains accurate. The following measures are required in this Renewal:

Proposed Mitigation

Time Restriction—The applicant stated that work would occur only during daylight hours, when visual monitoring of marine mammals can be conducted. In addition, all in-water construction will be limited to the period between August 1, 2021, and February 15, 2022.

Establishing and Monitoring Level A, Level B Harassment Zones, and Exclusion Zones—Before the commencement of in-water construction activities, which include vibratory pile removal, WSDOT must establish Level A harassment zones where received underwater sound pressure levels (SPLs) or cumulative sound exposure levels (SEL_{cum}) could cause permanent threshold shift (PTS).

WSDOT must also establish Level B harassment zones where received underwater SPLs are higher than 120 decibels root-mean-square (dB_{rms}) re 1 microPascal (μPa) for continuous noise sources (*e.g.,* vibratory pile removal).

WSDOT must establish exclusion zones as shown in Table 5 to prevent

Level A harassment takes of all marine mammal hearing groups.

For in-water heavy machinery work other than pile driving (*e.g.,* standard barges, *etc.*), if a marine mammal comes within 10 m, operations must cease and vessels must reduce speed to the minimum level required to maintain steerage and safe working conditions. This type of work could include the following activities: (1) Movement of the barge to the pile location; or (2) positioning of the pile on the substrate via a crane.

WSDOT must establish exclusion zones for Southern Resident killer whales (SRKW) and all marine mammals for which takes are not authorized at the Level B harassment distances. Specifically, for vibratory removal of 24-inch steel piles, an 8.7 km exclusion zone must be established. For vibratory removal of 14-inch timber piles, a 2.2 km exclusion zone must be established.

A summary of exclusion zones is provided in Table 5.

TABLE 5—EXCLUSION ZONES BY SPECIES AND HEARING GROUP

Pile type and size	Exclusion distance (m)					
	LF	MF	HF	Phocid	Otariid	SRKW
24-inch steel	100	10	150	60	10	8,700
14-inch timber	10	10	15	10	10	2,200

NMFS-approved protected species observers (PSOs) must conduct an initial survey of the exclusion zones to ensure that no marine mammals are seen within the zones beginning 30 minutes before removal of a pile segment begins. If marine mammals are found within the exclusion zone, pile driving of the segment must be delayed until they move out of the area. If a marine mammal is seen above water and then dives below, the contractor must wait 15 minutes. If no marine mammals are seen by the observer in that time it can be assumed that the animal has moved beyond the exclusion zone.

If pile driving of a segment ceases for 30 minutes or more and a marine mammal is sighted within the designated exclusion zone prior to commencement of pile removal, the observer(s) must notify the pile driving operator (or other authorized individual) immediately and continue to monitor the exclusion zone. Operations may not resume until the marine mammal has exited the exclusion zone or 15 minutes have elapsed since the last sighting.

Shutdown Measures—WSDOT must implement shutdown measures if a marine mammal is detected within or entering an exclusion zone listed in Table 5.

WSDOT must also implement shutdown measures if SRKW are sighted within the vicinity of the project area and are approaching the Level B harassment zone during in-water construction activities.

If a killer whale approaches the Level B harassment zone during pile driving or removal, and it is unknown whether it is a SRKW or a transient killer whale, it must be assumed to be a SRKW and WSDOT must implement the shutdown measure.

If a SRKW or an unidentified killer whale enters the Level B harassment zone undetected, in-water pile driving or pile removal must be suspended until the whale exits the Level B harassment zone, or 15 minutes have elapsed with no sighting of the animal, to avoid further Level B harassment.

Further, WSDOT must implement shutdown measures if the number of authorized takes for any particular species reaches the limit under the IHA and if such marine mammals are sighted within the vicinity of the project area and are approaching the Level B harassment zone during in-water construction activities.

Coordination with Local Marine Mammal Research Network—Prior to the start of pile driving for the day, WSDOT must contact the Orca Network and/or Center for Whale Research to find out the location of the nearest marine mammal sightings. The Local Marine Mammal Research Network consists of a list of over 600 (and growing) residents, scientists, and government agency personnel in the United States and Canada. Sightings are called or emailed into the Orca Network and immediately distributed to other sighting networks including: The NMFS Northwest Fisheries Science Center, the Center for Whale Research, Cascadia Research, the Whale Museum Hotline and the British Columbia Sightings Network.

Sightings information collected by the Orca Network includes detection by hydrophone. The SeaSound Remote Sensing Network is a system of interconnected hydrophones installed in the marine environment of Haro Strait (west side of San Juan Island) to study orca communication, in-water noise, bottom fish ecology and local climatic conditions. A hydrophone at the Port Townsend Marine Science Center measures average in-water sound levels and automatically detects unusual sounds. These passive acoustic devices allow researchers to hear when different marine mammals come into the region. This acoustic network, combined with the volunteer (incidental) visual sighting network allows researchers to document presence and location of various marine mammal species.

Proposed Monitoring and Reporting

Monitoring Measures—WSDOT must employ NMFS-approved PSOs to conduct marine mammal monitoring for its Seattle Multimodal Project at Colman Dock. The PSOs must observe and collect data on marine mammals in and around the project area for 30 minutes before, during, and for 30 minutes after all pile removal and pile installation work. NMFS-approved PSOs must meet the following requirements:

1. Independent observers (*i.e.,* not construction personnel) are required;
2. At least one observer must have prior experience working as an observer;
3. Other observers may substitute education (undergraduate degree in biological science or related field) or training for experience;
4. Where a team of three or more observers are required, one observer should be designated as lead observer or monitoring coordinator. The lead observer must have prior experience working as an observer; and
5. NMFS will require submission and approval of observer Curriculum Vitas.

Monitoring of marine mammals around the construction site must be conducted using high-quality binoculars (*e.g.,* Zeiss, 10 × 42 power). Due to the different sizes of zones of influence (ZOIs) from different pile sizes, several different ZOIs and different monitoring protocols corresponding to a specific pile size will be established. During vibratory removal of 24-inch steel piles, four land-based PSOs and one ferry-based PSO must monitor the zone. During vibratory removal of 14-inch

timber piles, four land-based PSOs must monitor the zone. Locations of the land-based PSOs and routes of monitoring vessels are shown in WSDOT's Marine Mammal Monitoring Plan, which is available online at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.*

To verify the required monitoring distance, the exclusion zones and zones of influence must be determined by using a range finder or hand-held global positioning system device.

Reporting Measures—WSDOT is required to submit a draft report on all marine mammal monitoring conducted under the IHA (if issued) within 90 calendar days of the completion of the project. A final report must be prepared and submitted within 30 days following resolution of comments on the draft report from NMFS.

The marine mammal report must contain the informational elements described in the Marine Mammal Monitoring Plan for the initial IHA, dated May 12, 2020, including, but not limited to:

1. Dates and times (begin and end) of all marine mammal monitoring;
2. Construction activities occurring during each daily observation period, including how many and what type of piles were driven or removed;
3. Weather parameters and water conditions during each monitoring period (*e.g.,* wind speed, percent cover, visibility, sea state);
4. The number of marine mammals observed, by species, relative to the pile location and if pile driving or removal was occurring at time of sighting;
5. Age and sex class, if possible, of all marine mammals observed;
6. PSO locations during marine mammal monitoring;
7. Distances and bearings of each marine mammal observed to the pile being driven or removed for each sighting (if pile driving or removal was occurring at time of sighting);
8. Description of any marine mammal behavior patterns during observation, including direction of travel and estimated time spent within the Level B harassment zones while the source was active;
9. Number of individuals of each species (differentiated by month as appropriate) detected within the monitoring zone;
10. Detailed information about any implementation of any mitigation triggered (*e.g.,* shutdowns and delays), a description of specific actions that ensued, and resulting behavior of the animal, if any;
11. Description of attempts to distinguish between the number of individual animals taken and the number of incidences of take, such as ability to track groups or individuals; and
12. Submit all PSO datasheets and/or raw sighting data (in a separate file from the Final Report referenced immediately above).

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, WSDOT must report the incident to the Office of Protected Resources (OPR) (301–427–8401), NMFS and to the West Coast Region (WCR) regional stranding coordinator (1–866–767–6114) as soon as feasible. If the death or injury was clearly caused by the specified activity, WSDOT 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 IHA. WSDOT 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.

Comments and Responses

A notice of NMFS' proposal to issue a Renewal IHA to WSDOT was published in the **Federal Register** on June 23, 2021 (86 FR 32895). That notice either described, or referenced descriptions of, WSDOT's activity, the marine mammal species that may be affected by the activity, the anticipated effects on marine mammals and their habitat, estimated amount and manner of take, and proposed mitigation, monitoring and reporting measures. NMFS received no public comments.

Determinations

The construction activities planned by WSDOT are a subset of, and identical to, those analyzed in the initial IHA, and the method of taking and the effects of the action are identical to the initial IHA (though the amount of proposed authorized take is notably lower). The potential effects of WSDOT's activities are limited to Level B harassment in the form of behavioral disturbance. In analyzing the effects of the activities in the 2020 IHA, NMFS determined that WSDOT's activities would have a negligible impact on the affected species or stocks and that the authorized take numbers of each species or stock were small relative to the relevant stocks (*e.g.,* less than one-third of all stocks). The mitigation measures and monitoring and reporting requirements as described above are identical to the initial IHA.

NMFS has concluded that there is no new information suggesting that our analysis or findings should change from those reached for the initial IHA. Based on the information and analysis contained here and in the referenced documents, NMFS has determined the following: (1) The required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) WSDOT's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action, and; (5) appropriate monitoring and reporting requirements are included.

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 evaluate our proposed action (*i.e.,* the issuance of an IHA Renewal) and alternatives with respect to potential impacts on the human environment. This action is consistent with categories of activities identified in Categorical Exclusion B4 of the Companion Manual for NAO 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 proposed action qualifies to be categorically excluded from further NEPA review.

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, in this case with the West Coast Region Protected Resources Division, whenever we propose to authorize take for endangered or threatened species.

The only species listed under the ESA with the potential to be present in the action area are the Mexico Distinct Population Segment (DPS) and Central America DPS of humpback whales. The effects of this Federal action were adequately analyzed in NMFS' Biological Opinion for the Seattle Multimodal Project at Colman Dock, Seattle, Washington, dated October 1, 2018, which concluded that issuance of an IHA would not jeopardize the continued existence of any endangered or threatened species or destroy or adversely modify any designated critical habitat.

Renewal

NMFS has issued a Renewal IHA to WSDOT for the take of marine mammals incidental to conducting the Seattle Multimodal Project at Colman Dock Year 4 in Washington State, between August 1, 2021 and July 31, 2022.

Dated: July 16, 2021.

Catherine Marzin,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2021–15539 Filed 7–21–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of Defense Medicare-Eligible Retiree Health Care Board of Actuaries; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Personnel and Readiness, U.S. Department of Defense (DoD).

ACTION: Notice of open Federal Advisory Committee meeting.

SUMMARY: DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Department of Defense Medicare-Eligible Retiree Health Care Board of Actuaries, hereafter, ''Board'' will take place.

DATES: Open to the public Friday, August 6, 2021, from 10:00 a.m. to 1:00 p.m.

ADDRESSES: THIS MEETING WILL BE HELD VIRTUALLY. For information on accessing the meeting, please contact Kathleen Ludwig, (703) 438–0223 or *Kathleen.A.Ludwig.civ@mail.mil* before July 30, 2021 at 12:00 p.m. EDT.

FOR FURTHER INFORMATION CONTACT: Inger Pettygrove, (703) 225–8803 (Voice), *inger.m.pettygrove.civ@mail.mil* (Email). Mailing address is Defense Human Resources Activity, DoD Office of the Actuary, 4800 Mark Center Drive, STE 03E25, Alexandria, VA 22350–8000. Website: *https://actuary.defense.gov/.* The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The purpose of the meeting is to execute the provisions of 10 U.S.C. chapter 56 (10 U.S.C. 1114 et. seq). The Board shall review DoD actuarial methods and assumptions to be used in the valuation of benefits under DoD retiree health care programs for Medicare-eligible beneficiaries.

Agenda: Discussion includes (1) Approved actuarial assumptions and methods needed for calculating: The September 30, 2020, unfunded liability payment (UFL)*, the FY 2023 per capita full-time and part-time normal cost amounts*, and the October 1, 2021, Treasury UFL amortization payment*; (2) Approve per capita full-time and part-time normal cost amounts for the October 1, 2021 (FY 2022) normal cost payments*; (3) Trust Fund investment experience update; (4) Medicare-Eligible Retiree Health Care Fund Update; (5) September 30, 2019, Actuarial Valuation Results; and (6) September 30, 2020, Actuarial Valuation Proposals. For * items, Board approval is required. Registered participants may obtain the most recent public agenda and other documentation by emailing the points of contact in the **FOR FURTHER INFORMATION CONTACT** section or on the Board's website.

Meeting Accessibility: Pursuant to FACA and 41 CFR 102–3.140, this meeting is open to the public.

Written Statements: In accordance with Section 10(a)(3) of the FACA and 41 CFR 102–3.105(j) and 102–3.140, interested persons may submit a written statement for consideration at any time, but should be received at least 10 business days prior to the meeting date so that the comments may be made available to the Board for their consideration prior to the meeting. Written statements should be submitted via email to Kathleen Ludwig at *Kathleen.A.Ludwig.civ@mail.mil,* by July 30, 2021, in either Adobe or Microsoft Word format. Please note that since the Board operates under the provisions of the FACA, as amended, all submitted comments and public presentations will be treated as public documents and will be made available for public inspection, including, but not limited to, being posted on the board website.

Dated: July 16, 2021.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2021–15562 Filed 7–21–21; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

[Docket ID: DoD–2021–OS–0049]

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 Department-wide system of records titled, ''Defense Reasonable Accommodation and Assistive Technology Records,'' DoD 0007. This system of records covers the DoD's maintenance of records about DoD civilian personnel and other individuals requesting or receiving reasonable accommodations or personal assistance services, and wounded, ill and injured Service Members on Active Duty requesting or receiving assistive technology solutions, hereafter referred to collectively as disability accommodation(s). The data includes information concerning the type(s) of accommodation requested and provided; nature of a requestor's condition; manner in which an accommodation, personal assistance service, or assistive technology solution assists a requestor; and acquisition or modification of equipment or assistive technology solutions, to include electronic devices. Additionally, the DoD is issuing a direct final rulemaking 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 August 23, 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 DoD is establishing the Defense Reasonable Accommodations and Assistive Technology Records, DoD 0007, as a DoD-wide Privacy Act system of records. A DoD-wide system of records notice (SORN) supports multiple DoD paper or electronic recordkeeping systems. DoD components maintaining the same kind of information on individuals for the same purpose maintain the system. The establishment of DoD-wide SORNs helps the 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.

This SORN describes reasonable accommodation and assistive technology records maintained by all component parts of the DoD, wherever they are maintained. The system covers both electronic and paper records and will be used by DoD components and offices to maintain records about accommodations based on disability requested by or provided to employees and applicants for employment and participants in DoD programs and activities. The Rehabilitation Act of 1973, as amended, generally requires Federal agencies to provide accommodations which enable individuals with disabilities to perform DoD employment and participate in DoD programs and activities, unless such accommodation would impose an undue burden. In addition, DoD's Computer/Electronic Accommodations Program (CAP) provides assistive (computer/electronic) technology solutions to individuals—including injured, wounded, or ill Service members—with hearing, vision, dexterity, cognitive, and/or communications impairments in the form of an accessible work environment. This also includes the request and delivery of personal assistance services for covered individuals. Such disability accommodations include: (1) Making existing facilities readily accessible to and usable by individuals with disabilities; (2) job restructuring, modification of work schedules or place of work, extended leave, telecommuting, or reassignment to a vacant position; and/or (3) acquisition or modification of equipment or devices, including computer software and hardware, appropriate adjustments or modifications of examinations, training materials or policies, the provision of qualified readers and/or interpreters, personal assistants, service animals, and other similar accommodations.

Additionally, the DoD is issuing a Direct Final Rulemaking to exempt this system of records from certain provisions of the Privacy Act elsewhere in today's issue of the **Federal Register**.

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.

The DoD notices for systems of records subject to the Privacy Act of 1974, as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy, Civil Liberties, and Transparency Division website at *https://dpcld.defense.gov.*

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 OMB and to Congress.

Dated: July 19, 2021.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

SYSTEM NAME AND NUMBER:

Defense Reasonable Accommodations and Assistive Technology Records, DoD 0007.

SECURITY CLASSIFICATION:

Unclassified and 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 MANAGERS:

The system managers are as follows:

A. Deputy Director, Computer/Electronic Accommodations Program, 4800 Mark Center Drive, Suite 05E22, Alexandria, VA 22350–3100, *cap@mail.mil.*

B. Deputy Assistant Secretary of the Army, Command & Leadership Policy and Programs Division, Equity and Inclusion Agency, 1000 Defense, Pentagon, Washington DC 20301–1100.

C. Disability Program Manager, Department of the Air Force, 1000 Defense, Pentagon, Washington DC 20301–1100, *usaf.pentagon.af-a1.mbx.a1q--workflow@mail.mil.*

D. Chief of Naval Personnel, Navy Inclusion and Diversity, 701 South Courthouse Road, (Bldg. 12, Rm. 4R140), Arlington, VA 22204.

E. Marine Corps Community Services (MCCS) Human Resources Program Manager, Business and Support Services Division (MRG), Headquarters, United States Marine Corps, 3044 Catlin Avenue, Quantico, VA 22134–5003 or by phone at 703–432–0433/0431.

To contact the system manager at the Combatant Commands or other Defense Agencies with oversight of the records, visit *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. 113, Secretary of Defense; 10 U.S.C. 136, Under Secretary of

Defense for Personnel and Readiness; 10 U.S.C. 1582, Assistive Technology, Assistive Technology Devices, and Assistive Technology Services; 29 U.S.C. 791, Employment of Individuals with Disabilities; 29 U.S.C. 794d, Electronic and Information Technology; Executive Order (E.O.) 13163, Increasing the Opportunities for Individuals with Disabilities to be Employed in the Federal Government; E.O. 13164, Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation; 29 CFR 1614.203, Rehabilitation Act; DoD Directive 1020.1, Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of Defense; and DoD Instruction 6025.22, Assistive Technology (AT) for Wounded, Ill, and Injured Service Members.

PURPOSE(S) OF THE SYSTEM:

To support the receipt, review, and evaluation of requests made to DoD for reasonable accommodation(s) (regardless of type of accommodation), personal assistance services, or assistive technology solutions (collectively referred to below as disability accommodation(s)), the outcome of such requests, and the implementation of approved accommodations and personal assistance services. To track performance in regard to the provision of disability accommodations by the Department and/or components.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals requesting disability accommodations sponsored or administered by the DoD, which includes DoD civilian employees (including non-appropriated fund employees and the DoD personnel employed or assigned outside of the contiguous United States hires, also known as local national employees); wounded, ill and injured Service Members on Active Duty who can be accommodated with assistive technology solutions; individuals participating in the DoD Computer/Electronic Accommodations Program (CAP) (including employees of CAP–partnering organizations and Federal entities); and other individuals affiliated with the DoD.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system include information regarding individuals requesting disability accommodations. Records include:

A. Personal and work related information, such as name, DoD ID number, status (applicant or current employee), address(es), phone, email, official duty telephone number, occupational series, grade level, worker compensation claims number, date request was initiated, supervisor's name and phone number.

B. Reason the accommodation is requested, including supporting documentation and related materials that substantiate the request for accommodation, type(s) of accommodation requested, type(s) of accommodation provided, whether medical or other appropriate supporting documentation was required to process the request, how the requested accommodation would assist in job performance, and the sources of technical assistance consulted in trying to identify possible accommodation, documents detailing the final decision for the requested accommodation, appeals, claims, and complaints.

C. Specific information regarding the condition which serves as the basis for the request, including but not limited to the characteristics of impairment, job function difficulties, current limitation(s), past accommodation(s), specific accommodation(s), permanent or temporary nature of condition(s), major life activities impacted by the condition, and duration of condition.

D. Documentation, including medical documentation, substantiating the need for the accommodation.

E. Information about assistive devices and technology evaluated or selected; prior assistive solutions provided to the individual; vendor information; and acquisition or modification data.

F. Records associated with personal assistance services provided to individuals with targeted disabilities assistance.

RECORD SOURCE CATEGORIES:

Records and information stored in this system of records are obtained from individuals requesting disability accommodations, rehabilitation counselors, healthcare providers, and DoD personnel who participate in the receipt, evaluation, review, decision and implementation of reasonable accommodation requests, such as hiring officials, human resource officials, supervisors and managers, reasonable accommodation officials, attorneys, and deciding officials.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Note: Medical information collected in support of the reasonable accommodation process is subject to confidentiality requirements. Agencies may share medical information within the DoD only on an as-needed basis for purposes of resolving and implementing requests for reasonable accommodations and assistive technology solutions. 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 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 National Archives and Records Administration for the purpose of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

F. 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.

G. 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.

H. 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.

I. To such recipients and under such circumstances and procedures as are mandated by Federal statute or treaty.

J. To an authorized appeal grievance examiner, formal complaints examiner, administrative judge, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an employee.

K. Disclosure of medical condition or history information to authorized government officials for the purpose of conducting an investigation into DoD's compliance with the Rehabilitation Act.

L. Disclosure of medical condition or history information to first aid and safety personnel in the event an employee's medical condition might require emergency treatment or special procedures.

M. To Federal agencies/entities participating in the DoD CAP to permit the agency to carry out its responsibilities under the program.

N. To commercial vendors to permit the vendor to identify and provide assistive technology solutions for individuals with disabilities.

O. To any agency, organization or person for the purposes of performing audit or oversight operations related to the operation of this system of records as authorized by law, but only information necessary and relevant to such audit or oversight function.

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:

Records may be retrieved by requester name, DoD ID number, office/workstation address, bureau/office, assigned case tracking number, and disability accommodation request date.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

General Records Schedule 2.3 provides that reasonable accommodation case files are retained for at least three years after employee separation from the agency or all appeals are concluded, whichever is later. If an individual files a claim of disability-related discrimination or an action is brought by the Equal Employment Opportunity Commission, all personnel records related to the claim will be retained until final disposition.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The 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 Common Access Card (CAC) authentication and password; Secret internet Protocol Router (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.

Custodians of medical records in this system of records must have the ability to protect this information from being accessed or accessible by others without a need to know. This may involve providing custodians with access to dedicated machines for copying, printing, or faxing; dedicated, secure file storage; and temporary or permanent workspaces where telephone conversations cannot be overheard by those without a need to know.

RECORD ACCESS PROCEDURES:

Individuals seeking access to their records should follow the procedures in 32 CFR part 310. Individuals should address written inquiries to the DoD office with oversight of the records. The public may identify the contact information for 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, current address, and email mail address. 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:

Individuals seeking to amend or correct the content of records about them should follow the procedures in 32 CFR part 310.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system of records should follow the instructions for Record Access Procedures above.

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); (d)(1), (2), (3), and (4); (e)(4)(G), (H), and (I); and (f) pursuant to 5 U.S.C. 552a(k)(1). 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 system(s) of records of which they were a part, and claims any additional exemptions set forth here. An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c), and (e), and published in 32 CFR part 310.

HISTORY:

None.

[FR Doc. 2021–15601 Filed 7–21–21; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2021–SCC–0074]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Impact Aid Electronic Data Collection (EDC) Program Questionnaire

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before August 23, 2021.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection request by selecting ''Department of Education'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment'' checkbox. Comments may also be sent to *ICDocketmgr@ed.gov.*

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Nicholas Di Taranto, 202–453–7457.

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: Impact Aid Electronic Data Collection (EDC) Program Questionnaire.

OMB Control Number: 1810–NEW.

Type of Review: A new information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 30.

Total Estimated Number of Annual Burden Hours: 8.

Abstract: The Impact Aid Program (IAP) in the Office of Elementary and Secondary Education (OESE) at the U.S. Department of Education (the Department) requests clearance for the Electronic Data Collection (EDC) Program Questionnaire. This is a new information collection request. As part of the Impact Aid 7003 application, Local Educational Agency's (LEA) are required to submit data concerning federally-connected children within their LEA. In the past LEAs have collected this information using paper forms, but more recently, and particularly this past year, there has been more interest from LEAs to collect this data electronically. The purpose of the EDC program is to reduce administrative burden and to create a set of best practices to assist other LEAs in the development their own electronic systems. The questionnaire will allow IAP staff to provide in depth technical assistance to LEAs and potentially increase efficiency and reduce costs associated with the Impact Aid data collection process. Prior to Impact Aid approval of an EDC program, the LEA must successfully demonstrate that their system complies with all requirements of the Impact Aid program: U.S.C. 7703 and 7705, and regulations at 34 CFR 222.39–35.

Dated: July 19, 2021.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2021–15609 Filed 7–21–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Case Number 2020–025, EERE–2017–BT–WAV–0041]

Energy Conservation Program: Extension of Waiver to AHT Cooling Systems GmbH and AHT Cooling Systems USA Inc. From the Department of Energy Commercial Refrigerator, Freezer, and Refrigerator-Freezer Test Procedure

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

ACTION: Notification of extension of waiver.

SUMMARY: The U.S. Department of Energy (''DOE'') is granting a waiver extension (Case No. 2020–025) to AHT Cooling Systems GmbH and AHT Cooling Systems USA Inc. (''AHT'') from specified portions of the DOE Commercial Refrigerators, Freezers, and Refrigerator-Freezers (collectively ''commercial refrigeration equipment'' or ''CRE'') test procedure for determining the energy consumption of the specified AHT CRE basic models. Under this extension, AHT is required to test and rate the specified basic models in accordance with the alternate test procedure specified in the Order.

DATES: The Extension of Waiver is effective on July 22, 2021. The Extension of Waiver will terminate upon the compliance date of any future amendment to the test procedure for CRE located in 10 CFR part 431, subpart C, appendix B that addresses the issues presented in this waiver. At such time, AHT must use the relevant test procedure for the specified basic models of CRE for any testing to demonstrate compliance with standards, and any other representations of energy use.

FOR FURTHER INFORMATION CONTACT:

Ms. Lucy deButts, 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. Email: *AS_Waiver_Requests@ee.doe.gov.*

Mr. Pete Cochran, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–33, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585–0103. Telephone: (202) 586–9496. Email: *peter.cochran@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: In accordance with Title 10 of the Code of Federal Regulations (10 CFR 431.401(g)), DOE gives notice of the issuance of an Extension of Waiver as set forth below. The Extension of Waiver extends the Decision and Order granted to AHT on October 30, 2018 (83 FR 54581, ''October 2018 Decision and Order'') to include the AHT basic models specified in this waiver, as requested by AHT on November 12, 2020.[1] AHT must test and rate the specifically identified CRE basic models in accordance with the alternate test procedure specified in the October 2018 Decision and Order. AHT's representations concerning the energy consumption of the specified basic models must be based on testing according to the provisions and restrictions in the alternate test procedure set forth in the October 2018 Decision and Order, and the representations must fairly disclose the test results. Distributors, retailers, and private labelers are held to the same requirements when making representations regarding the energy consumption of this equipment. (42 U.S.C. 6314(d))

DOE makes decisions on waiver extensions for only those basic models specifically set out in the request, not future models that may be manufactured by the petitioner. AHT may submit a new or amended petition for waiver and request for grant of interim waiver, as appropriate, for additional basic models of CRE. Alternatively, if appropriate, AHT may request that DOE extend the scope of a waiver to include additional basic models employing the same technology as the basic models set forth in the original petition consistent with 10 CFR 431.401(g).

Case Number 2020–025

Extension of Waiver

I. Background and Authority

The Energy Policy and Conservation Act, as amended (''EPCA''),[2] 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[3] of EPCA established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency for certain types of industrial equipment. This equipment includes Commercial Refrigerators, Freezers, and Refrigerator-Freezers (collectively ''commercial refrigeration equipment'' or ''CRE''), the focus of this document. (42 U.S.C. 6311(1)(E))

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), energy conservation standards (42 U.S.C. 6313), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), and the authority to require information and reports from manufacturers (42 U.S.C. 6316).

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(a); 42 U.S.C. 6295(s)), and (2) making representations about the efficiency of that equipment (42 U.S.C. 6314(d)). Similarly, DOE must use these test procedures to determine whether the equipment complies with relevant standards promulgated under EPCA. (42 U.S.C. 6316(a); 42 U.S.C. 6295(s))

Under 42 U.S.C. 6314, EPCA sets forth the criteria and procedures DOE is required to 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 which reflect the energy efficiency, energy use or estimated annual operating cost 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)) The test procedure for CRE is contained in 10 CFR part 431, subpart C, appendix B—Amended Uniform Test Method for the Measurement of Energy Consumption of Commercial Refrigerators, Freezers, and Refrigerator-Freezers (''Appendix B'').

Any interested person may submit a petition for waiver from DOE's test procedure requirements. 10 CFR 431.401(a)(1). DOE will grant a waiver from the test procedure requirements if DOE determines either that the basic model for which the waiver was requested contains a design characteristic that prevents testing of the basic model according to the prescribed test procedures, or that the prescribed test procedures evaluate the basic model in a manner so unrepresentative of its true energy or water consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 431.401(f)(2). DOE may grant the waiver subject to conditions, including adherence to alternate test procedures. *Id.*

A petitioner may request that DOE extend the scope of a waiver or an interim waiver to include additional basic models employing the same technology as the basic model(s) set forth in the original petition. 10 CFR 431.401(g). DOE will publish any such extension in the **Federal Register**. *Id.*

II. Request for an Extension of Waiver: Assertions and Determinations

On October 30, 2018, DOE issued a Decision and Order in Case Number 2017–007 granting AHT a waiver to test its AHT basic models specified in that Order using an alternate test procedure. 83 FR 54581 (''October 2018 Decision and Order''). AHT stated that the basic models listed in the petition do not have a defrost cycle when operated in freezer mode, and therefore cannot be tested under Appendix B, which references defrosts for the start of the test period and door-opening period.

Based on its review, including the information provided by AHT, DOE

[1] AHT's request is available at *https://www.regulations.gov/docket?D=EERE-2017-BT-WAV-0041*. The specified basic models are: IBIZA 100 (U) NAM–F, IBIZA 145 (U) NAM–F, IBIZA 210 (U) NAM–F, MALTA 145 (U) NAM–F, MALTA 185 (U) NAM–F, MANHATTAN XL 175 (U) NAM–F, MANHATTAN XL 210 (U) NAM–F, MIAMI 145 (U) NAM–F, MIAMI XL EC 185 (U) NAM–F, MIAMI 210 (U) NAM–F, MIAMI 250 (U) NAM–F, PARIS 145 (U) NAM–F, PARIS EC 185 (U) NAM–F, PARIS 210 (U) NAM–F, PARIS 250 (U) NAM–F, SYDNEY 175 (U) NAM–F, SYDNEY 210 (U) NAM–F, SYDNEY EC 213 (U) NAM–F, SYDNEY EC 223 (U) NAM–F, SYDNEY 230 (U) NAM–F, SYDNEY 250 (U) NAM–F, SYDNEY XL 175 (U) NAM–F, SYDNEY XL 210 (U) NAM–F, SYDNEY XL 250 (U) NAM–F, MONTREAL SLIM 175 (U) NAM–F, MONTREAL SLIM 210 (U) NAM–F, MONTREAL SLIM 250 (U) NAM–F, MONTREAL SLIM PUSH 175 (U) NAM F, MONTREAL SLIM PUSH 210 (U) NAM–F, MONTREAL SLIM PUSH 250 (U) NAM–F, MONTREAL XL 175 (U) NAM–F, MONTREAL XL 210 (U) NAM–F, MONTREAL XL 250 (U) NAM–F, MONTREAL XL EC 185 (U) NAM–F, MONTREAL XL EC 210 (U) NAM–F, MONTREAL XL EC PUSH 185 (U) NAM–F, MONTREAL XL EC PUSH 210 (U) NAM–F, MONTREAL XL PUSH 175 (U) NAM–F, MONTREAL XL PUSH 210 (U) NAM–F, and MONTREAL XL PUSH 250 (U) NAM–F.

[2] 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).

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

determined that the CRE basic models specified in the October 2018 Decision and Order contain a design characteristic that prevents testing the basic models according to the prescribed test procedure at Appendix B. 83 FR 54581, 54582. The October 2018 Decision and Order specifies that AHT must test and rate the subject basic models according to Appendix B, but with the test period starting after the unit achieves steady state conditions and the door-opening period starting 3 hours after the start of the test period. *Id* at 83 FR 54583.

On November 12, 2020, AHT submitted a request to extend the scope of the waiver, Case Number 2020–025, to specified additional AHT basic models.[4] AHT stated that these basic models have the same characteristics as the models covered by the existing waiver.

DOE has reviewed AHT's waiver extension request and determined that the CRE basic models identified in AHT's request incorporate the same design characteristics as those basic models covered under the waiver in Case Number 2017–007 (*i.e.,* lack of defrost cycle when operated in freezer mode), which prevents testing the basic models according to the prescribed test procedure at Appendix B. DOE also determined that the alternate procedure specified in Case Number 2017–007 will allow for the accurate measurement of the energy use of the CRE basic models identified by AHT in its waiver extension request, while alleviating the testing problems associated with AHT's implementation of DOE's applicable commercial refrigeration equipment test procedure for the specified basic models.

[4] The specified basic models are: IBIZA 100 (U) NAM–F, IBIZA 145 (U) NAM–F, IBIZA 210 (U) NAM–F, MALTA 145 (U) NAM–F, MALTA 185 (U) NAM–F, MANHATTAN XL 175 (U) NAM–F, MANHATTAN XL 210 (U) NAM–F, MIAMI 145 (U) NAM–F, MIAMI XL EC 185 (U) NAM–F, MIAMI 210 (U) NAM–F, MIAMI 250 (U) NAM–F, PARIS 145 (U) NAM–F, PARIS EC 185 (U) NAM–F, PARIS 210 (U) NAM–F, PARIS 250 (U) NAM–F, SYDNEY 175 (U) NAM–F, SYDNEY 210 (U) NAM–F, SYDNEY EC 213 (U) NAM–F, SYDNEY EC 223 (U) NAM–F, SYDNEY 230 (U) NAM–F, SYDNEY 250 (U) NAM–F, SYDNEY XL 175 (U) NAM–F, SYDNEY XL 210 (U) NAM–F, SYDNEY XL 250 (U) NAM–F, MONTREAL SLIM 175 (U) NAM–F, MONTREAL SLIM 210 (U) NAM–F, MONTREAL SLIM 250 (U) NAM–F, MONTREAL SLIM PUSH 175 (U) NAM F, MONTREAL SLIM PUSH 210 (U) NAM–F, MONTREAL SLIM PUSH 250 (U) NAM–F, MONTREAL XL 175 (U) NAM–F, MONTREAL XL 210 (U) NAM–F, MONTREAL XL 250 (U) NAM–F, MONTREAL XL EC 185 (U) NAM–F, MONTREAL XL EC 210 (U) NAM–F, MONTREAL XL EC PUSH 185 (U) NAM–F, MONTREAL XL EC PUSH 210 (U) NAM–F, MONTREAL XL PUSH 175 (U) NAM–F, MONTREAL XL PUSH 210 (U) NAM–F, and MONTREAL XL PUSH 250 (U) NAM–F.

III. Order

After careful consideration of all the material submitted by AHT in this matter, it is *ordered* that:

(1) AHT must, as of the date of publication of this Extension of Waiver in the **Federal Register**, test and rate the following AHT brand commercial freezer basic models (which do not have defrost cycle capability when operated in freezer mode) with the alternate test procedure as set forth in paragraph (2):

Brand	Basic model
AHT ..	IBIZA 100 (U) NAM–F.
AHT ..	IBIZA 145 (U) NAM–F.
AHT ..	IBIZA 210 (U) NAM–F.
AHT ..	MALTA 145 (U) NAM–F.
AHT ..	MALTA 185 (U) NAM–F.
AHT ..	MANHATTAN XL 175 (U) NAM–F.
AHT ..	MANHATTAN XL 210 (U) NAM–F.
AHT ..	MIAMI 145 (U) NAM–F.
AHT ..	MIAMI XL EC 185 (U) NAM–F.
AHT ..	MIAMI 210 (U) NAM–F.
AHT ..	MIAMI 250 (U) NAM–F.
AHT ..	PARIS 145 (U) NAM–F.
AHT ..	PARIS EC 185 (U) NAM–F.
AHT ..	PARIS 210 (U) NAM–F.
AHT ..	PARIS 250 (U) NAM–F.
AHT ..	SYDNEY 175 (U) NAM–F.
AHT ..	SYDNEY 210 (U) NAM–F.
AHT ..	SYDNEY EC 213 (U) NAM–F.
AHT ..	SYDNEY EC 223 (U) NAM–F.
AHT ..	SYDNEY 230 (U) NAM–F.
AHT ..	SYDNEY 250 (U) NAM–F.
AHT ..	SYDNEY XL 175 (U) NAM–F.
AHT ..	SYDNEY XL 210 (U) NAM–F.
AHT ..	SYDNEY XL 250 (U) NAM–F.
AHT ..	MONTREAL SLIM 175 (U) NAM–F.
AHT ..	MONTREAL SLIM 210 (U) NAM–F.
AHT ..	MONTREAL SLIM 250 (U) NAM–F.
AHT ..	MONTREAL SLIM PUSH 175 (U) NAM F.
AHT ..	MONTREAL SLIM PUSH 210 (U) NAM–F.
AHT ..	MONTREAL SLIM PUSH 250 (U) NAM–F.
AHT ..	MONTREAL XL 175 (U) NAM–F.
AHT ..	MONTREAL XL 210 (U) NAM–F.
AHT ..	MONTREAL XL 250 (U) NAM–F.
AHT ..	MONTREAL XL EC 185 (U) NAM–F.
AHT ..	MONTREAL XL EC 210 (U) NAM–F.
AHT ..	MONTREAL XL EC PUSH 185 (U) NAM–F.
AHT ..	MONTREAL XL EC PUSH 210 (U) NAM–F.
AHT ..	MONTREAL XL PUSH 175 (U) NAM–F.
AHT ..	MONTREAL XL PUSH 210 (U) NAM–F.
AHT ..	MONTREAL XL PUSH 250 (U) NAM–F.

(2) The alternate test procedure for the AHT basic models referenced in paragraph (1) of this Order is the test procedure for CRE prescribed by DOE at 10 CFR part 431, subpart C, appendix B, except that the test period shall be selected as detailed. All other requirements of Appendix B and DOE's regulations remain applicable.

The test shall begin when steady state conditions occur (per ASHRAE Standard 72– 2005, Section 3, definitions, which defines steady state as ''the condition where the average temperature of all test simulators changes less than 0.2 °C (0.4 °F) from one 24-hour period or refrigeration cycle to the next''). Additionally, the door-opening requirements shall be as defined in ASHRAE 72–2005 Section 7.2, with the exception that the eight-hour period of door openings shall begin three hours after the start of the test. Ambient temperature, test simulator temperatures, and all other data shall be recorded at three-minute intervals beginning at the start of the test and throughout the 24-hour testing period.

(3) *Representations.* AHT may not make representations about the energy use of a basic model listed in paragraph (1) of this Order for compliance, marketing, or other purposes unless that basic model has been tested in accordance with the provisions of paragraph (2) of this Order and such representations fairly disclose the results of such testing.

(4) This Extension of Waiver shall remain in effect according to the provisions of 10 CFR 431.401.

(5) This Extension of Waiver is issued on the condition that the statements, representations, and documentation provided by AHT are valid. If AHT makes any modifications to the controls or capabilities (*e.g.,* adding automatic defrost to freezer mode) of these basic models, the waiver will no longer be valid and AHT will either be required to use the current Federal test method or submit a new application for a test procedure waiver. DOE may rescind or modify this Extension of Waiver (and/or the underlying Order issued in Case Number 2017–007) at any time if it determines the factual basis underlying the petition for extension of waiver (and/or the underlying Order issued in Case Number 2017–007) is incorrect, or the results from the alternate test procedure are unrepresentative of a basic model's true energy consumption characteristics. 10 CFR 431.401(k)(1). Likewise, AHT may request that DOE rescind or modify the Extension of Waiver (and/or the underlying Order issued in Case Number 2017–007) if AHT discovers an error in the information provided to DOE as part of its petition, determines that the waiver is no longer needed, or for other appropriate reasons. 10 CFR 431.401(k)(2).

(6) AHT remains obligated to fulfill all applicable requirements set forth at 10 CFR part 429.

Signing Authority

This document of the Department of Energy was signed on July 17, 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 July 19, 2021.

Treena V. Garrett,

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

[FR Doc. 2021–15578 Filed 7–21–21; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. PP–485]

Application for Presidential Permit; North Star Electric Cooperative

AGENCY: Office of Electricity, Department of Energy.

ACTION: Notice of application.

SUMMARY: North Star Electric Cooperative has applied for a Presidential permit to construct, operate, maintain, and connect an electric transmission line across the United States border with Canada.

DATES: Comments or motions to intervene must be submitted on or before August 23, 2021.

ADDRESSES: Comments, protests, motions to intervene, or request for more information should be addressed by electronic email to *Electricity.Exports@hq.doe.gov,* or by facsimile to (202) 586–8008.

FOR FURTHER INFORMATION CONTACT: Christopher Lawrence (Program Office) at 202–586–5260 or via electronic mail at *Christopher.Lawrence@hq.doe.gov;* Christopher Drake (Program Attorney) at 202–586–2919 or via electronic mail at *Christopher.Drake@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: The construction, operation, maintenance, and connection of facilities at the international border of the United States for the transmission of electric energy between the United States and a foreign country is prohibited in the absence of a Presidential permit issued pursuant to Executive Order (E.O.) 10485, as amended by E.O. 12038.[1]

On February 19, 2021 North Star Electric Cooperative, Incorporated (Applicant or North Star) filed an application (Application or App.) with the Office of Electricity of the Department of Energy (DOE) for a ''Presidential Permit authorizing the continued connection, operation, and maintenance of facilities for the transmission of electric energy at the international border between the United States and Canada.'' App. at 1. The Applicant states that it ''is a distribution cooperative member-owner of Minnkota Power Cooperative (''Minnkota''), a generation and transmission cooperative that provides wholesale power requirements to North Star and its other member-owner cooperatives.'' *Id.* The Applicant's principal place of business is in Baudette, Minnesota. *Id.* at 4.

North Star states that it ''currently serves 26 residential customers in Canada,'' and that the facilities for which it seeks a Presidential permit ''comprise low-voltage (7,200 and 14,400 volts) lines running from Minnkota's International Falls substation in northern Minnesota approximately 10.35 miles to the border'' noting that ''the actual length of the line . . . is approximately 14.16 miles'' in the United States. *Id.* at 2 & n.2. North Star adds that it was unaware that a Presidential permit was required for its facilities, and that the Application aims to bring the cooperative into compliance with legal requirements. *See it.* at 3.

The facilities for which North Star seeks a permit from Minnkota's International Falls Substation northeast to the international border. *See* App. at 5. Specifically, beginning at the substation, the facilities consist of ''4.1 miles of 14,000 volt three-phase underground lines, then 2.5 miles of 14,000 volt three-chase overhead line, then 1.0 miles of 7,200 volt three-phase overhead line, then 4.0 miles of 7,200 volt three-phase underwater line to an oil circuit recloser (''OCR'') breaker on the U.S. mainland.'' *Id.* Beginning at the OCR breaker, ''one single-circuit line continues north within the U.S. to serve additional customers located in the U.S. and the majority of the customers located in Canada, and a tap on that line heads east for about 1.2 miles toward the U.S./Canada border to serve the remaining two customers in Canadian waters.'' *Id.* These facilities include ''a 0.15 mile stretch of 7,200 volt three-phase overhead line, then 0.14 miles of 7,200 volt singlephase overhead, and then 2.27 miles of 7,200 volt single-phase underwater line to the U.S./Canada border, which is just beyond Curtis Island.'' *Id.* The facilities include ''two single-circuit lines'' crossing the border—''[t]he first heads north from the Curtis Island . . . and feeds the majority of the customer accounts in Canadian waters,'' and ''[t]he second line heads east of Curtis Island and feeds the remaining two customer accounts in Canadian waters.'' *Id.* at 6.

North Star also proposes to upgrade some of its existing cross-border facilities, and requests that any permit 'include permission to make appropriate upgrades to the [f]acilities to enable North Star to continue to reliably serve the customers in [Canada].'' App. at 3. The Applicant notes that it ''does not expect to construct any additional cross-border facilities (*i.e.,* new crossing points). *Id.* at 3 n.4

Since the restructuring of the electric industry began, resulting in the introduction of different types of competitive entities into the marketplace, DOE has consistently expressed its policy that cross-border trade in electric energy should be subject to the same principles of comparable open access and non-discrimination that apply to transmission in interstate commerce. DOE has stated that policy in export authorizations granted to entities requesting authority to export over international transmission or distribution facilities. Specifically, DOE expects transmitting utilities owning border facilities to provide access across the border in accordance with the principles of comparable open access and non-discrimination contained in the Federal Power Act and articulated in Federal Energy Regulatory Commission (FERC) Order No. 888 (Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; FERC Stats. & Regs. ¶ 31,036 (1996)), as amended.

Procedural Matters: Any person may comment on this application by filing such comment at the address provided above. Any person seeking to become a party to this proceeding must file a motion to intervene at the address provided above in accordance with Rule 214 of FERC's Rules of Practice and Procedure (18 CFR 385.214). Two copies of each comment or motion to intervene should be filed with DOE on or before the date listed above.

Additional copies of such motions to intervene also should be filed directly with: Daniel E. Frank, 700 Sixth St. NW, Suite 700, Washington, DC 20001;

[1] The permit application is for the connection of facilities to be operated at distribution-level voltage. Note that DOE regulations require ''[a]ny person, firm, co-operative, corporation or other entity who operates an electric power transmission or distribution facility crossing the border of the United States, for the transmission of electric energy between the United States and a foreign country,'' to hold a Presidential permit for the facility. 10 CFR 205.320(a).

DanielFrank@eversheds-sutherland.com.

Before a Presidential permit may be issued or amended, DOE must determine that the proposed action is in the public interest. In making that determination, DOE may consider the environmental impacts of the proposed project, determine the project's impact on electric reliability by ascertaining whether the proposed project would adversely affect the operation of the U.S. electric power supply system under normal and contingency conditions, and weigh any other factors that it may also deem relevant to the public interest. DOE must also obtain favorable recommendations of the Secretary of State and the Secretary of Defense before taking final action on a Presidential permit application.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, or by accessing the program website at *https://energy.gov/oe/services/electricity-policy-coordination-and-implementation/international-electricity-regulatio-2.*

Signed in Washington, DC, on July 19, 2021.

Christopher Lawrence,

Management and Program Analyst, Energy Resilience Division, Office of Electricity.

[FR Doc. 2021–15599 Filed 7–21–21; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Case Number 2021–005, EERE–2020–BT–WAV–0035]

Energy Conservation Program: Extension of Waiver to Ningbo FOTILE Kitchen Ware Co. Ltd. From the Department of Energy Dishwashers Test Procedure

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

ACTION: Notification of extension of waiver.

SUMMARY: The U.S. Department of Energy (''DOE'') is granting a waiver extension (Case No. 2021–005) to Ningbo FOTILE Kitchen Ware Co. Ltd (FOTILE) from specified portions of the DOE dishwashers test procedure for determining the energy and water consumption of the specified FOTILE dishwasher basic models. Under this extension, FOTILE is required to test and rate the specified basic models in accordance with the alternate test procedure specified in the waiver.

DATES: The Extension of Waiver is effective on July 22, 2021. The Extension of Waiver will terminate upon the compliance date of any future amendment to the test procedure for dishwasher located in 10 CFR part 430, subpart B, appendix C1 that addresses the issues presented in this waiver. At such time, FOTILE must use the relevant test procedure for the specified basic models of dishwashers for any testing to demonstrate compliance with standards, and any other representations of energy use.

FOR FURTHER INFORMATION CONTACT:

Ms. Lucy deButts, 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. Email: *AS_Waiver_Requests@ee.doe.gov.*

Ms. Amelia Whiting, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–33, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585–0103. Telephone: (202) 586–2588. Email: *Amelia.Whiting@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: In accordance with title 10 of the Code of Federal Regulations (10 CFR 430.27(g)), DOE gives notification of the issuance of an Extension of Waiver as set forth below. The Extension of Waiver extends the waiver granted to FOTILE in a Decision and Order issued on May 17, 2021 (86 FR 26712, ''May 2021 Decision and Order'') to include the FOTILE basic models specified in this waiver extension, as requested by FOTILE on May 18, 2021.[1] FOTILE must test and rate the specifically identified dishwasher basic models in accordance with the alternate test procedure specified in the May 2021 Decision and Order. FOTILE's representations concerning the energy and water consumption of the specified basic models must be based on testing according to the provisions and restrictions in the alternate test procedure set forth in the May 2021 Decision and Order, and the representations must fairly disclose the test results. Distributors, retailers, and private labelers are held to the same requirements when making representations regarding the energy and water consumption of these products. (42 U.S.C. 6393(c))

DOE makes decisions on waiver extensions for only those basic models specifically set out in the request, not future models that may be manufactured by the petitioner. FOTILE may submit a new or amended petition for waiver and request for grant of interim waiver, as appropriate, for additional basic models of dishwashers. Alternatively, if appropriate, FOTILE may request that DOE extend the scope of a waiver or interim waiver to include additional basic models employing the same technology as the basic models set forth in the original petition consistent with 10 CFR 430.27(g).

Case Number 2020–020

Extension of Waiver

I. Background and 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 EPCA, Public Law 94–163 (42 U.S.C. 6291–6309, as codified), established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency for certain types of consumer products. These products include dishwashers, the focus of this document. (42 U.S.C. 6292(a)(6))

Under EPCA, the energy conservation program 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. 6291), energy conservation standards (42 U.S.C. 6295), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

The Federal testing requirements consist of test procedures that manufacturers of covered products must use as the basis for: (1) Certifying to DOE that their products comply with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6295(s)), and (2) making representations about the efficiency of that product (42 U.S.C. 6293(c)). Similarly, DOE must use these test procedures to determine whether the product complies with relevant standards promulgated under EPCA. (42 U.S.C. 6295(s))

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE is required to follow when prescribing or amending test procedures for covered

[1] FOTILE's request is available at *https://www.regulations.gov/docket/EERE-2020-BT-WAV-0035-0005.* The specified basic models are: SD2F–P3 and SD2F–P3L.

[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 as Part A.

products. EPCA requires that any test procedures prescribed or amended under this section must be reasonably designed to produce test results which reflect the energy efficiency, energy use or estimated annual operating cost of covered product during a representative average use cycle and requires that test procedures not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for dishwashers is contained in 10 CFR part 430, subpart B, appendix C1—*Uniform Test Method for the Measurement of Energy Consumption Dishwashers* (''Appendix C1'').

Any interested person may submit a petition for waiver from DOE's test procedure requirements. 10 CFR 430.27(a)(1). DOE will grant a waiver from the test procedure requirements if DOE determines either that the basic model for which the waiver was requested contains a design characteristic that prevents testing of the basic model according to the prescribed test procedures, or that the prescribed test procedures evaluate the basic model in a manner so unrepresentative of its true energy or water consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(f)(2). DOE may grant the waiver subject to conditions, including adherence to alternate test procedures. *Id.*

A petitioner may request that DOE extend the scope of a waiver or an interim waiver to include additional basic models employing the same technology as the basic model(s) set forth in the original petition. 10 CFR 430.27(g). DOE will publish any such extension in the **Federal Register.** *Id.*

II. Request for an Extension of Waiver: Assertions and Determinations

On May 17, 2021, DOE issued a Decision and Order in Case Number 2020–020 granting FOTILE a waiver to test its basic models specified in that waiver using an alternate test procedure. 86 FR 26712 (''May 2021 Decision and Order''). In the October 15, 2020 petition for waiver, FOTILE stated that the subject dishwasher models, which FOTILE described as ''in-sink'' compact dishwashers, do not have a main detergent compartment and have different installation instructions than under-counter or under-sink dishwashers. FOTILE requested that DOE waive sections of the dishwasher test procedure pertaining to installation requirements and placement of the detergent. FOTILE suggested an alternate test procedure to install the dishwasher basic models from the top of a rectangular enclosure (as opposed to the front) and to specify placement of the detergent directly into the dishwasher chamber. 86 FR 26712, 26713.

Based on its review, including the information provided by FOTILE, DOE determined that the current test procedure at Appendix C1 would evaluate the dishwasher basic models specified in the May 2021 Decision and Order in a manner so unrepresentative of their true energy and water consumption characteristics as to provide materially inaccurate comparative data. 86 FR 26712, 26713–26714. DOE concluded that the alternate test procedure suggested by the petitioner, with modifications, will allow for the accurate measurement of the energy and water use of these products and alleviates the problems with testing and representation of dishwashers. 86 FR 26712, 26714. The May 2021 Decision and Order specifies that FOTILE must test and rate the subject basic models such that the compact in-sink dishwasher with a combination sink must be installed in a rectangular enclosure constructed of nominal 0.374 inch (9.5 mm) plywood painted black. 86 FR 26712, 26714–26715. The enclosure must consist of a front, a bottom, a back, and two sides and the dishwasher must be installed from the top and mounted to the edges of the enclosure. 86 FR 26712, 26715. The front, back, and sides of the enclosure must be brought into the closest contact with the appliance that the configuration of the dishwasher will allow. *Id.* The height of the rectangular test enclosure must be the height that provides the minimum clearances as specified in the manufacturer's operation manual. *Id.* The dishwasher must be installed from the top and mounted to the edges of the enclosure. *Id.* Additionally, for compact in-sink dishwashers with a combination sink that have neither prewash program nor a main detergent compartment, the amount of main wash detergent (in grams) to be added directly into the washing chamber should be determined according to section 2.10.2 of Appendix C1. *Id.*

On May 18, 2021, FOTILE submitted a request to extend the scope of the waiver, Case Number 2021–005, to the basic models SD2F–P3 and SD2F–P3L. FOTILE stated that these basic models have the same characteristics that prevent testing of the product according to the prescribed DOE test procedure as the models covered by the existing waiver.

DOE has reviewed FOTILE's waiver extension request and determined that the dishwasher basic models identified in FOTILE's request incorporate the same design characteristics as those basic models covered under the waiver in Case Number 2020–020 such that the test procedure evaluates these basic models in a manner that is unrepresentative of their actual energy and water use. Specifically, the models identified in FOTILE's waiver extension request do not have a main detergent compartment and cannot be installed using the current installation instructions in Appendix C1. *See* 86 FR 26712, 26713. DOE also determined that the alternate procedure specified in Case Number 2020–020 will allow for the accurate measurement of the energy and water use of the dishwasher basic models identified by FOTILE in its waiver extension request.

III. Order

After careful consideration of all the material submitted by FOTILE in this matter, it is *ordered* that:

(1) FOTILE must, as of the date of publication of this Extension of Waiver in the **Federal Register**, test and rate the following FOTILE brand dishwasher basic models with the alternate test procedure as set forth in paragraph (2):

Brand	Basic model
FOTILE	SD2F–P3.
FOTILE	SD2F–P3L.

(2) The alternate test procedure for the FOTILE basic models referenced in paragraph (1) of this Order is the test procedure for dishwashers prescribed by DOE at 10 CFR part 430, subpart B, appendix C1, with the modifications provided below. All other requirements of Appendix C1 and DOE's regulations remain applicable.

In section 2.1, Installation, add at the end of the section:

A compact in-sink dishwasher with a combination sink must be installed in a rectangular enclosure constructed of nominal 0.374 inch (9.5 mm) plywood painted black. The enclosure must consist of a front, a bottom, a back, and two sides. The front, back, and sides of the enclosure must be brought into the closest contact with the appliance that the configuration of the dishwasher will allow. The height of the rectangular test enclosure must be the height that provides the minimum clearances as specified in the manufacturer's operation manual. The dishwasher must be installed from the top and mounted to the edges of the enclosure.

In section 2.10, Detergent, add at the end of the section:

For compact in-sink dishwashers with a combination sink that have neither

prewash program nor a main detergent compartment, determine the amount of main wash detergent (in grams) to be added directly into the washing chamber according to section 2.10.2 of Appendix C1.

(3) *Representations.* FOTILE may not make representations about the energy and water use of a basic model listed in paragraph (1) of this Order for compliance, marketing, or other purposes unless that basic model has been tested in accordance with the provisions of paragraph (2) of this Order and such representations fairly disclose the results of such testing.

(4) This Extension of Waiver shall remain in effect according to the provisions of 10 CFR 430.27.

(5) This Extension of Waiver is issued on the condition that the statements, representations, and documentation provided by FOTILE are valid. If FOTILE makes any modifications to the controls or configurations of these basic models, the waiver will no longer be valid and FOTILE will either be required to use the current Federal test method or submit a new application for a test procedure waiver. DOE may rescind or modify this Extension of Waiver (and/or the underlying Order issued in Case Number 2020–020) at any time if it determines the factual basis underlying the petition for extension of waiver (and/or the underlying Order issued in Case Number 2020–020) is incorrect, or the results from the alternate test procedure are unrepresentative of a basic model's true energy consumption characteristics. 10 CFR 430.27(k)(1). Likewise, FOTILE may request that DOE rescind or modify the Extension of Waiver (and/or the underlying Order issued in Case Number 2020–020) if FOTILE discovers an error in the information provided to DOE as part of its petition, determines that the waiver is no longer needed, or for other appropriate reasons. 10 CFR 430.27(k)(2).

(6) FOTILE remains obligated to fulfill all applicable requirements set forth at 10 CFR part 429.

DOE makes decisions on waiver extensions, for only those basic models specifically set out in the request, not future models that may be manufactured by the petitioner. FOTILE may submit a new or amended petition for waiver and request for grant of interim waiver, as appropriate, for additional basic models of dishwashers. Alternatively, if appropriate, FOTILE may request that DOE extend the scope of a waiver or interim waiver to include additional basic models employing the same technology as the basic models set forth in the original petition consistent with 10 CFR 430.27(g).

Signing Authority

This document of the Department of Energy was signed on July 17, 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 July 19, 2021.

Treena V. Garrett,

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

[FR Doc. 2021–15577 Filed 7–21–21; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–489]

Application To Export Electric Energy; North Star Electric Cooperative

AGENCY: Office of Electricity, Department of Energy.

ACTION: Notice of application.

SUMMARY: North Star Electric Cooperative (Applicant or North Star) has applied for authorization to transmit electric energy from the United States to Canada pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before August 23, 2021.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed by electronic mail to *Electricity.Exports@hq.doe.gov,* or by facsimile to (202) 586–8008.

FOR FURTHER INFORMATION CONTACT: Matt Aronoff, 202–586–5863, *matthew.aronoff@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: The Department of Energy (DOE) regulates exports of electricity from the United States to a foreign country, pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b) and 42 U.S.C. 7172(f)). Such exports require authorization under section 202(e) of the Federal Power Act (16 U.S.C. 824a(e)).

On June 6, 2021, North Star filed an application with DOE (Application or App.) to transmit electric energy from the United States to Canada for a term of five years. North Star states that it ''is a cooperative corporation organized under Minnesota state law with its principal place of business [in] Baudette, MN.'' App. at 4. North Star also describes itself as ''a distribution cooperative member-owner of Minnkota Power Cooperative ('Minnkota'), a generation and transmission . . . cooperative that provides wholesale power requirements to North Star and its other member-owned cooperatives.'' *Id.* at 1–2. North Star further represents that ''because [it] is a cooperative, [its] customers are its member-owners.'' *Id.* at 1.

North Star states that it ''does not own any of its own power generation facilities itself, but instead purchases all of its power supply requirements (to serve its retail customers) from Minnkota.'' App. at 2.

At the time of its application, North Star served residential customers in Canada ''via two radial, low-voltage feeds that cross the U.S.-Canadian border and extend ten miles from Minnkota's International Falls Substation in northern Minnesota to the border and then into Canada.'' App. at 2. It describes these customers as ''in Canadian waters.'' *Id.* North Star has applied for an export authorization ''so that it may continue to serve its existing customers in Canada and to serve any future customers that may be tapped off the described radial lines,'' including three new customers—also in Canadian waters—who have requested service. *Id.* at 3. North Star contends that its proposed exports ''will not impair the sufficiency of electric supply within the United States'' and will not ''impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the Federal Energy Regulatory Commission.'' *Id.*

The Applicant represents that the existing cross-border distribution facilities to be utilized by the Applicant have been in operation for at least 50 years. *See* App. at 7. North Star has exported power over these distribution facilities without holding the required export authorization under section 202(e) of the Federal Power Act, and ''regrets that it did not obtain this required authorization earlier.'' *Id.* at 3. The Applicant states that ''in July 2018, after being approached by three

prospective customers about extending retail service to new customer[s] in Canadian waters, North Star discovered it did not have the necessary authorization'' to export power to customers in Canada. *Id.* at 2–3. North Star, via its power supplier, found that it did not hold a required Presidential Permit. *See id.* at 3. North Star has represented that it ''was not aware of the requirement to have either a Presidential permit or export authorization.'' *Id.* North Star has further represented that ''[a]s soon as it became aware of [the] requirements, [it] contacted counsel to determine appropriate remedial actions, including filing the necessary applications and obtaining the required permit(s) and authorization.'' *Id.* Accordingly, the Applicant has submitted this application for export and, concurrently, submitted an application for a Presidential Permit.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the Application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at the above address in accordance with FERC Rule 214 (18 CFR 385.214).

Comments and other filings concerning North Star's application to export electric energy to Canada should be clearly marked with OE Docket No. EA–489. Additional copies are to be provided directly to Daniel E. Frank, 700 Sixth St. NW, Suite 700, Washington, DC 20001–3980, *danielfrank@eversheds-sutherland.com.*

A final decision will be made on the requested authorization after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE evaluates whether the proposed action will have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

Copies of the Application will be made available, upon request, by accessing the program website at *http://energy.gov/node/11845,* or by emailing Matt Aronoff at *matthew.aronoff@hq.doe.gov.*

Signed in Washington, DC, on July 19, 2021.

Christopher Lawrence,

Management and Program Analyst, Energy Resilience Division, Office of Electricity.

[FR Doc. 2021–15596 Filed 7–21–21; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2310–243]

Pacific Gas and Electric Company; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Temporary variance of license requirement.

b. *Project No.:* 2310–243.

c. *Date Filed:* July 8, 2021 and supplemented on July 14, 2021.

d. *Applicant:* Pacific Gas and Electric Company (licensee).

e. *Name of Project:* Drum-Spaulding Project.

f. *Location:* South Yuba River and Bear River in Placer and Nevada counties, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Michelle Ocken, License Coordinator, Pacific Gas and Electric Company, (530) 863–3439.

i. *FERC Contact:* Robert Ballantine, (202) 502–6289, *robert.ballantine@ferc.gov.*

j. Deadline for filing comments, motions to intervene, and protests is 20 days from the issuance of this notice by the Commission (August 4, 2021).

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov*, (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852. The first page of any filing should include docket number P–2310–243. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* Due to persistent drought conditions, the licensee requests Commission approval of a temporary variance of the minimum flow requirement at streamflow gage YB–292 (Mormon Ravine). The licensee is requesting to decrease the target flow from an instantaneous 5 cubic feet per second (cfs) to 3 cfs, measured as a 24-hour average. The reduced flow is necessary to manage water resources in association with Placer County Water Agency and license required flows. If granted, the variance would last through October 1, 2021, or until adequate precipitation occurs to ensure that inflow equals outflow at the referenced reservoir for at least seven consecutive days, whichever comes later.

l. *Locations of the Application:* 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 website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. Agencies may obtain copies of the application directly from the applicant. 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, (866) 208–3676 or TTY, (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* All filings must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 385.2010.

Dated: July 15, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–15541 Filed 7–21–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC21–22–000]

Commission Information Collection Activities (FERC–585); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on a renewal of currently approved information collection, FERC–585 (Reporting of Electric Energy Shortages and Contingency Plans Under PURPA [1] Section 206), which will be submitted to the Office of Management and Budget (OMB) for review.

DATES: Comments on the collection of information are due August 23, 2021.

ADDRESSES: Send written comments on FERC–585 to OMB through *www.reginfo.gov/public/do/PRAMain.* Attention: Federal Energy Regulatory Commission Desk Officer. Please identify the OMB Control Number (1902–0138) in the subject line of your comments. Comments should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.*

Please submit copies of your comments to the Commission. You may submit copies of your comments (identified by Docket No. IC21–22–000) by one of the following methods:

Electronic filing through *http://www.ferc.gov,* is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery.

○ *Mail via U.S. Postal Service Only:* Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

○ *Hand (Including Courier) Delivery:* Deliver to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Instructions: OMB submissions must be formatted and filed in accordance with submission guidelines at *www.reginfo.gov/public/do/PRAMain.* Using the search function under the ''Currently Under Review'' field, select Federal Energy Regulatory Commission; click ''submit,'' and select ''comment'' to the right of the subject collection.

FERC submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *https://www.ferc.gov/ferc-online/overview.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION:

Title: FERC–585 (Reporting of Electric Energy Shortages and Contingency Plans Under PURPA [2] Section 206).

OMB Control No.: 1902–0138

Type of Request: Three-year extension of the FERC–585 information collection requirements with no changes to the current reporting requirements.

Abstract: The Commission uses the information collected under the requirements of FERC–585 to implement the statutory provisions of Section 206 of PURPA. Section 206 of PURPA amended the Federal Power Act (FPA) by adding a new subsection (g) to section 202, under which the Commission, by rule, was to require each public utility to report to the Commission and any appropriate state regulatory authority:

- any anticipated shortages of electric energy or capacity which would affect the utility's capability to serve its wholesale customers; and
- a contingency plan that would outline what circumstances might give rise to such occurrences.
- In Order No. 575,[3] the Commission modified the reporting requirements in 18 CFR 294.101(b) to provide that, if a public utility includes in its rates schedule, provisions that during electric energy and capacity shortages:

○ It will treat firm power wholesale customers without undue discrimination or preference; and

○ it will report any modifications to its contingency plan for accommodating shortages within 15 days to the appropriate state regulatory agency and to the affected wholesale customers, then the utility need not file with the Commission an additional statement of contingency plan for accommodating such shortages.

This revision merely changed the reporting mechanism; the public utility's contingency plan would be located in its filed rate rather than in a

[1] PURPA = Public Utility Regulatory Policies Act of 1979 (Pub. L. 95–617, 92 Stat. 3117), enacted 11/9/1978.

[2] PURPA = Public Utility Regulatory Policies Act of 1979 (Pub. L. 95–617, 92 Stat. 3117), enacted 11/9/1978.

[3] Final Rule in Docket RM92–12–000, issued on 1/13/1995.

separate document. In Order No. 659,[4] the Commission modified the reporting requirements in 18 CFR 294.101(e) to provide that public utilities must comply with the requirements to report shortages and anticipated shortages by submitting this information electronically using the Office of Electric Reliability's alert system at *emergency@ferc.gov* in lieu of submitting an original and two copies to the Secretary of the Commission. The Commission uses the information to evaluate and formulate an appropriate option for action in the event an unanticipated shortage is reported and/or materializes. Without this information, the Commission and State agencies would be unable to:

- Examine and approve or modify utility actions;
- prepare a response to anticipated disruptions in electric energy; and/or
- ensure equitable treatment of all public utility customers under the shortage situation.

The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR part 294.101.

The 60-day notice[5] published on 5/06/2021 with no comments received.

Type of Respondents: Public Utilities.

Estimate of Annual Burden:[6] The Commission estimates the annual public reporting burden for the information collection as:

FERC–585 (Reporting of Electric Shortages and Contingency Plans Under PURPA Section 206)

	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden & cost per response[7] (4)	Total annual burden hours & total annual cost (3) * (4) = (5)	Cost per respondent ($) (5)÷(1)
Contingency plan	1	1	1	1 hrs.; $83.00	1 hrs.; $83.00	$83.00
Capacity Shortage	1	1	1	1 hrs.; $83.00	1 hrs.; $83.00	83.00
Total					2 hrs.; $166.00	

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–15591 Filed 7–21–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2310–242]

Pacific Gas and Electric Company; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Temporary variance of license requirement.

b. *Project No.:* 2310–242.

c. *Date Filed:* July 2, 2021 and supplemented on July 14, 2021.

d. *Applicant:* Pacific Gas and Electric Company (licensee).

e. *Name of Project:* Drum-Spaulding Project.

f. *Location:* South Yuba River and Bear River in Placer and Nevada counties, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Michelle Ocken, License Coordinator, Pacific Gas and Electric Company, (530) 863–3439.

i. *FERC Contact:* Robert Ballantine, (202) 502–6289, *robert.ballantine@ferc.gov.*

j. Deadline for filing comments, motions to intervene, and protests is 20 days from the issuance of this notice by the Commission (August 4, 2021).

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852. The first page of any filing should include docket number P–2310–242. Comments emailed to Commission staff are not

[4] Final Rule in Docket RM05–19–000, issued on 5/27/2005

[5] 86 FR 20684

[6] ''Burden'' is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to 5 Code of Federal Regulations 1320.3.

[7] The estimates for cost per response are derived using the following formula: Average Burden Hours per Response * 83.00 per Hour = Average Cost per Response. This is Based upon FERC's 2020 FTE average salary plus benefits. Commission staff believes that any industry effort applied to FERC–585 would be compensated similarly to FERC's average salary.

considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* Due to persistent drought conditions, the licensee requests Commission approval of a temporary variance of the minimum flow requirement at streamflow gages YB–316 (Upper Peak Lower Peak and/or Kidd Lake), YB–207 (Lake Creek below Feeley Lake), YB–208 (Carr Lake), and YB–209 (Rucker Creek below Blue Lake). The licensee is requesting to reduce flow at YB–316, to 3 cubic feet per second (cfs) and that flows at YB–207, YB–208 and YB–209 be reduced from license required flows of 0.50 cfs (target), 0.20 cfs (allowable) to proposed flows of 0.50 cfs (target), 0.10 cfs (allowable), measured as a 48-hour average. As requested, the reduced flow releases would prevent dewatering of these reaches. If granted, the variance would last through October 1, 2021, or until adequate precipitation occurs to ensure that inflow equals outflow at the referenced reservoirs for at least seven consecutive days, whichever comes later.

l. *Locations of the Application:* 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 website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. Agencies may obtain copies of the application directly from the applicant. 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, (866) 208–3676 or TTY, (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* All filings must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 385.2010.

Dated: July 15, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–15542 Filed 7–21–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD21–4–000]

Billing Procedures for Annual Charges for the Costs of Other Federal Agencies for Administering Part I of the Federal Power Act; Notice Reporting Costs for Other Federal Agencies' Administrative Annual Charges for Fiscal Year 2020

1. The Federal Energy Regulatory Commission (Commission) is required to determine the reasonableness of costs incurred by other Federal agencies (OFAs) [1] in connection with their participation in the Commission's proceedings under the Federal Power Act (FPA) Part I [2] when those agencies seek to include such costs in the administrative charges licensees must pay to reimburse the United States for the cost of administering Part I.[3] The Commission's *Order on Remand and Acting on Appeals of Annual Charge Bills* [4] determined which costs are eligible to be included in the administrative annual charges. This order also established a process whereby the Commission would annually request each OFA to submit cost data, using a form [5] specifically designed for this purpose. In addition, the order established requirements for detailed cost accounting reports and other documented analyses to explain the cost assumptions contained in the OFAs' submissions.

2. The Commission has completed its review of the forms and supporting documentation submitted by the U.S. Department of the Interior (Interior), the U.S. Department of Agriculture (Agriculture), and the U.S. Department of Commerce (Commerce) for fiscal year (FY) 2020. This notice reports the costs the Commission included in its administrative annual charges for FY 2021.

Scope of Eligible Costs

3. The basis for eligible costs that should be included in the OFAs' administrative annual charges is prescribed by the Office of Management and Budget's (OMB) Circular A–25—*User Charges* and the Federal Accounting Standards Advisory Board's Statement of Federal Financial Accounting Standards (SFFAS) Number 4—*Managerial Cost Accounting Concepts and Standards for the Federal Government.* Circular A–25 establishes Federal policy regarding fees assessed for government services and provides specific information on the scope and type of activities subject to user charges.

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[1] The OFAs include: The U.S. Department of the Interior (Bureau of Indian Affairs, Bureau of Land Management, Bureau of Reclamation, National Park Service, U.S. Fish and Wildlife Service, Office of the Solicitor, Office of Environmental Policy & Compliance, Office of Hearings and Appeals, and Office of Policy Analysis); the U.S. Department of Agriculture (U.S. Forest Service); the U.S. Department of Commerce (National Marine Fisheries Service); and the U.S. Army Corps of Engineers.

[2] 16 U.S.C. 791a–823d (2018).

[3] *See id.* § 803(e)(1) and 42 U.S.C. 7178 (2018).

[4] 107 FERC ¶ 61,277, *order on reh'g,* 109 FERC ¶ 61,040 (2004).

[5] Other Federal Agency Cost Submission Form, *available at https://www.ferc.gov/docs-filing/forms.asp#ofa.*

SFFAS Number 4 provides a conceptual framework for federal agencies to determine the full costs of government goods and services.

4. Circular A–25 provides for user charges to be assessed against recipients of special benefits derived from federal activities beyond those received by the general public.[6] With regard to licensees, the special benefit derived from federal activities is the license to operate a hydropower project. The guidance provides for the assessment of sufficient user charges to recover the *full* costs of services associated with these special benefits.[7] SFFAS Number 4 defines full costs as the costs of resources consumed by a specific governmental unit that contribute directly or indirectly to a provided service.[8] Thus, pursuant to OMB requirements and authoritative accounting guidance, the Commission must base its OFA administrative annual charge on all direct and indirect costs incurred by agencies in administering Part I of the FPA. The special form the Commission designed for this purpose, the ''Other Federal Agency Cost Submission Form,'' captures the full range of costs recoverable under the FPA and the referenced accounting guidance.[9]

Commission Review of OFA Cost Submittals

5. The Commission received cost forms and other supporting documentation from the Departments of the Interior, Agriculture, and Commerce. The Commission completed a review of each OFA's cost submission forms and supporting reports. In its examination of the OFAs' cost data, the Commission considered each agency's ability to demonstrate a system or process which effectively captured, isolated, and reported FPA Part I costs as required by the ''Other Federal Agency Cost Submission Form.''

6. The Commission held a Technical Conference on March 25, 2021 to report its initial findings to licensees and OFAs. Representatives for several licensees and most of the OFAs attended the conference. Following the technical conference, a transcript was posted, and licensees had the opportunity to submit comments to the Commission regarding its initial review.

7. Idaho Falls Group (Idaho Falls) filed written comments,[10] stating its general support of the Commission's analysis but raising concerns regarding Department of the Interior, National Park Service (NPS) and Bureau of Reclamation (BOR) individual cost submissions. The issues are addressed in the Appendix to this notice.

8. After additional review, full consideration of the comments presented, and in accordance with the previously cited guidance, the Commission accepted as reasonable any costs reported via the cost submission forms that were clearly documented in the OFAs' accompanying reports and/or analyses. These documented costs will be included in the administrative annual charges for FY 2021.

Summary of Reported & Accepted Costs for Fiscal Year 2020

	Municipal		Non-Municipal		TOTAL	
	Reported	Accepted	Reported	Accepted	Reported	Accepted
Department of the Interior						
Bureau of Indian Affairs	-	-	-	-	-	-
Bureau of Land Management	-	-	116,752	-	116,752	-
Bureau of Reclamation	882	882	21,055	2,422	21,937	3,304
National Park Service	171,008	171,008	565,382	565,382	736,390	736,390
U.S. Fish and Wildlife Service	181,804	181,804	1,035,765	1,035,765	1,217,569	1,217,569
Office of the Solicitor	-	-	-	-	-	-
Office of Environmental Policy & Compliance	60,365	60,365	179,315	179,315	239,680	239,680
Office of Hearings and Appeals	-	-	-	-	-	-
Department of Agriculture						
U.S. Forest Service	919,109	921,283	1,265,348	1,251,578	2,184,457	2,172,861
Department of Commerce						
National Marine Fisheries Service	1,037,588	1,028,494	632,122	633,954	1,669,710	1,662,448
TOTAL	**2,370,756**	**2,363,836**	**3,815,739**	**3,668,416**	**6,186,495**	**6,032,252**

Figure 1

9. Figure 1 summarizes the total reported costs incurred by Interior, Agriculture, and Commerce with respect to their participation in administering Part I of the FPA. Additionally, Figure 1 summarizes the reported costs that the Commission determined were clearly documented and accepted for inclusion in its FY 2021 administrative annual charges.

Summary Findings of Commission's Costs Review

10. As presented in Figure 1, the Commission has determined that $6,032,252 of the $6,186,495 in total reported costs were reasonable and clearly documented in the OFAs' accompanying reports and/or analyses. Based on this finding, 2% of the total reported cost was determined to be unreasonable. The Commission notes the most significant issue with the documentation provided by the OFAs was the lack of supporting documentation to substantiate costs reported on the ''Other Federal Agency Cost Submission Form.''

11. The cost reports that the Commission determined were clearly documented and supported could be traced to detailed cost-accounting reports, which reconciled to data provided from agency financial systems or other pertinent source documentation. A further breakdown of

[6] OMB Circular A–25 § 6.

[7] OMB Circular A–25 § 6.a.2.

[8] SFFAS Number 4 ¶ 7.

[9] For the past few years, the form has excluded ''Other Direct Costs'' to avoid the possibility of confusion that occurred in earlier years as to whether costs were being entered twice as ''Other Direct Costs'' and ''Overhead.''

[10] *See* Letter from Michael A. Swiger, Van Ness Feldman, to the Honorable Kimberly D. Bose, FERC, Docket No. AD21–4–000 (filed April 30, 2021).

these costs is included in the Appendix to this notice, along with an explanation of how the Commission determined their reasonableness.

Points of Contact

12. If you have any questions regarding this notice, please contact Raven Rodriguez at (202) 502–6276.

Dated: July 15, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–15540 Filed 7–21–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC21–23–000]

Commission Information Collection Activities (Ferc–725v); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC–725V, Mandatory Reliability Standards: COM Reliability Standards, which will be submitted to the Office of Management and Budget (OMB) for review.

DATES: Comments on the collection of information are due August 23, 2021.

ADDRESSES: Send written comments on FERC–725V to OMB through *www.reginfo.gov/public/do/PRAMain.* Attention: Federal Energy Regulatory Commission Desk Officer. Please identify the OMB Control Number (1902–0277) in the subject line of your comments. Comments should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.*

Please submit copies of your comments to the Commission. You may submit copies of your comments (identified by Docket No. IC21–23–000) by one of the following methods:

Electronic filing through *http://www.ferc.gov,* is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery.
  - *Mail via U.S. Postal Service Only:* Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.
  - *Hand (Including Courier) Delivery:* Deliver to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Instructions: OMB submissions must be formatted and filed in accordance with submission guidelines at *www.reginfo.gov/public/do/PRAMain.* Using the search function under the ''Currently Under Review'' field, select Federal Energy Regulatory Commission; click ''submit,'' and select ''comment'' to the right of the subject collection.

FERC submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *https://www.ferc.gov/ferc-online/overview.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION:

Title: FERC–725V, Mandatory Reliability Standards: COM Reliability Standards.

OMB Control No.: 1902–0277.

Type of Request: Three-year extension of the FERC–725V information collection requirements with no changes to the reporting requirements.

Abstract: On August 15, 2016, the North American Electric Reliability Corporation (NERC) filed a petition for Commission approval, pursuant to section 215(d)(1) of the Federal Power Act (''FPA'') [1] and Section 39.5 [2] of the Federal Energy Regulatory Commission's regulations, for Reliability Standard COM–001–3 (Communications), the associated Implementation Plan, retirement of currently-effective Reliability Standard COM–001–2.1, and Violation Risk Factors (''VRFs'') and Violation Severity Levels (''VSLs'') associated with new Requirements R12 and R13 in Reliability Standard COM–001–3. Reliability Standard COM–001–3 reflects revisions developed under Project 2015–07 Internal Communications Capabilities, in compliance with the Commission's directive in Order No. 888 that NERC ''develop modifications to COM–001–2, or develop a new standard, to address the Commission's concerns regarding ensuring the adequacy of internal communications capability whenever internal communications could directly affect the reliability opera.''

Reliability Standards COM–001–3 and COM–002–4 do not require responsible entities to file information with the Commission. COM–001–3 requires that transmission operators, balancing authorities, reliability coordinators, distribution providers, and generator operators must maintain documentation of Interpersonal Communication capability and designation of Alternate Interpersonal Communication, as well as evidence of testing of the Alternate Interpersonal Communication facilities. COM–002–4 requires balancing authorities, distribution providers, reliability coordinators, transmission operators, and generator operators to develop and maintain documented communication protocols, and to be able to provide evidence of training on the protocols and of their annual assessment of the protocols. Additionally, all applicable entities (balancing authorities, reliability coordinators, transmission operators, generator operators, and distribution providers) must be able to provide evidence of three-part communication when issuing or receiving an Operating Instruction during an Emergency.

Type of Respondents: Public utilities.

Estimate of Annual Burden [3]: The Commission estimates the annual public reporting burden and cost for the information collection as: [4]

[1] 16 U.S.C. 824o (2012).

[2] 18 CFR 39.5 (2015).

[3] The Commission defines burden as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

[4] The estimates for cost per response are loaded hourly wage figure (includes benefits) is based on two occupational categories for 2020 found on the Bureau of Labor Statistics website (*http://www.bls.gov/oes/current/naics2_22.htm*): The hourly estimates for salary plus benefits are: (a) Electrical Engineer (code 17–2071), $70.19; (b) Information and Record Clerk (code 43–4199), $43.38. The average hourly cost (salary plus benefits), weighting both skill sets equally, is $56.79. For these calculations, we round the figure to $57.00 per hour.

FERC–725V, MANDATORY RELIABILITY STANDARDS: COM RELIABILITY STANDARDS

	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden & cost per response [4] (4)	Total annual burden hours & total annual cost ($) (3) * (4) = (5)	Cost per respondent ($) (5) ÷ (1)
(On-going) Maintain evidence of Interpersonal Communication capability [5].	1,313 (BA, DP, GOP, RC & TOP).	1	1,313	4 hrs.; $228	5,252 hrs.; $299,364	$228
(On-going) Maintain evidence of training and assessments [6].	199 (BA, RC & TOP).	1	199	8 hrs.; 456	1,592 hrs.; 90,744	456
(On-going) Maintain evidence of training [7]	1,257 (DP & GOP)	1	1,257	8 hrs.; 456	10,056 hrs.; 573,192	456
Total			2,769		16,900 hrs.; 963,300	

Comments: [5] [6] [7] Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: July 16, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–15588 Filed 7–21–21; 8:45 am]

BILLING CODE 6717–01–P

[5] For COM–001–3 the BA, RC, TOP, GOP, DP were taken as aggregate to eliminate overlap if the same entity has multiple registrations.

[6] For COM–002–4 the BA, RC and TOP were taken as aggregate to eliminate overlap if the same entity has multiple registration.

[7] For COM–002–4 the DP and GOP were taken as aggregate to eliminate overlap if the same entity has multiple registrations.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC21–25–000]

Commission Information Collection Activities (Ferc-552); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on a renewal of currently approved information collection FERC–552, (Annual Report of Natural Gas Transactions), which will be submitted to the Office of Management and Budget (OMB) for review.

DATES: Comments on the collection of information are due August 23, 2021.

ADDRESSES: Send written comments on FERC–552 to OMB through *www.reginfo.gov/public/do/PRAMain.* Attention: Federal Energy Regulatory Commission Desk Officer. Please identify the OMB Control Number (1902–0242) in the subject line of your comments. Comments should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.*

Please submit copies of your comments to the Commission. You may submit copies of your comments (identified by Docket No. IC21–25–000) by one of the following methods:

Electronic filing through *http://www.ferc.gov,* is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery.

○ *Mail via U.S. Postal Service Only:* Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

○ *Hand (Including Courier) Delivery:* Deliver to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Instructions: OMB submissions must be formatted and filed in accordance with submission guidelines at *www.reginfo.gov/public/do/PRAMain.* Using the search function under the ''Currently Under Review'' field, select Federal Energy Regulatory Commission; click ''submit,'' and select ''comment'' to the right of the subject collection.

FERC submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *https://www.ferc.gov/ferc-online/overview.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION:

Title: FERC Form No. 552, Annual Report of Natural Gas Transactions.

OMB Control No.: 1902–0242.

Type of Request: Three-year extension of the FERC Form No. 552 information collection requirements with no changes to the current reporting requirements.

Abstract: The Commission uses the information collected in the FERC Form No. 552 [1] to provide greater transparency into the size of the physical natural gas market and the use of physical fixed-price and index-based natural gas transactions. This information assists the Commission and the public in assessing whether index prices are the result of a robust market of fixed-price transactions.

FERC Form No. 552 had its genesis in the Energy Policy Act of 2005,[2] which added section 23 of the Natural Gas Act (NGA). Section 23 of the NGA, among other things, directs the Commission ''to facilitate price transparency in markets for the sale or transportation of physical natural gas in interstate commerce, having due regard for the public interest, the integrity of those markets,

[1] FERC Form No. 552 is prescribed in 18 CFR 260.401.

[2] Energy Policy Act of 2005, Public Law 109–58, sections 1261 *et seq.,* 119 Stat. 594 (2005).

and the protection of consumers.'' [3] The 60-day notice comment period ended on 7/12/2021 and the Commission received no comments.[4]

Type of Respondents: Wholesale natural gas market participants.

Estimate of Annual Burden:[5] The Commission estimates the average annual burden and cost [6] for this information collection as follows.

FERC FORM NO. 552, ANNUAL REPORT OF NATURAL GAS TRANSACTIONS

Category	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Annual average burden hrs. & cost ($) per response (4)	Total average annual burden hrs. & cost ($) (3) * (4) = (5)	Average annual cost per respondent ($) (rounded) (5) ÷ (1)
Wholesale natural gas market participants.	688	1	688	20 hrs.; $1,702.60	13,760 hrs.; $1,171,388.80 ...	1,702.60

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: July 15, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–15543 Filed 7–21–21; 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: EC21–104–000.

Applicants: Ensign Wind, LLC, Ensign Wind Energy, LLC, Minco Wind II, LLC, Minco Wind Energy II, LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act of Ensign Wind, LLC, et al.

Filed Date: 7/16/21.

Accession Number: 20210716–5082.

Comments Due: 5 p.m. ET 8/6/21.

Docket Numbers: EC21–105–000.

Applicants: Georgia Power Company.

Description: Application for Authorization Under Section 203 of the Federal Power Act of Georgia Power Company.

Filed Date: 7/16/21.

Accession Number: 20210716–5134.

Comments Due: 5 p.m. ET 8/6/21.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2414–014; ER19–1044–004.

Applicants: Old Trail Wind Farm, LLC, Telocaset Wind Power Partners, LLC.

Description: Notice of Change in Status of Old Trail Wind Farm, LLC, et al.

Filed Date: 7/16/21.

Accession Number: 20210716–5110.

Comments Due: 5 p.m. ET 8/6/21.

Docket Numbers: ER12–1926–002; ER20–370–001; ER21–1198–001.

Applicants: Union Atlantic Electricity, City Power & Gas, LLC, Pay Less Energy LLC.

Description: Notice of Change in Status of Union Atlantic Electricity, et al.

Filed Date: 7/15/21.

Accession Number: 20210715–5136.

Comments Due: 5 p.m. ET 8/5/21.

Docket Numbers: ER19–2722–005.

Applicants: PJM Interconnection, L.L.C.

Description: Compliance filing: Fast-Start Compliance to Set Effective Date to be effective 9/1/2021.

Filed Date: 7/16/21.

Accession Number: 20210716–5130.

Comments Due: 5 p.m. ET 8/6/21.

Docket Numbers: ER21–326–001.

Applicants: Direct Energy Business Marketing, LLC.

Description: Compliance filing: Supplemental Report Regarding a Spot Sale in WECC to be effective N/A.

Filed Date: 7/16/21.

Accession Number: 20210716–5135.

Comments Due: 5 p.m. ET 8/6/21.

Docket Numbers: ER21–1921–001.

Applicants: Citadel Energy Marketing LLC.

Description: Tariff Amendment: Amendment to 1 to be effective 5/18/2021.

Filed Date: 7/16/21.

Accession Number: 20210716–5038.

Comments Due: 5 p.m. ET 7/21/21.

Docket Numbers: ER21–2436–000.

Applicants: NorthWestern Corporation.

Description: § 205(d) Rate Filing: SA 924—Agreement with Tongue River Electric Cooperative (TRECO) to be effective 7/19/2021.

Filed Date: 7/16/21.

Accession Number: 20210716–5027.

Comments Due: 5 p.m. ET 8/6/21.

Docket Numbers: ER21–2437–000.

Applicants: Midcontinent Independent System Operator, Inc., American Transmission Company LLC.

Description: § 205(d) Rate Filing: 2021–07–16_SA 3675 ATC-Cloverland Electric PCA to be effective 9/15/2021.

Filed Date: 7/16/21.

Accession Number: 20210716–5032.

Comments Due: 5 p.m. ET 8/6/21.

Docket Numbers: ER21–2438–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 3630R1 Maverick Wind Project GIA to be effective 6/29/2021.

Filed Date: 7/16/21.

[3] 15 U.S.C. 717t–2(a)(1)(2006).

[4] 86 FR 26022 (5/12/2021).

[5] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. Refer to 5 CFR 1320.3 for additional information.

[6] Costs (for wages and benefits) are based on wage figures from the Bureau of Labor Statistics (BLS) for May 2020 (at *https://www.bls.gov/oes/current/naics2_22.htm*) and benefits information (issued March 2020, *https://www.bls.gov/news.release/ecec.nr0.htm*). The staff estimates that 75% of the work is done by a financial analyst (code 13–2098) at an hourly cost of $66.09 (for wages plus benefits), and 25% of the work is done by legal staff members (code 23–0000) at an hourly cost of $142.25 (for wages plus benefits). Therefore, the weighted cost (for wages plus benefits) is calculated to $85.13/hour [or ($66.09/hour * 0.75) + ($142.25/hour * 0.25)].

Accession Number: 20210716–5034.
Comments Due: 5 p.m. ET 8/6/21.

Docket Numbers: ER21–2439–000.
Applicants: Midcontinent Independent System Operator, Inc., American Transmission Company LLC.
Description: § 205(d) Rate Filing: 2021–07–16_SA 2770 ATC-Sun Prairie 1st Rev CFA to be effective 9/15/2021.
Filed Date: 7/16/21.
Accession Number: 20210716–5084.
Comments Due: 5 p.m. ET 8/6/21.

Docket Numbers: ER21–2440–000.
Applicants: PacifiCorp.
Description: § 205(d) Rate Filing: OATT Revised Attachment H–1 (Updates Form 1 Source References) to be effective 9/15/2021.
Filed Date: 7/16/21.
Accession Number: 20210716–5086.
Comments Due: 5 p.m. ET 8/6/21.

Docket Numbers: ER21–2441–000.
Applicants: In Commodities US LLC.
Description: Baseline eTariff Filing: Baseline new to be effective 8/1/2021.
Filed Date: 7/16/21.
Accession Number: 20210716–5113.
Comments Due: 5 p.m. ET 8/6/21.

Docket Numbers: ER21–2442–000.
Applicants: Morgan Stanley Capital Group Inc.
Description: Compliance filing: Compliance Cost Justification to be effective N/A.
Filed Date: 7/16/21.
Accession Number: 20210716–5118.
Comments Due: 5 p.m. ET 8/6/21.

Docket Numbers: ER21–2443–000.
Applicants: Black Hills Power, Inc.
Description: Compliance filing: Report Regarding a Sale Above The WECC Soft Price Cap to be effective N/A.
Filed Date: 7/16/21.
Accession Number: 20210716–5125.
Comments Due: 5 p.m. ET 8/6/21.

Docket Numbers: ER21–2444–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits Prospective Waiver of Certain Pre-Auction Deadlines Affected by the Default Market Seller Offer CAP.
Filed Date: 7/16/21.
Accession Number: 20210716–5128.
Comments Due: 5 p.m. ET 8/6/21.

Docket Numbers: ER21–2445–000.
Applicants: Glacier Sands Wind Power, LLC.
Description: Baseline eTariff Filing: Baseline new to be effective 7/17/2021.
Filed Date: 7/16/21.
Accession Number: 20210716–5129.
Comments Due: 5 p.m. ET 8/6/21.

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: July 16, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–15590 Filed 7–21–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–50–000; Docket No. CP20–51–000]

Tennessee Gas Pipeline Company, LLC; Southern Natural Gas Company, LLC; Notice of Availability of the Draft Environmental Impact Statement for the Proposed Evangeline Pass Expansion Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a draft environmental impact statement (EIS) for the Evangeline Pass Expansion Project (Project), proposed by Tennessee Gas Pipeline Company, LLC (Tennessee) and Southern Natural Gas Company, LLC (SNG) in the above-referenced dockets.

Tennessee requests authorization to construct and operate about 13 miles of 36-inch-diameter pipeline and a new compressor station in St. Bernard and Plaquemines Parishes, Louisiana. SNG requests authorization to construct and operate a new compressor station and three new meter stations in Clarke and Smith, Counties, Mississippi; and St. Bernard Parish, Louisiana. The Project would enable the transportation of up to 1,100,000 dekatherms per day of natural gas to an interconnect with Venture Global Gator Express, LLC's Gator Express Pipeline to provide feed gas for Venture Global Plaquemines LNG, LLC's facility in Plaquemines Parish, Louisiana.

The draft EIS responds to comments that were received on the Commission's August 24, 2020 Environmental Assessment (EA), provides additional discussion of climate change impacts in the region, and discloses downstream greenhouse gas emissions for the Project. With the exception of climate change impacts, the FERC staff concludes that approval of the proposed Project, with the mitigation measures recommended in this EIS, would not result in significant environmental impacts. FERC staff continues to be unable to determine significance with regards to climate change impacts.

The draft EIS incorporates the above referenced EA, which addressed the potential environmental effects of the construction and operation of the following Project facilities:

Tennessee

- about 9 miles of 36-inch-diameter looping pipeline in St. Bernard Parish, Louisiana (Yscloskey Toca Lateral Loop);
- about 4 miles of 36-inch-diameter looping pipeline in Plaquemines Parish, Louisiana (Grand Bayou Loop); and
- a new 23,470 horsepower compressor station consisting of one natural gas-fired Solar Turbines Titan 130 turbine driven compressor unit along Tennessee's existing 500 line in St. Bernard Parish, Louisiana (Compressor Station 529);

SNG

- a new 22,220 hp compressor station consisting of two natural gas-fired Solar Taurus 70 turbines (11,110 hp each) in Clarke County, Mississippi (Rose Hill Compressor Station); and
- three new meter stations: Rose Hill Receipt Meter Station in Clarke County, Mississippi; Midcontinent Express Pipeline Receipt Meter Station in Smith County, Mississippi; and Toca Delivery Meter Station in St. Bernard Parish, Louisiana.

The Commission mailed a copy of the *Notice of Availability of the Draft Environmental Impact Statement for the Evangeline Pass Expansion Project* to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the Project area. The draft EIS is only available in electronic format. It may be viewed and downloaded from the FERC's website (*www.ferc.gov*), on the natural gas environmental documents page (*https://www.ferc.gov/industries-data/natural-gas/environment/*

environmental-documents). In addition, the draft EIS may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (*https://elibrary.ferc.gov/eLibrary/search*) select ''General Search'' and enter the docket number in the ''Docket Number'' field (*i.e.,* CP20–50–000 or CP20–51–000). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

The draft EIS is not a decision document. It presents Commission staff's independent analysis of the environmental issues for the Commission to consider when addressing the merits of all issues in this proceeding. Any person wishing to comment on the draft EIS may do so. Your comments should focus on draft EIS's disclosure and discussion of potential environmental effects, including climate impacts due to downstream greenhouse gas emissions, and measures to avoid or lessen environmental impacts. To ensure consideration of your comments on the proposal in the final EIS, it is important that the Commission receive your comments on or before 5:00pm Eastern Time on September 7, 2021.

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature on the Commission's website (*www.ferc.gov*) under the link to FERC Online. This is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' If you are filing a comment on a particular project, please select ''Comment on a Filing'' as the filing type; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the Project docket number (CP20–50–000 or CP20–51–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR part 385.214). Motions to intervene are more fully described at *https://www.ferc.gov/ferc-online/ferc-online/how-guides.* Only intervenors have the right to seek rehearing or judicial review of the Commission's decision. The Commission grants affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which no other party can adequately represent. Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered.

Questions?

Additional information about the Project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the eLibrary link. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Dated: July 16, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–15592 Filed 7–21–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP21–966–000.

Applicants: Equitrans, L.P.

Description: § 4(d) Rate Filing: Equitrans' Clean Up Filing—July 2021 to be effective 8/15/2021.

Filed Date: 7/15/21.

Accession Number: 20210715–5017.

Comments Due: 5 p.m. ET 7/27/21.

Docket Numbers: RP21–967–000.

Applicants: Natural Gas Pipeline Company of America.

Description: § 4(d) Rate Filing: Amendment to a Negotiated Rate Agreement Filing—Presidio WAB LLC to be effective 7/15/2021.

Filed Date: 7/15/21.

Accession Number: 20210715–5053.

Comments Due: 5 p.m. ET 7/27/21.

Docket Numbers: RP21–968–000.

Applicants: NEXUS Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Negotiated Rates—Release eff 07–15–2021 to be effective 7/15/2021.

Filed Date: 7/15/21.

Accession Number: 20210715–5108.

Comments Due: 5 p.m. ET 7/27/21.

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: July 16, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–15589 Filed 7–21–21; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8712–01–R6]

Public Water System Supervision Program Revision for the State of Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval.

SUMMARY: Notice is hereby given that the State of Texas is revising its approved Public Water System Supervision (PWSS) program. Texas has adopted the Environmental Protection Agency (EPA) drinking water rule for Variance and Exemptions (V&E). EPA has determined that the proposed V&E Rule submitted by Texas is no less stringent than the corresponding federal regulations. Therefore, EPA intends to approve this PWSS program revision package.

DATES: All interested parties may request a public hearing. A request for a public hearing must be submitted by August 23, 2021 to the Regional Administrator at the EPA Region 6 address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by August 23, 2021, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on August 23, 2021. Any request for a public hearing shall include the following information: The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; and the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, at the following offices: Texas Commission on Environmental Quality, Water Supply Division, Public Drinking Water Section (MC–155), Building F, 12100 Park 35 Circle, Austin, TX 78753; and United States Environmental Protection Agency, Region 6, Drinking Water Section (6WD–DD), 1201 Elm St, Dallas, TX 75270.

FOR FURTHER INFORMATION CONTACT: José G. Rodriguez, EPA Region 6, Drinking Water Section at the Dallas address given above, or by telephone at (214) 665–8087, or by email at *rodriguez.jose@epa.gov.*

Authority: Section 1413 of the Safe Drinking Water Act, as amended (1996), and 40 CFR part 142 of the National Primary Drinking Water Regulations.

Dated: July 9, 2021.

David Gray,

Acting Regional Administrator, Region 6.

[FR Doc. 2021–15470 Filed 7–21–21; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meetings; Notice of a Matter To Be Deferred From the Agenda for Consideration at an Agency Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: The previously announced meeting agenda of the Board of Directors, published at 86 FR 37752, has changed.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Tuesday, July 20, 2021, at 10:00 a.m.

CHANGES IN THE MEETING: Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the following matter will be deferred from the Summary Agenda at the open meeting of the Board of Directors of the Federal Deposit Insurance Corporation scheduled to be held at 10:00 a.m. on July 20, 2021, via a Webcast live on the internet:

Memorandum and resolution re: Notice of Proposed Rulemaking on Revisions to Standardized Approach for Calculating the Exposure Amount of Derivative Contracts.

CONTACT PERSON FOR MORE INFORMATION: Requests for further information concerning the meeting may be directed to Debra A. Decker, Deputy Executive Secretary of the Corporation, at (202) 898–8748.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on July 19, 2021.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2021–15672 Filed 7–20–21; 11:15 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

TIME AND DATE: 10:17 a.m. on Tuesday, July 20, 2021.

PLACE: The meeting was held via video conference on the internet.

STATUS: Closed.

MATTERS TO BE CONSIDERED: In calling the meeting, the Board determined, on motion of Director Martin J. Gruenberg, seconded by Director Michael J. Hsu (Acting Comptroller of the Currency), and concurred in by Director David Uejio (Acting Director, Consumer Financial Protection Bureau), and Chairman Jelena McWilliams, that Corporation business required its consideration of the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B).

CONTACT PERSON FOR MORE INFORMATION: Requests for further information concerning the meeting may be directed to Debra A. Decker, Deputy Executive Secretary of the Corporation, at 202–898–8748.

Dated this the 20th day of July, 2021.

Federal Deposit Insurance Corporation.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2021–15729 Filed 7–20–21; 4:15 pm]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

TIME AND DATE: Tuesday, July 27, 2021 at 10:00 a.m. and its continuation at the conclusion of the open meeting on July 29, 2021.

PLACE: 1050 First Street NE, Washington, DC (This meeting will be a virtual meeting).

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Compliance matters pursuant to 52 U.S.C. § 30109.

Matters concerning participation in civil actions or proceedings or arbitration.

* * * * *

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer. Telephone: (202) 694–1220.

Vicktoria J. Allen,

Acting Deputy Secretary of the Commission.

[FR Doc. 2021–15734 Filed 7–20–21; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than August 6, 2021.

A. Federal Reserve Bank of Dallas (Karen Smith, Director, Applications) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *The Vanguard Group, Inc., Malvern, Pennsylvania; on behalf of itself, its subsidiaries and affiliates, including investment companies registered under the Investment Company Act of 1940, other pooled investment vehicles, and institutional accounts that are sponsored, managed, or advised by Vanguard;* to acquire additional voting shares of Comerica Incorporated, Dallas, Texas, and thereby indirectly acquire additional voting shares of Comerica Bank, Dallas, Texas, and Comerica Bank & Trust, National Association, Ann Arbor, Michigan.

Board of Governors of the Federal Reserve System, July 19, 2021.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2021–15593 Filed 7–21–21; 8:45 am]

BILLING CODE 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 (AHRQ), HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''*The AHRQ Safety Program for Methicillin-Resistant Staphylococcus aureus (MRSA) Prevention.*'' This proposed information collection was previously published in the **Federal Register** on May 3rd, 2021 and allowed 60 days for public comment. AHRQ did not receive any substantive comments from members of the public. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by August 23, 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: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

The AHRQ Safety Program for Methicillin-Resistant Staphylococcus aureus (MRSA) Prevention

As part of the HHS HAI National Action Plan (NAP), AHRQ has supported the implementation and adoption of the Comprehensive Unit-based Safety Program (CUSP) to reduce Central-Line Associated Bloodstream Infections (CLABSI) and Catheter-Associated Urinary Tract Infections (CAUTI), and subsequently applied CUSP to other clinical challenges, including reducing surgical site infections and improving care for mechanically ventilated patients. As part of the National Action Plan for Combating Antibiotic-Resistant Bacteria (CARB NAP), the HHS HAI National Action Plan, and Healthy People 2030 goals, AHRQ will now apply the principles and concepts that have been learned from these HAI reduction efforts to the prevention of MRSA invasive infections.

Healthcare-associated infections, or HAIs, are a highly significant cause of illness and death for patients in the U.S. At any given time, HAIs affect one out of every 31 hospital inpatients. More than a million of these infections occur across our health care system every year. This leads to significant patient harm and loss of life, and costs billions of dollars each year in medical and non-medical costs. In addition, the 3 million Americans currently residing in U.S. nursing homes experience a staggering 2–3 million HAIs each year.

Particular concern has arisen related to the persistent prevalence of methicillin-resistant Staphylococcus aureus (MRSA). This bacterium affects both communities and healthcare facilities, but the majority of morbidity and mortality occurs in critically and chronically ill patients. While MRSA was rare in the US through the 1970s, its prevalence in US health care facilities began rising in the 1980s and has continued to do so. In 2000, MRSA was responsible for 133,510 hospitalizations in children and adults. This number more than doubled by 2005, with 278,203 hospitalizations along with 56,248 septic events and 6,639 deaths being attributed to MRSA. MRSA has become a major form of hospital-associated Staphylococcus aureus infection.

For various patient safety initiatives, AHRQ has promoted the implementation and adoption of the Comprehensive Unit-based Safety Program (CUSP) approach which combines clinical and cultural (*i.e.,* technical and adaptive) intervention components to facilitate the implementation of technical bundles to improve patient safety. For MRSA prevention, it is likely that a combination of technical approaches is indicated, including decolonization along with classic infection control practices such as hand hygiene, environmental cleaning, general HAI prevention, and contact precautions/isolation. Implementation of these technical approaches would benefit

greatly from the cultural and behavioral interventions incorporated in CUSP. AHRQ expects that this approach, which includes a focus on teamwork, communication, and patient engagement, will enhance the effectiveness of interventions to reduce MRSA infection that will be implemented and evaluated as part of this project.

This project will assist hospital units and long-term care facilities in adopting and implementing technical approaches to reduce MRSA infections. It will be implemented in four cohorts:

- At least 400 ICUs
- at least 400 non-ICUs
- at least 300 hospital surgical services
- at least 300 long-term care facilities.

The goals of this project are to (1) develop and implement a program to prevent MRSA invasive infection in intensive care units (ICUs), non-ICUs, inpatient surgery, and long-term care facilities, (2) assess the adoption of CUSP for MRSA Prevention, and (3) evaluate the effectiveness of the intervention in the participating units. AHRQ is requesting a 3-year clearance to perform the data collection activities needed to assess the adoption of the program and evaluate its effectiveness in the participating units and facilities.

The project is being conducted by AHRQ through its contractor, Johns Hopkins University (JHU) and JHU's subcontractor, NORC at the University of Chicago. The project is being undertaken pursuant to AHRQ's mission to enhance the quality, appropriateness, and effectiveness of health services, and access to such services, through the establishment of a broad base of scientific research and through the promotion of improvements in clinical and health systems practices, including the prevention of diseases and other health conditions (42 U.S.C. 299).

Method of Collection

The evaluation will utilize an interrupted time series design to assess MRSA invasive infections (defined as MRSA bacteremia) and secondary clinical outcomes, using 18 months of implementation data and 12 months of retrospective data. We will also assess needs of participating units and capacity to implement the intervention, awareness of MRSA prevention, implementation fidelity and effectiveness, communication and teamwork, and changes in patient safety culture and behavior using a pre-post design.

The primary data collection includes the following:

(1) *Unit or Facility-level clinical outcome change data:* The program will use a secure online portal to collect clinical outcomes measures extracted from site electronic health record (EHR) systems for the 12 month period prior to the start of the implementation, as well as for the 18 month implementation period. These data will be used to evaluate the effectiveness of the *AHRQ Safety Program for MRSA Prevention.*

(2) *Survey of Patient Safety Culture:* The NORC/JHU team will administer AHRQ Surveys of Patient Safety Culture to all eligible AHRQ Safety Program for MRSA Prevention staff at the participating units or facilities at the beginning and end of the intervention. We will administer the Hospital Survey of Patient Safety Culture (HSOPS) in the ICU, non-ICU, and surgical cohorts, and the Nursing Home Survey on Patient Safety Culture (NHSOPS) in the long term care cohort. These surveys ask questions about patient safety issues, medical errors, and event reporting in the respective setting. NORC/JHU will request that all staff on the unit or facility that is implementing the AHRQ Safety Program for MRSA Prevention complete the survey. As unit and facility size vary, we estimate the average number of respondents to be 25 for each unit.

(3) *Infrastructure Assessment Tool—Gap Analysis:* The NORC/JHU team will administer the Gap Analysis during the first month of the intervention to an Infection Preventionist and one of the unit's team leaders (most likely a nurse). Information on current practices in MRSA prevention on the unit will be collected.

(4) Implementation Assessments—Team Checkup Tool: The implementation assessments will be conducted to monitor the program's progress and determine what the participating sites have learned through participating in the program. The Team Checkup Tool will be requested monthly, and we anticipate participation from approximately 1 staff (most commonly a nurse) per unit. The program will use the Team Checkup Tool to monitor key actions of staff members. The Tool asks about use of safety guidelines, tools, and resources throughout three different phases: Assessment (1), Planning, Training, and Implementation (2), and Sustainment (3).

This data collection effort will be part of a comprehensive evaluation strategy to assess the adoption of the Comprehensive Unit-Based Safety Program (CUSP) for MRSA Prevention in ICUs, non-ICUs, surgical services, and long-term care settings; and measure the effectiveness of the interventions in the participating facilities or units. The evaluation has four main goals:

1. Program participation: Assess the ability of sites to successfully encourage full participation of unit/facility staff in educational activities.

2. Implementation and adoption: Assess the implementation and adoption of CUSP for MRSA prevention.

3. Program effectiveness: Measure the effectiveness of the CUSP for MRSA prevention bundle.

4. Causal pathways: Describe the characteristics of teams that are associated with successful implementation and improvement outcomes.

Estimated Annual Respondent Burden

Exhibit 1 shows the total estimated annualized burden hours for the data collection efforts. All data collection activities are expected to occur within the three-year clearance period. The total estimated annualized burden is 11,552 hours.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents +	Number of responses per respondent	Hours per response	Total burden hours
Survey of Patient Safety Culture				
HSOPS (25 respondents per unit, pre- and post-implementation for ICU (400), non-ICU (400), and surgical (300) cohorts, 1,100 units total)	9,167	2	0.25	4,584
NHSOPS (25 respondents per facility, one response per pre- and post-implementation for LTC cohort, 300 facilities total)	2,500	2	0.25	1,250

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Form name	Number of respondents +	Number of responses per respondent	Hours per response	Total burden hours
Infrastructure Assessment				
Gap Analysis (1 assessment per unit or facility, pre and post-implementation for all four cohorts, 1,400 sites total)	467	2	1	934
Implementation Assessments				
Team Checkup Tool (1 checklist conducted monthly during the 18 months of implementation for ICU, non-ICU, and Surgical cohorts, 1,100 units total)	367	18	0.17	1,123
Team Checkup Tool (1 checklist conducted monthly per facility during the 18 month implementation period for LTC cohort, 300 facilities total)	100	18	0.17	306
Electronic Health Record (EHR) Extracts				
Initial data pull for 10% of hospitals that do not confer rights to their NHSN data (once at baseline for ICU and non-ICU cohorts, 800 units total)	27	1	5	135
Initial data pull for hospital onset bacteremia (including MSSA) and MRSA-positive clinical cultures (not available in NHSN) (once at baseline for ICU and non-ICU cohorts, 800 units total)	267	1	3.5	935
Initial data pull for 10% of units that submit point prevalence survey data (once at baseline for ICU and non-ICU cohorts, 800 units total)	27	1	0.5	14
Initial data pull for 20% of surgical units that do not confer rights to NHSN data (once at baseline for Surgical cohort, 300 settings total)	20	1	0.5	10
Initial data pull (once at baseline for LTC cohort, 300 facilities total)	100	1	5	500
Quarterly data collection of monthly data (quarterly during 18 months of implementation for ICU and non-ICU, cohorts, 800 units total)	267	6	0.5	801
Quarterly data collection of monthly data for 20% of hospitals that do not confer rights to their NHSN data (*quarterly during 18 months of implementation for surgical cohorts, 300 units total*)	20	6	0.5	60
Monthly data (monthly per facility during 18 months of implementation for LTC cohort, 300 facilities total)	100	18	0.5	900
Total	13,429	.....	.....	11,552

+ The number of respondents per data collection effort is calculated by multiplying the number of respondents per unit by the total number of units. The result is divided by three to capture an annualized number.

Exhibit 2 shows the estimated annualized cost burden based on the respondents' time to complete the data collection activities. The total annualized cost burden is estimated to be $540,325.83.

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate	Total cost burden
Survey of Patient Safety Culture				
HSOPS (25 respondents per unit, pre- and post-implementation for ICU (400), non-ICU (400), and surgical (300) cohorts, 1,100 units total)	9,167	4,584	* $51.53	$236,187.76
NHSOPS (25 respondents per facility, one response per pre- and post-implementation for LTC cohort, 300 facilities total)	2,500	1,250	* 51.53	64,412.50
Infrastructure Assessment				
Gap Analysis (1 assessment per unit or facility, pre and post-implementation for all four cohorts, 1,400 sites total)	467	934	* 51.53	48,129.02
Implementation Assessments				
Team Checkup Tool (1 checklist conducted monthly during 3 months of ramp-up and 15 months of implementation periods for ICU, non-ICU, and Surgical cohorts, 1,100 units total)	367	1,123	* 51.53	57,868.19
Team Checkup Tool (1 checklist conducted monthly per facility during 18 months of implementation for LTC cohort, 300 facilities total)	100	306	* 51.53	15,768.18

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN—Continued

Form name	Number of respondents	Total burden hours	Average hourly wage rate	Total cost burden
Electronic Health Record (EHR) Extracts				
Initial data pull for 10% of hospitals that do not confer rights to their NHSN data (once at baseline for ICU and non-ICU cohorts, 800 units total)	27	135	^35.17	4,747.95
Initial data pull for hospital onset bacteremia (including MSSA) and MRSA-positive clinical cultures (not available in NHSN) (once at baseline for ICU and non-ICU cohorts, 800 units total)	267	935	^35.17	32,866.37
Initial data pull for 10% of units that submit point prevalence survey data (once at baseline for ICU and non-ICU cohorts, 800 units total)	27	14	^35.17	474.80
Initial data pull for 20% of surgical settings that do not confer rights to NHSN data (once at baseline for Surgical cohort, 300 settings total)	20	10	^35.17	351.70
Initial data pull (once at baseline for LTC cohort, 300 facilities total)	100	500	^35.17	17,585.00
Quarterly data (quarterly during 18 months of implementation for ICU and non-ICU cohorts, 1,100 units total)	267	801	^35.17	28,171.17
Quarterly data collection of monthly data for 20% of hospitals that do not confer rights to their NHSN data (quarterly during 18 months of implementation for surgical cohorts, 300 units total)	20	60	^35.17	2,110.20
Monthly data (monthly per facility during 18 months of implementation for LTC cohort, 100 facilities total)	100	900	^35.17	31,653.00
Total	13,429	11,552		540,325.83

*This is an average of the average hourly wage rate for physician, nurse, nurse practitioner, physician's assistant, and nurse's aide from the May 2019 National Occupational Employment and Wage Estimates, United States, U.S. Bureau of Labor Statistics (*https://www.bls.gov/oes/current/oes_nat.htm#00-0000*).

^This is an average of the average hourly wage rate for nurse and IT specialist from the May 2019 National Occupational Employment and Wage Estimates, United States, U.S. Bureau of Labor Statistics (*https://www.bls.gov/oes/current/oes_nat.htm#00-0000*).

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: July 19, 2021.

Marquita Cullom,

Associate Director.

[FR Doc. 2021–15621 Filed 7–21–21; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Public Health Determination Regarding an Exception for Unaccompanied Noncitizen Children From the Order Suspending the Right To Introduce Certain Persons From Countries Where a Quarantinable Communicable Disease Exists

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), a component of the Department of Health and Human Services (HHS), announces an Order excepting unaccompanied noncitizen children (UC) from the Order Suspending the Right to Introduce Certain Persons from Countries Where a Quarantinable Communicable Disease Exists, issued on October 13, 2020 (October Order). CDC finds that, at this time, there is appropriate infrastructure in place to protect the children, caregivers, and local communities from elevated risk of COVID–19 transmission as a result of the introduction of UC, and U.S. healthcare resources are not significantly impacted by providing UC necessary care. CDC believes the COVID–19-related public health concerns associated with UC introduction can be adequately addressed without the UC being subject to the October Order, thereby permitting the government to better address the humanitarian challenges for these children. Therefore, CDC is fully excepting UC from the October Order, and the Notice regarding the temporary exception of UC published February 17, 2021 is hereby superseded.

DATES: This Order went into effect July 16, 2021.

FOR FURTHER INFORMATION CONTACT: Tiffany Brown, Deputy Chief of Staff, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–10, Atlanta, GA 30329. Phone: 404–639–7000. Email: *cdcregulations@cdc.gov.*

SUPPLEMENTARY INFORMATION: As part of government efforts to mitigate the introduction, transmission, and spread of COVID–19, CDC issued the October Order,[1] suspending the right to

[1] Order Suspending the Right to Introduce Certain Persons from Countries Where a Quarantinable Communicable Disease Exists, 85 FR 65806 (Oct. 16, 2020). The October Order replaced the Order Suspending Introduction of Certain Persons from Countries Where a Communicable Disease Exists, issued on March 20, 2020. 85 FR 17060 (Mar. 26, 2020); Extension of Order Under Sections 362 and 365 of the Public Health Service Act; Order Suspending Introduction of Certain Persons From Countries Where a Communicable Disease Exists,

Continued

introduce certain persons into the United States (U.S.) from countries or places where a quarantinable communicable disease exists to protect the public's health from an increase in risk of the introduction of COVID–19. The Order applied specifically to certain noncitizens as defined [2] who would otherwise be introduced into a congregate setting in land or coastal ports of entry (POE) or Border Patrol stations at or near the U.S. borders with Canada and Mexico. On February 17, 2021,[3] CDC published a notice announcing the temporary exception from expulsion of unaccompanied noncitizen children [4] (UC) encountered in the United States from the October Order.[5]

As detailed in the Order, CDC has reviewed the current situation with regards to the COVID–19 public health emergency and UC in immigrations facilities and has concluded that it is appropriate to fully except UC from the October Order given the measures in place to prevent and mitigate transmission of COVID–19 in this population. CDC finds that the robust network UC care facilities operated by the Office of Refugee Resettlement (ORR), a component of HHS, the testing and medical care available therein, as well as COVID–19 mitigation protocols including vaccination for personnel and eligible UC, result in very low likelihood that processing UC in accordance with existing immigration procedures under Title 8 of the U.S. Code will result in undue strain on the U.S. healthcare system or healthcare resources. Moreover, UC released to a vetted sponsor or placed in a permanent ORR shelter do not pose a significant level of risk for COVID–19 spread into the community because they are released after having undergone testing, quarantine and/or isolation, and vaccination when possible, and their sponsors are provided with appropriate medical and public health direction.

A copy of the Order is provided below, and a copy of the signed Order can be found at *https://www.cdc.gov/coronavirus/2019-ncov/more/pdf/NoticeUnaccompaniedChildren.pdf.*

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

Order Under Sections 362 & 365 of the Public Health Service Act (42 U.S.C. 265, 268) and 42 CFR 71.40

Public Health Determination Regarding an Exception for Unaccompanied Noncitizen Children From the Order Suspending the right to Introduce Certain Persons From Countries Where a Quarantinable Communicable Disease Exists

As part of U.S. government efforts to mitigate the introduction, transmission, and spread of COVID–19, CDC issued an Order on March 20, 2020 (March Order), later replaced on October 13, 2020 (October Order),[6] suspending the right to introduce [7] certain persons into the United States from countries or places where a quarantinable communicable disease [8] exists in order to protect the public health from an increase in risk of the introduction of COVID–19. The Orders applied specifically to covered noncitizens [9] who would otherwise be introduced into a congregate setting in land or coastal ports of entry (POE) or Border Patrol stations at or near the U.S. borders [10] with Canada and Mexico. On February 17, 2021, CDC published a notice [11] (February Notice) announcing the temporary exception of unaccompanied noncitizen children from the October Order; the February Notice stated that CDC would complete a public health assessment and publish an additional notice or a modified Order. As explained below, CDC has concluded that it is appropriate to except unaccompanied noncitizen children [12] (UC) from the October Order given the measures in place to prevent and mitigate transmission of COVID–19 in this population.

Under the March and October Orders, UC were included as part of the covered noncitizens for whom the right of introduction into the United States was suspended; however, UC largely have been excepted from the application of the Order, first pursuant to judicial

85 FR 22424 (Apr. 22, 2020); Amendment and Extension of Order Under Sections 362 and 365 of the Public Health Service Act; Order Suspending Introduction of Certain Persons from Countries Where a Communicable Disease Exists, 85 FR 31503 (May 26, 2020).

[2] *See* 85 FR 65806, 65807.

[3] Notice of Temporary Exception from Expulsion of Unaccompanied Noncitizen Children Encountered in the United States Pending Forthcoming Public Health Determination, 86 FR 9942 (Feb. 17, 2021).

[4] CDC's understanding is that this class of individuals is similar to or the same as those individuals who would be considered ''unaccompanied alien children'' (see 6 U.S.C. 279) for purposes of HHS ORR custody, were DHS to make the necessary immigration determinations under Title 8 of the U.S. Code.

[5] Notice of Temporary Exception from Expulsion of Unaccompanied Noncitizen Children Encountered in the United States Pending Forthcoming Public Health Determination, 86 FR 9942 (Feb. 17, 2021).

[6] Order Suspending the Right to Introduce Certain Persons from Countries Where a Quarantinable Communicable Disease Exists, 85 FR 65806 (Oct. 16, 2020). The October Order replaced the Order Suspending Introduction of Certain Persons from Countries Where a Communicable Disease Exists, issued on March 20, 2020, extended on April 20, 2020, and amended May 19, 2020. Notice of Order Under Sections 362 and 365 of the Public Health Service Act Suspending Introduction of Certain Persons from Countries Where a Communicable Disease Exists, 85 FR 17060 (Mar. 26, 2020); Extension of Order Under Sections 362 and 365 of the Public Health Service Act; Order Suspending Introduction of Certain Persons From Countries Where a Communicable Disease Exists, 85 FR 22424 (Apr. 22, 2020); Amendment and Extension of Order Under Sections 362 and 365 of the Public Health Service Act; Order Suspending Introduction of Certain Persons from Countries Where a Communicable Disease Exists, 85 FR 31503 (May 26, 2020).

[7] ''Suspension of the right to introduce'' means to cause the temporary cessation of the effect of any law, rule, decree, or order pursuant to which a person might otherwise have the right to be introduced or seek introduction into the United States. 42 CFR 71.40(b)(5).

[8] Quarantinable communicable diseases are any of the communicable diseases listed in Executive Order, as provided under § 361 of the Public Health Service Act (42 U.S.C. 264). 42 CFR 71.1. The list of quarantinable communicable diseases currently includes cholera, diphtheria, infectious tuberculosis, plague, smallpox, yellow fever, viral hemorrhagic fevers (Lassa, Marburg, Ebola, Crimean-Congo, South American, and others not yet isolated or named), severe acute respiratory syndromes (including Middle East respiratory syndrome and COVID–19), and influenza caused by novel or reemergent influenza viruses that are causing, or have the potential to cause, a pandemic. *See* Exec. Order 13295, 68 FR 17255 (Apr. 4, 2003), as amended by Exec. Order 13375, 70 FR 17299 (Apr. 1, 2005) and Exec. Order 13674, 79 FR 45671 (July 31, 2014).

[9] This Order is using the term ''covered noncitizens'' to have the same meaning as ''covered aliens'' in the October Order. *See* October Order, 85 FR 65806, 65807 (defining ''covered aliens'' as ''persons traveling from Canada or Mexico (regardless of their country of origin) who would otherwise be introduced into a congregate setting in a land or coastal Port of Entry (POE) or Border Patrol station at or near the United States borders with Canada or Mexico,'' subject to certain exceptions. These persons ''would typically be aliens seeking to enter the United States at POEs who do not have proper travel documents, aliens whose entry is otherwise contrary to law, and aliens who are apprehended near the border seeking to unlawfully enter the United States between POEs.'').

[10] When U.S. Customs and Border Protection (CBP) or the U.S. Department of Homeland Security (DHS) partner agencies encounter noncitizens off the coast closely adjacent to the land borders, it transfers the noncitizens for processing in POE or Border Patrol stations closest to the encounter. Absent the October Order, such noncitizens would be held in the same congregate settings and holding facilities as any encounters along the land border, resulting in similar public health concerns related to the introduction, transmission, and spread of COVID–19.

[11] Notice of Temporary Exception from Expulsion of Unaccompanied Noncitizen Children Encountered in the United States Pending Forthcoming Public Health Determination, 86 FR 9942 (Feb. 17, 2021).

[12] CDC's understanding is that this class of individuals is similar to or the same as those individuals who would be considered ''unaccompanied alien children'' (see 6 U.S.C. 279) for purposes of HHS ORR custody, were DHS to make the necessary immigration determinations under Title 8 of the U.S. Code.

action,[13] and later under the February Notice. As a result, since November 18, 2020, UC have generally been processed under regular immigration processes under Title 8 of the U.S. Code and therefore referred from U.S. Customs and Border Protection (CBP), an agency within the U.S. Department of Homeland Security (DHS), to the Office of Refugee Resettlement (ORR) within the U.S. Department of Health and Human Services' (HHS) Administration for Children and Families (ACF) for care and custody, according to the usual legal framework governing such referrals.[14] Pursuant to these requirements, UC encountered in the United States by CBP generally are transferred to ORR within 72 hours of intake at a POE or Border Patrol station.[15] Upon transfer to ORR custody, UC are transported to facilities that operate under cooperative agreements or contracts with HHS and must meet ORR requirements to ensure a high level of quality, child-focused care by appropriately trained staff. ORR operates 210 facilities in 22 states. At these facilities, case managers work to identify and ultimately place UC with vetted sponsors (usually family members within the United States).

Beginning in mid-2020, the United States began experiencing an increase in the number of UC arriving daily at the southern border. By February 2021, due to the record numbers of transfers to ORR, UC being held in CBP custody awaiting ORR transfer increased due to a lack of available space in ORR facilities. ORR and other government agencies responded to the influx of UC by rapidly expanding capacity and developing robust, safe COVID–19 protocols in consultation with CDC.

In conjunction with the Federal Emergency Management Agency (FEMA) and with the assistance of the Department of Defense, HHS and ORR opened temporary intake facilities along the U.S. southern border and in the interior to add capacity. A total of 14 Emergency Intake Sites (EIS)[16] were opened across the United States. CDC assisted ORR by sending medical epidemiologists and other public health professionals to provide technical assistance on COVID–19 mitigation protocols. ORR now has a capacity of over 20,000 beds; currently, over 15,100 children are in its care. ORR has successfully processed and discharged over 55,000 UC since January 20, 2021. The successful efforts to expand capacity for UC have resulted in sufficient capacity at ORR sites—both along the border and in the interior—significantly reducing the length of time that UC remain in CBP custody. As of July 13, 2021, the current average time a UC remained in CBP custody before transferring to ORR custody was 26 hours, and four UC have been in CBP custody for over 72 hours.[17] This represents a substantial improvement from early 2021.[18] While the number of UC encountered may remain at elevated levels, expanded ORR capacity and improved processing methods have resulted in UC remaining in CBP custody for shorter periods of time.

The processes in place at the EIS and at ORR's regular facilities afford sufficient resources and time to identify SARS–CoV–2 cases and implement environmental controls to attenuate the risk of COVID–19 infection and spread.[19] With CDC's assistance and guidance, ORR also has implemented COVID–19 testing regimes for UC in its care and continues to practice other mitigation measures to further prevent and curtail any transmission of the SARS–CoV–2 virus among UC in its care. These strategies include universal and proper wearing of masks, physical distancing, frequent hand washing, cleaning and disinfection, improved ventilation, staff vaccination, and cohorting UC according to their COVID–19 test status. Per CDC recommendation, ORR conducts serial testing of staff to allow early detection of a possible outbreak.[20] ORR contract staff working in facilities serving UC are encouraged to receive the COVID–19 vaccine.[21] As advised by CDC, ORR restricts movement of unvaccinated personnel between facilities to reduce potential outbreaks resulting from transfer of unvaccinated staff between shelters. These measures help reduce the spread of COVID–19 among UC prior to being introduced into U.S. communities.

In addition to the mitigation measures at EIS and ORR facilities outlined above, following FDA expansion of the emergency use authorization for the Pfizer-BioNTech COVID–19 vaccine for adolescents 12 to 15 years of age, CDC provided updated recommendations to ORR regarding the vaccination of UC ages 12 and older. ORR subsequently approved the administration of COVID–19 vaccine for age-eligible children. Under ORR care, children ages 12 and over are offered a COVID–19 vaccine as soon as possible, as long as there are no contraindications and vaccination does not delay unification of UC with sponsors. Of the total population of UC in ORR care, approximately 90% are eligible for vaccination and, as of July 12, 2021, ORR has administered at least one dose of the COVID–19 vaccine to 10,124 UC. CDC considers these vaccination efforts to be a critical risk reduction measure that supports excepting UC from the October Order.

Although 8,435 UC have tested positive for COVID–19 while at ORR shelters during the period of March 24, 2020 to July 8, 2021, 8,081 of those UC testing positive have successfully completed medical isolation, with few requiring medical treatment. Similarly, 6,590 COVID–19 cases have been reported among 14 EIS as of July 7, 2021; however only 14 (0.5%) of the UC in this group have required hospitalization (including two severe

[13] Dkt. No. 80, *P.J.E.S.* v. *Mayorkas et al.,* No. 1:20–cv–02245 (D.D.C. Nov. 18, 2020).

[14] *See* 8 U.S.C. 1232; Stipulated Settlement Agreement, *Flores* v. *Reno,* No. CV 85–cv–4544 (C.D. Cal. Jan. 17, 1997).

[15] 8 U.S.C. 1232(b)(3).

[16] EIS are intended to be a temporary measure providing a standard of care consistent with the best interest of children during an emergency situation. When fully operational with appropriate staffing and basic medical resources, EIS provide a safer, less crowded environment where UC are cared for, processed as quickly as possible, and are either released to a sponsor or transferred to an appropriate ORR facility for longer-term care. When no longer necessary, EIS facilities are demobilized.

[17] HHS Executive Leadership Information Brief (internal document). Published July 12, 2021.

[18] For comparison, on March 29, 2021, nearly 5,500 UC were in CBP custody, with 3,540 of those UC in custody for longer than 72 hours; as of March 31, 2021, the average time in CBP custody for UC was 131 hours.

[19] Specifically, ORR currently uses the following COVID–19 protocols for UC at EIS: UC are tested for COVID–19 by CBP prior to being transported to an EIS and then are also tested upon arrival to EIS. UC are required to quarantine for the first 7 days after admission to an EIS and can be released from quarantine on the morning of day 8 if they remain asymptomatic and had a negative COVID–19 test in the 48 hours prior. In addition to testing at admission and during quarantine, UC are routinely tested during their stay at EIS (*e.g.,* every three days), and any UC that develops symptoms consistent with COVID–19 infection is immediately tested. UC who test positive for COVID–19 are required to be isolated for 10 days from the date the positive test was collected, or 10 days from the date of symptom onset if asymptomatic. Contact tracing is conducted whenever anyone tests positive for COVID–19; UC exposed to COVID–19 are quarantined for seven days, tested on the 5th, 6th, or 7th day of their quarantine, and are released upon receiving a negative test result. ORR has also issued similar COVID–19 guidance to licensed facilities.

[20] In ORR facilities where the risk of transmission is moderate to high, public health officials working collaboratively with ORR facilities can determine the appropriateness of offering screening and repeat testing of randomly selected asymptomatic staff and children at the facility, as feasible, to identify cases and prevent secondary transmission.

[21] Additional criteria (*e.g.,* continued symptom monitoring and correct and consistent wearing of masks) should be met by ORR as outlined on CDC's website. *See* Science Brief: Options to Reduce Quarantine for Contacts of Persons with SARS–CoV–2 Infection Using Symptom Monitoring and Diagnostic Testing, Centers for Disease Control and Prevention, *https://www.cdc.gov/coronavirus/2019-ncov/more/scientific-brief-options-to-reduce-quarantine.html* (last updated Dec. 2, 2020).

cases requiring intensive care). These numbers indicate that the risk of overburdening the local healthcare systems by UC presenting with severe COVID–19 disease remains low. Based on the robust network of ORR care facilities and the testing and medical care available therein, as well as COVID–19 mitigation protocols including vaccination for personnel and eligible UC, there is very low likelihood that processing UC in accordance with existing Title 8 procedures will result in undue strain on the U.S. healthcare system or healthcare resources. Moreover, UC released to a vetted sponsor or placed in a permanent ORR shelter do not pose a significant level of risk for COVID–19 spread into the community because they are released after having undergone testing, quarantine and/or isolation, and vaccination when possible, and their sponsors are provided with appropriate medical and public health direction.

CDC thus finds that, at this time,[22] there is appropriate infrastructure in place to protect the children, caregivers, and local communities from elevated risk of COVID–19 transmission as a result of the introduction of UC, and U.S. healthcare resources are not significantly impacted by providing UC necessary care. CDC believes the COVID–19-related public health concerns associated with UC introduction can be adequately addressed without UC being subject to the October Order, thereby permitting the government to better address the humanitarian challenges for these children. Based on the foregoing, CDC is fully excepting UC from the October Order,[23] and the February Notice is hereby superseded. This Order shall be immediately effective. I consulted with DHS and other federal departments as needed before I issued this Order and requested that DHS continue to aid in the enforcement of this Order because CDC does not have the capability, resources, or personnel needed to do so.[24]

This Order is not a rule subject to notice and comment under the Administrative Procedure Act (APA). Even if it were, notice and comment and a delay in effective date are not required because there is good cause to dispense with prior public notice and the opportunity to comment on this Order and a delayed effective date. Given the public health emergency caused by COVID–19 and the highly unpredictable nature of its transmission and spread, it would be impracticable and contrary to public health practices and the public interest to delay the issuing and effective date of this Order with respect to UC. In addition, because this Order concerns the ongoing discussions with Canada and Mexico on how best to control COVID–19 transmission over our shared borders, it directly ''involve[s] . . . a . . . foreign affairs function of the United States.'' 5 U.S.C. 553(a)(1). Notice and comment and a delay in effective date would not be required for that reason as well.

Authority

The authority for this Order is Sections 362 and 365 of the Public Health Service Act (42 U.S.C. 265, 268) and 42 CFR 71.40.

Dated: July 19,2021.

Sherri Berger,

Chief of Staff, Centers for Disease Control and Prevention.

[FR Doc. 2021–15699 Filed 7–20–21; 4:15 pm]

BILLING CODE 4163–18–P

[22] This situation could change based on an increased influx of UC, changes in COVID–19 infection dynamics among UC, or unforeseen reductions in housing capacity.

[23] *See* 86 FR 9942.

[24] 42 U.S.C. 268; 42 CFR 71.40(d).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2021–0071; NIOSH–341]

World Trade Center Health Program; Request for Information

AGENCY: Centers for Disease Control and Prevention, HHS.

ACTION: Request for information.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH), within the Centers for Disease Control and Prevention (CDC), is soliciting public comment on the scope of an upcoming funding announcement for FY2022 regarding the World Trade Center (WTC) Health Program's research priorities involving WTC survivors. The WTC Health Program's research program helps answer critical questions about potential 9/11-related physical and mental health conditions as well as diagnosing and treating health conditions on the List of WTC-Related Health Conditions.

DATES: Comments must be received by August 23, 2021.

ADDRESSES: Comments may be submitted through either of the following two methods:

- *Federal eRulemaking Portal: http://www.regulations.gov* (follow the instructions for submitting comments), or
- *By Mail:* NIOSH Docket Office, Robert A. Taft Laboratories, MS C–34, 1090 Tusculum Avenue, Cincinnati, Ohio 45226–1998.

Instructions: All written submissions received in response to this notice must include the agency name (Centers for Disease Control and Prevention, HHS) and docket number (CDC–2021–0071; NIOSH–341) for this action. All relevant comments, including any personal information provided, will be posted without change to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Rachel Weiss, Program Analyst, 1090 Tusculum Avenue, MS: C–48, Cincinnati, OH 45226; telephone (855) 818–1629 (this is a toll-free number); email *NIOSHregs@cdc.gov.*

SUPPLEMENTARY INFORMATION: Title I of the James Zadroga 9/11 Health and Compensation Act of 2010 (Pub. L. 111–347, as amended by Pub. L. 114–113 and Pub. L. 116–59), added Title XXXIII to the Public Health Service (PHS) Act,[1] establishing the WTC Health Program within the Department of Health and Human Services (HHS). The WTC Health Program provides medical monitoring and treatment benefits for health conditions on the List of WTC-Related Health Conditions (List)[2] to eligible firefighters and related personnel, law enforcement officers, and rescue, recovery, and cleanup workers who responded to the September 11, 2001, terrorist attacks in New York City, at the Pentagon, and in Shanksville, Pennsylvania (responders). The Program also provides benefits to eligible persons who were present in the dust or dust cloud on September 11, 2001, or who worked, resided, or attended school, childcare, or adult daycare in the New York City disaster area (survivors).

The Zadroga Act also requires that the Program establish a research program on health conditions resulting from the September 11, 2001, terrorist attacks, addressing the following topics:[3]

- Physical and mental health conditions that may be related to the September 11, 2001, terrorist attacks;

[1] Title XXXIII of the PHS Act is codified at 42 U.S.C. 300mm to 300mm–61. Those portions of the James Zadroga 9/11 Health and Compensation Act of 2010 found in Titles II and III of Public Law 111–347 do not pertain to the WTC Health Program and are codified elsewhere.

[2] The List of WTC-Related Health Conditions is established in 42 U.S.C. 300mm–22(a)(3)–(4) and 300mm–32(b); additional conditions may be added through rulemaking and the complete list is provided in WTC Health Program regulations at 42 CFR 88.15.

[3] 42 U.S.C. 300mm–51(a).

• Diagnosing WTC-related health conditions for which there have been diagnostic uncertainty; and

• Treating WTC-related health conditions for which there have been treatment uncertainty.

Request for Information

The WTC Health Program conducts research among members receiving monitoring or treatment in the Program and in sampled populations outside the New York City disaster area in Manhattan as far north as 14th Street and in Brooklyn. WTC survivors include individuals who lived, worked, went to school, or attended child or adult day care in the NYC Disaster Area on September 11, 2001, or in the following days, weeks, or months and those otherwise meeting the eligibility criteria in 42 CFR 88.8. NIOSH is soliciting public comments from any interested party regarding research priorities for WTC Health Program FY2022 research projects on WTC survivors (adults and children) and similar survivor populations south of 14th street in Manhattan and in Brooklyn. Specifically, NIOSH seeks input on the following questions:

(1) What are the most important research gaps that need to be addressed within the scope of the research solicitation? (For NIOSH-funded research projects related to the September 11, 2001 terrorist attacks and areas of interest based on the Program's Research Agenda, please visit the WTC Health Program Research Gateway.)

(2) What are the most important areas of diagnostic and treatment uncertainty that could most benefit from intervention research (information that bridges the gap between science and practice, care, or treatment by addressing the barriers, challenges, and needs to advance implementation of new or improved treatment, care, or practices)?

(3) What are the primary research needs of WTC survivors (adults and/or children) and similar survivor populations south of 14th street in Manhattan and in Brooklyn?

John J. Howard,

Administrator, World Trade Center Health Program and Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, Department of Health and Human Services.

[FR Doc. 2021–15611 Filed 7–21–21; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Early Head Start–Child Care Partnerships Sustainability Study (OMB #0970–0471)

AGENCY: Office of Planning, Research, and Evaluation, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Administration for Children and Families (ACF) at the U.S. Department of Health and Human Services (HHS) seeks approval to collect information for the Early Head Start–Child Care Partnerships Sustainability Study.

DATES: *Comments due within 30 days of publication.* OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

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.

SUPPLEMENTARY INFORMATION:

Description: This information collection is to provide nationally descriptive, longitudinal data on partnerships between Early Head Start programs and child care providers to inform program planning, technical assistance, and research. The proposed data collection is a follow-up study of the 2015 (National Descriptive Study (NDS) of Early Head Start–Child Care Partnerships (OMB 0970–0471) that obtained information about the EHS programs, community-based child care centers, and family child care providers participating in the federal grants supporting the implementation of Early Head Start–child care partnerships (EHS–CCPs). The current information collection request will follow up with EHS programs and child care providers who participated in the NDS to understand whether and how partnerships have been sustained or have dissolved, and which features of partnerships support or impede sustainability. Data collection activities will include surveys of directors of 2015 EHS–CCP grantees and of child care provider directors/managers who were selected for participation in the NDS, as well as semi-structured interviews with a purposive sample of providers whose partnerships have dissolved and have been sustained since 2016.

Respondents: Early Head Start program directors and child care providers.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents (total over request period)	Number of responses per respondent (total over request period)	Average burden per response (in hours)	Total burden (in hours)	Annual burden (in hours)
EHS Program Director Survey	335	1	.58	194	65
Provider Survey (Sustained Partnership Provider Survey and Dissolved Partnership Provider Survey)	470	1	.50	235	78
Dissolved Partnership Provider Semi-structured Interview Protocol	48	1	.83	40	13
Sustained Partnership Provider Semi-structured Interview Protocol	24	1	.83	20	6

Estimated Total Annual Burden Hours: 162.

Authority: Sec 645A and 649 of the Improving Head Start for School Readiness Act of 2007 and the

Consolidated Appropriations Act of 2019.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2021–15568 Filed 7–21–21; 8:45 am]

BILLING CODE 4184–22–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; ACF–901—American Rescue Plan (ARP) Stabilization Grants Provider-Level Data (New Collection)

AGENCY: Office of Child Care, Administration for Children and Families, Health and Human Services (HHS).

ACTION: Request for public comment.

SUMMARY: The Office of Child Care, Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is proposing to collect data for a new collection, ACF–901—American Rescue Plan (ARP) Stabilization Grants Provider-Level Data. The data collection will provide numbers and characteristics of child care providers receiving ARP Act stabilization grant awards.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: The proposed collection of information will be posted at *www.acf.hhs.gov/occ.* Comments may be submitted by emailing *infocollection@acf.hhs.gov.* Alternatively, a copy can also be obtained by emailing *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The ARP Act of 2021 (Sec. 2202, Pub. L. 117–2) included approximately $24 billion in funding for child care stabilization grants. State and territory lead agencies must spend at least 90 percent of the stabilization funds as subgrants to qualified child care providers to support the stability of the child care sector during and after the COVID–19 public health emergency. Data collection will include child care provider-level information about the numbers and characteristics of child care providers receiving stabilization grant awards.

Respondents: State and Territory Lead Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual burden hours
ACF–901: American Rescue Plan (ARP) Stabilization Grants Provider-Level Data	56	4	20	4,480

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: The Child Care and Development Block Grant Act (42 U.S.C. 9857 *et seq.*); 45 CFR parts 98 and 99; the ARP Act of 2021 (Sec. 2202, Pub. L. 117–2).

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2021–15606 Filed 7–21–21; 8:45 am]

BILLING CODE 4184–84–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; The Study of Disability Services Coordinators and Inclusion in Head Start (New Collection)

AGENCY: Office of Planning, Research, and Evaluation, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: This is a new request for data collection for the Study of Disability Services Coordinators and Inclusion in Head Start. The study aims to provide a nationally representative picture of the Early Head Start (EHS) and Head Start (HS) Disability Services Coordinator (DSC) workforce, as well as services provided to children with disabilities and their families within these programs and how EHS/HS collaborates with services in the community, including health providers, Local Education Agencies, and Part C. This is the first study of the HS/EHS DSC workforce and will contain three waves of data collection using surveys and qualitative interviews.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of the Paperwork Reduction Act of 1995, the Administration for Children and Families (ACF) is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: Copies of the proposed collection of information can be obtained and comments may be forwarded by emailing *OPREinfocollection@acf.hhs.gov.* Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: OPRE Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The Study of DSCs and Inclusion in Head Start will support ACF in better understanding the implementation of EHS/HS policies and practices for delivering disability services. This study aims to present a nationally representative description of the characteristics and work of DSCs and related staff in EHS/HS programs and how EHS/HS serves children with

disabilities and their families. The study will not allow for statistical generalization beyond EHS/HS and their service populations.

The study will report on inclusive practices, staffing, professional development, and collaboration with local education agencies, early intervention programs, health providers, and other community stakeholders who serve young children with disabilities and their families.

ACF aims to address the research questions through a national survey of EHS/HS program directors (Wave 1), a survey with DSCs identified by the directors (Wave 2), and a one-time qualitative interview with a subset of DSCs who respond to the web-based survey (Wave 3). There are no data regarding the population of the DSC workforce and subgroups, preventing the team from setting a frame for selecting a nationally representative sample. Given the lack of administrative data and contact information about DSCs, it is essential that a national survey of EHS/HS directors (Wave 1) be conducted to identify DSC respondents. A purposive sample of DSCs who completed the Wave 2 survey will be asked to participate in a semi-structured, qualitative interview.

Data collection activities will occur over 15 months, shortly after OMB approval. The three waves of data collection will occur concurrently—the Wave 1 survey will be fielded for approximately 8 months; the Wave 2 survey will be fielded for approximately 12 months; and the Wave 3 interviews will be conducted over 4 months.

Respondents: Head Start Directors, Head Start Disability Services Coordinators.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents (total over request period)	Number of responses per respondent (total over request period)	Average burden per response (in hours)	Total burden (in hours)	Annual burden (in hours)
Survey of EHS/HS Program Directors (Wave 1)	1,600	1	0.42	672	336
Survey of EHS/HS DSCs (Wave 2)	1,200	1	0.75	900	450
DSC Interview (Wave 3)	36	1	0.75	27	13.5

Estimated Total Annual Burden Hours: 799.5.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: 42 U.S.C. 9835; 42 U.S.C. 9844.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2021–15594 Filed 7–21–21; 8:45 am]

BILLING CODE 4184–22–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Office of Child Care Data Collection for ACF–218: FFY 2021 Quality Progress Report (QPR)

AGENCY: Office of Child Care, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Office of Child Care (OCC) is requesting a 1-year extension of the form ACF–218: Quality Progress Report (QPR) (OMB #0970–0517, expiration 9/30/2021). There are minor changes requested to the form related to COVID–19 pandemic supplemental funding increases.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: The proposed collection of information will be posted at *www.acf.hhs.gov/occ.* Comments may be submitted by emailing *infocollection@acf.hhs.gov.* Alternatively, a copy can also be obtained by emailing *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: Lead Agencies are required to spend a certain percent of their Child Care and Development Fund (CCDF) awards on activities to improve the quality of child care. Lead Agencies are also required to invest in at least 1 of 10 allowable quality activities included in the Child Care and Development Block Grant (CCDBG) Act of 2014. In order to ensure that states and territories are meeting these requirements, the CCDBG Act and the CCDF final rule require Lead Agencies to submit an annual report that describes how quality funds were expended. The CCDF final rule named this the QPR. The report must describe how quality funds were expended, including what types of activities were funded and measures used to evaluate progress in improving the quality of child care programs and services. The QPR increased transparency on quality spending and will continue to gather detailed information on how states and territories are spending their quality funds, as well as more specific data points to reflect the requirements in the CCDBG Act and the CCDF final rule. The annual data provided by the QPR will be used to describe how lead agencies are spending a significant investment per year to key stakeholders, including Congress, federal, state and territory administrators, providers, parents, and the public.

Specifically, this report will be used to:

• Ensure accountability and transparency for the use of CCDF quality funds, including a set-aside for quality infant and toddler care and the stabilization grants funded by the American Rescue Plan Act funding;

• Track progress toward meeting state- and territory-set indicators and benchmarks for improvement of child care quality based on goals and activities described in CCDF Plans;

• Understand efforts to progress towards all child care settings meeting the developmental needs of children; and

• Inform federal technical assistance efforts and decisions regarding strategic use of quality funds.

Respondents: State and territory CCDF lead agencies (56).

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual burden hours
ACF–218: FFY 2021 QPR	56	1	75	4,200

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: 42 U.S.C. 9858.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2021–15711 Filed 7–21–21; 8:45 am]

BILLING CODE 4184–43–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Child Support Portal Registration (OMB No.: 0970–0370)

AGENCY: Office of Child Support Enforcement, Administration for Children and Families, Health and Human Services (HHS).

ACTION: Request for public comment.

SUMMARY: The Office of Child Support Enforcement (OCSE), Administration for Children and Families (ACF), is requesting the federal Office of Management and Budget (OMB) approve the ''Child Support Portal Registration,'' with revisions, for an additional three years. OCSE's Child Support Portal (''Portal'') contains applications to assist state child support agencies with administering their programs. Authorized Portal users must register with OCSE to access Portal applications and provide OCSE with certain preferences. The current OMB approval expires on February 28, 2022.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: Copies of the proposed collection of information can be obtained and comments may be forwarded by emailing *infocollection@acf.hhs.gov.* Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation (OPRE), 330 C Street SW, Washington, DC 20201, Attn: ACF Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: OCSE's Division of Federal Systems maintains the Portal, which contains various applications that authorized users may view, update, and upload or download information for child support purposes. OCSE creates secure profiles for authorized users for employers, insurers, and financial institutions based on information provided in the Employer Services and Insurance Match Debt Inquiry Portal Registration forms. OCSE added the electronic National Medical Support Notice (e-NMSN), the electronic Incoming Withholding Order (e-IWO), and Multistate Financial Institution Data Match FAST Levy (MSFIDM FAST LEVY) Profile forms, which provide OCSE with information to set up the respective program user's process and capture preferences. State child support agencies manage and authenticate authorization for individual users via the state proxy server; therefore, a Portal Registration form is not required. State users must, however, provide OCSE with their respective Portal preferences.

Respondents: Employers, Financial Institutions, Insurers, and State Child Support Agencies.

ANNUAL BURDEN ESTIMATES

Information collection instrument	Tota estimated number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours
Employer Services Agreement and Profile	9,508	1	0.08	760.64
Insurance Match Debt Inquiry Agreement and Profile	18	1	0.08	1.44
e-NMSN: Plan Administrator Profile	5	1	0.22	1.10
e-NMSN: Employer Profile	5	1	0.22	1.10
e-NMSN: State Profile	5	1	0.22	1.10
e-IWO S2S Profile	4	1	0.22	0.88

ANNUAL BURDEN ESTIMATES—Continued

Information collection instrument	Tota estimated number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours
e-IWO NPO Profile	46	1	0.22	10.12
MSFI–FAST Levy Profile	5	1	0.08	0.40
Portal Registration Screens	1,254	1	0.15	188.10

Estimated Total Annual Burden Hours: 964.88.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: 42 U.S.C. 653(m)(2) and 44 U.S.C. 3554.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2021–15614 Filed 7–21–21; 8:45 am]

BILLING CODE 4184–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request, Information Collection Request Title: Rural Health Care Services Outreach Program Performance Improvement and Measurement Systems (PIMS) Measures, OMB No. 0906–0009, Revision

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR must be received no later than September 20, 2021.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 14N136B, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Lisa Wright-Solomon, the HRSA Information Collection Clearance Officer at (301) 443–1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information request collection title for reference.

Information Collection Request Title: Rural Health Care Services Outreach Program PIMS Measures OMB No. 0906–0009—Revision

Abstract: The Rural Health Care Services Outreach (Outreach) Program is authorized by Section 330A(e) of the Public Health Service Act (42 U.S.C. 254c(e)) to ''promote rural health care services outreach by improving and expanding the delivery of health care services to include new and enhanced services in rural areas, through community engagement and evidence-based or innovative, evidence-informed models.'' The goals for the Outreach Program are as follows: (1) Expand the delivery of health care services to include new and enhanced services exclusively in rural communities, (2) deliver health care services through a strong consortium, in which every consortium member organization is actively involved and engaged in the planning and delivery of services, (3) utilize community engagement and evidence-based or innovative, evidence-informed model(s) in the delivery of health care services, and (4) improve population health, and demonstrate health outcomes and sustainability.

Need and Proposed Use of the Information: The PIMS measures for the Outreach Program enable HRSA and the Federal Office of Rural Health Policy to capture awardee-level and aggregate data that illustrate the impact and scope of federal funding. The collection of this information helps further inform and substantiate the focus and objectives of the grant program. The measures encompass the following topics: (a) Access to care, (b) population demographics, (c) consortium/network, (d) sustainability, and (e) project specific domains.

The proposed Outreach PIMS measures reflect an increase in the number of measures including the following:

(1) The addition of project-specific measures related to the Healthy Rural Hometown Initiative (includes 17 required and 20 optional measures for a total of 37 additional measures) applicable only to Outreach awardees who apply to be part of the Healthy Rural Hometown Initiative track (anticipated total of 16 out of 61 awardees) to focus on one or more of the five causes of excess death in rural communities (heart disease, cancer, unintentional injury/substance use, chronic lower respiratory disease, and stroke);

(2) addition of project-specific measures (3 additional measures) only applicable to Outreach Awardees with a focus on telehealth (anticipated total of 15 out of 61 awardees);

(3) the addition of social determinants of health measures (3 additional measures) only applicable to Outreach Awardees addressing social determinants of health as part of their grant funded activities (anticipated total of 15 out of 61 awardees);

(4) the consolidation of the access to care measures from singular to composite measure format (currently 14, previously 16) applicable to all awardees (anticipated total of 61 awardees);

(5) removal of an outdated project specific measure (1 measure removed) applicable to awardees focused on childhood obesity;

(6) removal of an outdated project specific applicable to awardees

providing clinical services (currently 7, previously 8) related to Healthy People 2020 and;

(7) removal of the outdated project specific Health Improvement Special Project measure (1 measure removed).

In total, the proposed changes reflect the addition of 43 measures and the removal of 5 measures for an increase in measures by a total of 38 measures. Of these measures, 17 are required and 26 are optional. All additional measures proposed are project specific (only applicable to anticipated total ranging from 15–16 out of 61 awardees). All measures will not be applicable to all 61 respondents. Project specific measures will remain applicable only to Outreach Awardees focusing on the respective project specific topic.

Likely Respondents: The respondents would be award recipients of the Rural Health Care Services Outreach Program.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; train personnel and to be able to respond to a collection of information; to search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

Total Estimated Annualized Burden Hours:

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Rural Health Care Services Outreach PIMS	61	1	61	3.5	213.5
	61		61		213.5

HRSA specifically requests comments on the: (1) Necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2021–15607 Filed 7–21–21; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request; Information Collection Request Title: The Advisory Committee on Heritable Disorders in Newborns and Children's Public Health System Assessment Surveys, OMB No. 0906–0014, Revision

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR should be received no later than September 20, 2021.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 14N136B, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Lisa Wright-Solomon, the HRSA Information Collection Clearance Officer at (301) 443–1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information request collection title for reference.

Information Collection Request Title: The Advisory Committee on Heritable Disorders in Newborns and Children's Public Health System Assessment Surveys, OMB No. 0906–0014—Revision.

Abstract: The purpose of the Public Health System Assessment Surveys is to inform the Advisory Committee on Heritable Disorders in Newborns and Children (Committee) on states' ability to add newborn screening for particular conditions, including the feasibility, readiness, and overall capacity to screen for a new condition.

The Committee was established under the Public Health Service Act, 42 U.S.C. 217a: Advisory councils or committees, and Title XI § 1111 (42 U.S.C. 300b-10). The purpose of the Committee is to provide the Secretary with recommendations, advice, and technical information regarding the most appropriate application of technologies, policies, guidelines, and standards for: (a) Effectively reducing morbidity and mortality in newborns and children having, or at risk for, heritable disorders; and (b) enhancing the ability of state and local health agencies to provide for newborn and child screening, counseling, and health care services for newborns and children having, or at risk for, heritable disorders. Specifically, the Committee makes systematic evidence-based recommendations on newborn screening for conditions that have the potential to change the health outcomes for newborns.

The Committee tasks an external workgroup to conduct systematic evidence-based reviews for conditions being considered for addition to the Recommended Uniform Screening Panel, and their corresponding newborn screening test(s), confirmatory test(s), and treatment(s). Reviews also include an analysis of the benefits and harms of newborn screening for a selected condition at a population level and an assessment of state public health newborn screening programs' ability to implement the screening of a new condition.

Need and Proposed Use of the Information: The Committee's Evidence Review Group administers the surveys to collect data from state newborn screening programs in the United States.

The surveys have been developed to capture the following: (1) Readiness of state public health newborn screening programs to expand newborn screening to include the target condition, (2) specific requirements of screening for a condition that could hinder or facilitate implementation in each state, and (3) estimated timeframes needed for each state to complete major milestones toward full implementation of newborn screening for the condition.

The following is a summary of proposed changes to the Committee's Public Health System Assessment Surveys:

Proposed changes to the ''INITIAL Survey of the Secretary's Advisory Committee on Heritable Disorders in Newborns and Children's Public Health System Assessment:''

- Survey title:
  - *Current title:* ''INITIAL Survey of the Secretary's Advisory Committee on Heritable Disorders in Newborns and Children's Public Health System Assessment''
  - *Proposed change:* (strike ''Secretary's'') ''INITIAL Survey of the Advisory Committee on Heritable Disorders in Newborns and Children's Public Health System Assessment''
  - *Rationale:* Per the charter signed on November 10, 2020, the Advisory Committee on Heritable Disorders in Newborns and Children is the correct name for the Committee.
- Introductory paragraph:
  - *Current introductory paragraph:* ''The purpose of this survey is to inform the Secretary of Health and Human Services Advisory Committee on Heritable Disorders in Newborns and Children (Committee) about states' ability to add newborn screening (NBS) for [condition x] using information gathered from most of the state and territorial NBS programs in the U.S. . . .''
  - *Proposed change:* (strike ''Secretary of Health and Human Services'') ''The purpose of this survey is to inform the Advisory Committee on Heritable Disorders in Newborns and Children (Committee) about states' ability to add newborn screening (NBS) for [condition x] using information gathered from most of the state and territorial NBS programs in the U.S. . . .''
  - *Rationale:* Per the charter signed November 10, 2020, the Advisory Committee on Heritable Disorders in Newborns and Children is the correct name of the Committee.
- Instructions for question 3 (grammatical edit):
  - *Current instructions:* ''. . . The following question asks you to consider, in general, how much the following factors would be an issue in considering adding [condition x] to your NBS panel.''
  - *Proposed change:* (strike ''in'' and replace with ''when'') ''. . . The following question asks you to consider, in general, how much the following factors would be an issue when considering adding [condition x] to your NBS panel.''
  - *Rationale:* Change made to correct a grammatical error.

Proposed changes to the ''FOLLOW–UP Survey of the Secretary's Advisory Committee on Heritable Disorders in Newborns and Children's Public Health System Assessment''

- Survey title:
  - *Current title:* ''INITIAL Survey of the Secretary's Advisory Committee on Heritable Disorders in Newborns and Children's Public Health System Assessment''
  - *Proposed change:* (strike ''Secretary's'') ''INITIAL Survey of the Advisory Committee on Heritable Disorders in Newborns and Children's Pub.
  - *Rationale:* Per the charter signed November 10, 2020, the Advisory Committee on Heritable Disorders in Newborns and Children is the correct name of the Committee.
- Question 9 (grammatical edits):
  - *Current question:* ''Have you developed a follow up protocol and/or educational materials for [condition x]? If so please describe the steps for short-term follow and how the plan was developed.''
  - *Proposed change:* (insert hyphen in ''follow-up'' and insert ''-up'' in the phrase ''short-term follow'') ''Have you developed a follow-up protocol and/or educational materials for [condition x]? If so, please describe the steps for short-term follow-up and how the plan was developed.
  - *Rationale:* Change made to correct grammatical errors.

The data gathered informs the Committee on the following: (1) Feasibility of implementing population-based screening for the target condition, (2) readiness of state newborn screening programs to adopt screening for the condition, (3) gaps or limitations related to the feasibility or readiness of states to screen for a condition, and (4) areas of technical assistance and resources needed to facilitate screening for conditions with low feasibility or readiness.

Likely Respondents: The respondents to the survey will be state and territorial newborn screening programs.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
INITIAL Survey of the Advisory Committee on Heritable Disorders in Newborns and Children's Public Health System Assessment	[1] 59	[3] 2	118	10.0	1,180
FOLLOW–UP Survey of the Advisory Committee on Heritable Disorders in Newborns and Children's Public Health System Assessment	[2] 30	[3] 2	60	2.0	120
Total	89	.....	178	.....	1,300

* It is anticipated that the proposed revisions will not impact the estimated annualized burden hours.

[1] The respondents to the survey will be state and territorial newborn screening programs.

[2] Up to 30 states and/or territories will be asked to complete a follow-up survey.
[3] Up to two conditions may be reviewed per year.

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2021–15598 Filed 7–21–21; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Meeting of the Advisory Committee on Heritable Disorders in Newborns and Children

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In accordance with the Public Health Service Act and the Federal Advisory Committee Act, this notice announces that the Advisory Committee on Heritable Disorders in Newborns and Children (ACHDNC or Committee) has scheduled a public meeting to be held on Thursday, August 12, 2021, and Friday, August 13, 2021. Information about the ACHDNC and the agenda for this meeting can be found on the ACHDNC website at *https://www.hrsa.gov/advisory-committees/heritable-disorders/index.html.*

DATES: Thursday, August 12, 2021, from 10:00 a.m. to 2:15 p.m. Eastern Time (ET) and Friday, August 13, 2021, from 10:00 a.m. to 2:00 p.m. ET.

ADDRESSES: This meeting will be held via webinar. While this meeting is open to the public, advance registration is required.

Please register online at *https://www.achdncmeetings.org/registration/* by the deadline of 12:00 p.m. ET on August 11, 2021. Instructions on how to access the meeting via webcast will be provided upon registration.

FOR FURTHER INFORMATION CONTACT: Alaina Harris, Maternal and Child Health Bureau, HRSA, 5600 Fishers Lane, Rockville, Maryland 20857; 301–443–0721; or *ACHDNC@hrsa.gov.*

SUPPLEMENTARY INFORMATION: ACHDNC provides advice and recommendations to the Secretary of HHS (Secretary) on the development of newborn screening activities, technologies, policies, guidelines, and programs for effectively reducing morbidity and mortality in newborns and children having, or at risk for, heritable disorders. The ACHDNC reviews and reports regularly on newborn and childhood screening practices, recommends improvements in the national newborn and childhood screening programs, and fulfills requirements stated in the authorizing legislation. In addition, ACHDNC's recommendations regarding inclusion of additional conditions for screening, following adoption by the Secretary, are evidence-informed preventive health services provided for in the comprehensive guidelines supported by HRSA through the Recommended Uniform Screening Panel pursuant to section 2713 of the Public Health Service Act (42 U.S.C. 300gg–13). Under this provision, non-grandfathered group health plans and health insurance issuers offering group or individual health insurance are required to provide insurance coverage without cost-sharing (a co-payment, co-insurance, or deductible) for preventive services for plan years (*i.e.,* policy years) beginning on or after the date that is one year from the Secretary's adoption of the condition for screening.

During the August 12–13, 2021, meeting, ACHDNC will hear from experts in the fields of public health, medicine, heritable disorders, rare disorders, and newborn screening. Agenda items include the following:

(1) Overview of the Committee's review of its evidence-review processes and proposed updates,

(2) A presentation on phase one of the mucopolysaccharidosis type II evidence review,

(3) Guanidinoacetate methyltransferase (GAMT) deficiency nomination summary,

(4) Possible Committee vote on whether to move GAMT deficiency forward to a full evidence review,

(5) Committee discussion on emerging issues for newborn screening,

(6) A panel presentation on national registries followed by Committee discussion,

(7) A panel presentation on emerging issues facing the newborn screening workforce followed by Committee discussion, and

(8) Public comments on any newborn screening related topic.

The public is also encouraged to provide public comment on the proposed updates to the Committee's evidence review processes. For reference, a summary of questions for public consideration is on the ACHDNC website. We request that public participants providing oral comments on the review of the Committee's evidence review process also submit a written version of their remarks.

The agenda for this meeting does not include any vote or decision to recommend a condition for inclusion in the Recommended Uniform Screening Panel. As noted in the agenda items, the Committee may hold a vote on whether or not to recommend a nominated condition (GAMT deficiency) to full evidence review, which may lead to such a recommendation at a future time. Agenda items are subject to change as priorities dictate. Information about the ACHDNC, including a roster of members and past meeting summaries, is available on the ACHDNC website listed above.

As previously noted, members of the public will have the opportunity to provide comments. Public participants providing general oral comments may submit written statements in advance of the scheduled meeting. Oral comments will be honored in the order they are requested and may be limited as time allows. Requests to provide a written statement or make oral comments to the ACHDNC must be submitted via the registration website by 10:00 a.m. ET on Monday, August 9, 2021.

Individuals who need special assistance or another reasonable accommodation should notify Alaina Harris at the address and phone number listed above at least 10 business days prior to the meeting.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2021–15569 Filed 7–21–21; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, 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; National Institute Of Allergy And Infectious Diseases (NIAID) Clinical Site Monitoring Center (CSMC).

Date: August 17, 2021.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G53, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Konrad Krzewski, Ph.D., Scientific Review Officer, Scientific Review Program, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G53, Rockville, MD 20852, 240–747–7526, *konrad.krzewski@nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID 2021 DMID Omnibus BAA (HHS–NIH–NIAID–BAA2021–01) Research Area 002: Development of Therapeutic Products for Biodefense, Anti-Microbial Resistant (AMR) Infections and Emerging Infectious Diseases-Viral Therapeutics.

Date: August 18–19, 2021.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G53, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Frank S. De Silva, 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 3G53, Rockville, MD 20892–9823, (240) 669–5023, *fdesilva@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: July 16, 2021.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–15557 Filed 7–21–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Diagnosis and Treatment of Pediatric and Rare Cancers.

Date: September 16–17, 2021.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W260, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Nadeem Khan, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W260, Rockville, Maryland 20850, 240–276–5856, *nadeem.khan@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; K22 Transition Career Development Award.

Date: September 21, 2021.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W234, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Adriana Stoica, Ph.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W234, Rockville, Maryland 20850, 240–276–6368, *Stoicaa2@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Program Project I (P01).

Date: October 6–7, 2021.

Time: 9:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W618, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Mukesh Kumar, Ph.D., Scientific Review Officer, Research Program Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W618, Rockville, Maryland 20850, 240–276–6611, *mukesh.kumar3@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Program Project II.

Date: October 12–13, 2021.

Time: 9:30 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W116, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Klaus B. Piontek, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W116, Rockville, Maryland 20850, 240–276–5413, *klaus.piontek@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI SPORE (P50) Review I.

Date: October 13–14, 2021.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W242, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: John Paul Cairns, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W242, Rockville, Maryland 20850, 240–276–5415, *paul.cairns@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI SPORE (P50) Review II.

Date: October 14, 2021.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W248, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Anita T. Tandle, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W248, Rockville, Maryland 20850, 240–276–5085, *tandlea@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Program Project III.

Date: October 20–21, 2021.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W648, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Michael E. Lindquist, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W648, Rockville, Maryland 20850 *mike.lindquist@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Technologies for Basic and Clinical Cancer Research.

Date: October 28–29, 2021.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W260, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Nadeem Khan, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W260, Rockville, Maryland 20850, 240–276–5856, *nadeem.khan@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 16, 2021.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–15547 Filed 7–21–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA- 2021–0013; OMB No. 1660–0002]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Disaster Assistance Registration

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 30 Day notice of renewal and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before August 23, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Information Management Division, email address *FEMA-Information-Collections-Management@fema.dhs.gov* or Brian Thompson, Supervisory Program Specialist, FEMA, Recovery Directorate, 540–686–3602.

SUPPLEMENTARY INFORMATION: This proposed information collection previously published in the **Federal Register** on April 12, 2021, at 86 FR 19001 with a 60 day public comment period. No comments were received. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

Collection of Information

Title: Disaster Assistance Registration.

Type of information collection: Extension, without change, of a currently approved information collection.

OMB Number: 1660–0002.

Form Titles and Numbers: FF–104–FY–21–123 (formerly FEMA Form 009–0–1T (English)), Tele-Registration, Disaster Assistance Registration; FF–104–FY–21–1123–A (formerly FEMA Form 009–0–1T (Spanish)), Tele-Registration, Registro Para Asistencia De Desatre; FF–104–FY–21–123–COVID–FA (formerly FEMA Form 009–0–1T–COVID–FA (English)), Tele-Registration, COVID–19 Funeral Assistance; FF–104–FY–21–125 (formerly FEMA Form 009–0–1Int (English)), Internet, Disaster Assistance Registration; FF–104–FY–21–125–A (formerly FEMA Form 009–0–2Int (Spanish)), Internet, Registro Para Asistencia De Desastre; FF–104–FY–21–122 (formerly FEMA Form 009–0–1 (English)), Paper Application/Disaster Assistance Registration; FF–104–FY–21–122–A (formerly FEMA Form 009–0–2 (Spanish)), Solicitud en Papel/Registro Para Asistencia De Desastre; FF–104–FY–21–128 (formerly FEMA Form 009–0–3 (English)), Declaration and Release; FF–104–FY–21–128–A (formerly FEMA Form 009–0–4 (Spanish)), Declaración Y Autorización; FF–104–FY–21–127 (formerly FEMA Form 009–0–5 (English)), Manufactured Housing Unit Revocable License and Receipt for Government Property; FF–104–FY–21–127–A (formerly FEMA Form 009–0–6 (Spanish)), Las Casas Manufacturadas Unidad Licencia Revocable y Recibo de la Propiedad del Gobierno; Request for Information (RFI).

Abstract: The forms in this collection are used to obtain pertinent information to provide financial assistance, and if necessary, direct assistance to eligible individuals and households who, as a direct result of a disaster or emergency, have uninsured or under-insured, necessary or serious expenses they are unable to meet. This extension, without change, will also support the continued ability to provide COVID–19 Funeral Assistance to individuals who responsible for a deceased individual's funeral expenses.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 2,004,488.

Estimated Number of Responses: 2,004,488.

Estimated Total Annual Burden Hours: 622,707.

Estimated Total Annual Respondent Cost: $24,441,251.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $203,187,715.

Comments

Comments may be submitted as indicated in the **ADDRESS** 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. 2021–15610 Filed 7–21–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4512–DR; Docket ID FEMA–2021–0001]

Virginia; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Homeland Security (DHS).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Virginia (FEMA–4512–DR), dated April 2, 2020, and related determinations.

DATES: This change occurred on July 6, 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, MaryAnn Tierney, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Janice P. Barlow 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. 2021–15625 Filed 7–21–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4506–DR; Docket ID FEMA–2021–0001]

Pennsylvania; 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 Commonwealth of Pennsylvania (FEMA–4506–DR), dated March 30, 2020, and related determinations.

DATES: This change occurred on July 6, 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, MaryAnn Tierney, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Janice P. Barlow 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. 2021–15624 Filed 7–21–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4590–DR; Docket ID FEMA–2021–0001]

Louisiana; 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 State of Louisiana (FEMA–4590–DR), dated March 9, 2021, and related determinations.

DATES: This amendment was issued July 9, 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 Louisiana 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 March 9, 2021.

Bienville, Calcasieu, Claiborne, Franklin, Natchitoches, Rapides, Richland, Sabine, Webster, and West Carroll Parishes for debris removal [Category A] and permanent work [Categories C–G] (already designated for Individual Assistance and emergency protective measures [Category B], including direct federal assistance, under the Public Assistance program).

Caldwell, Iberville, Livingston, and Tensas Parishes for debris removal [Category A] and permanent work [Categories C–G] (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. 2021–15634 Filed 7–21–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4590–DR; Docket ID FEMA–2021–0001]

Louisiana; 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 Louisiana (FEMA–4590–DR), dated March 9, 2021, and related determinations.

DATES: This amendment was issued June 22, 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 Louisiana 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 March 9, 2021.

Allen, Beauregard, Lincoln, St. Helena, Union, and Washington Parishes for debris removal [Category A] and permanent work [Categories C–G] (already designated for emergency protective measures [Category B], including direct federal assistance, under the Public Assistance program)

Bossier, Caddo, Catahoula, Concordia, DeSoto, East Baton Rouge, Grant, LaSalle, and Ouachita Parishes for debris removal [Category A] and permanent work [Categories C–G] (already designated for Individual Assistance and 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. 2021–15633 Filed 7–21–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3561–EM; Docket ID FEMA–2021–0001]

Florida; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Florida (FEMA–3561–EM), dated July 4, 2021, and related determinations.

DATES: This amendment was issued July 7, 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 an emergency declaration for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared an emergency by the President in his declaration of July 4, 2021.

Alachua, Columbia, Dixie, Franklin, Hamilton, Gilchrist, Jefferson, Lake, Lafayette, Madison, Marion, Sumter, Suwannee, Taylor, and Wakulla Counties for emergency protective measures (Category B), limited to direct Federal assistance and reimbursement for mass care including evacuation and shelter support.

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. 2021–15619 Filed 7–21–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4502–DR; Docket ID FEMA–2021–0001]

District of Columbia; 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 District of Columbia (FEMA–4502–DR), dated March 29, 2020, and related determinations.

DATES: This change occurred on July 6, 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, MaryAnn Tierney, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Janice P. Barlow 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. 2021–15623 Filed 7–21–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4566–DR; Docket ID FEMA–2021–0001]

Delaware; 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 State of Delaware (FEMA–4566–DR), dated October 2, 2020, and related determinations.

DATES: This change occurred on June 1, 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, Mark K. O'Hanlon, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Timothy S. Pheil, 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. 2021–15629 Filed 7–21–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3561–EM; Docket ID FEMA–2021–0001]

Florida; Amendment No. 2 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Florida (FEMA–3561–EM), dated July 4, 2021, and related determinations.

DATES: This amendment was issued July 9, 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 an emergency declaration for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared an emergency by the President in his declaration of July 4, 2021.

Baker, Bradford, Clay, Duval, Nassau, Putnam, and Union Counties for emergency protective measures (Category B), limited to direct Federal assistance and reimbursement for mass care including evacuation and shelter support.

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. 2021–15620 Filed 7–21–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2021–0019; OMB No. 1660–0068]

Agency Information Collection Activities: Proposed Collection; Comment Request; Federal Hotel and Motel Fire Safety Declaration Form

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice of renewal 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 an extension without change of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning a list of hotels, motels, and similar places of public accommodations meeting minimum fire-safety requirements. The information collected is voluntary and if approved for listing, the lodging establishment may be used by Federal employees on government related travel and for Federal agency conferences. As the list is open to use by the public, non-government travelers may use the list to identify lodging meeting minimum life-safety criteria from fire.

DATES: Comments must be submitted on or before September 20, 2021.

ADDRESSES: Submit comments at *www.regulations.gov* under Docket ID FEMA–2021–0019. Follow the instructions for submitting comments.

All submissions received must include the agency name and Docket ID and will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available on the homepage of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Teressa Kaas, Fire Program Specialist, FEMA/U.S. Fire Administration, *Teressa.Kaas@fema.dhs.gov* or 301–447–1263 for additional information. You may contact the Information Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Hotel and Motel Fire Safety Act of 1990 (Pub. L. 101–391) requires FEMA to establish and maintain a list of hotels, motels, and similar places of public accommodation meeting minimum requirements for protection of life from fire. This list is known as the National Master List (NML). This law resulted from a series of deadly fires in hotels and motels, occurring in the late 70's and 80's, with high loss of life. The legislative intent of this public law is to provide all travelers the assurance of fire-safety in accommodations identified on the NML. Public Law 101–391 further stipulates that Federal employees on official travel stay in properties approved by the authority having jurisdiction and listed on the current NML. For statutory reference see 15 U.S.C. 2224–26.

Collection of Information

Title: Federal Hotel and Motel Fire Safety Declaration Form.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0068.

FEMA Form: FEMA Form 516–0–1, Federal Hotel and Motel Fire Safety Declaration Form.

Abstract: FEMA Form 516–0–1 collects basic information on life-safety systems related directly to fire-safety in hotels, motels, and similar places of accommodations applying for inclusion on the National Master List in compliance with the Hotel and Motel Fire Safety Act of 1990 (Pub. L. 101–391). Information is published in the National Master List and is publicly available.

Affected Public: Business or other for-profit; State, Local or Tribal Government.

Estimated Number of Respondents: 2,532.

Estimated Number of Responses: 3,141.

Estimated Total Annual Burden Hours: 836 hours.

Estimated Total Annual Respondent Cost: $38,864

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $89,668.

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. 2021–15612 Filed 7–21–21; 8:45 am]

BILLING CODE 9111–76–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4526–DR; Docket ID FEMA–2021–0001]

Delaware; 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 Delaware (FEMA–4526–DR), dated April 5, 2020, and related determinations.

DATES: This change occurred on July 6, 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, MaryAnn Tierney, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Janice P. Barlow 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. 2021–15627 Filed 7–21–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4581–DR; Docket ID FEMA–2021–0001]

Colorado; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Homeland Security (DHS).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Colorado (FEMA–4581–DR), dated January 15, 2021, and related determinations.

DATES: This change occurred on June 7, 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, Alana B. Kuhn, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Jon K. Huss, 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. 2021–15630 Filed 7–21–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4562–DR; Docket ID FEMA–2021–0001]

Oregon; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Homeland Security (DHS).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Oregon (FEMA–4562–DR), dated September 15, 2020, and related determinations.

DATES: This amendment was issued June 29, 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: Notice is hereby given that, in a letter dated June 29, 2021, the President amended the cost-sharing arrangements regarding Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), in a letter to Deanne Criswell, Administrator, Federal Emergency Management Agency, Department of Homeland Security, under Executive Order 12148, as follows:

I have determined that the damage in certain areas of the State of Oregon resulting from wildfires and straight-line winds during the period of September 7 to November 3, 2020, is of sufficient severity and magnitude that special cost sharing arrangements are warranted regarding federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act'').

Therefore, I amend the declaration of September 15, 2020, to authorize a 100 percent Federal cost share for debris removal and emergency protective measures, including direct Federal assistance, under the Public Assistance program for a continuous period of 30 days established by the State of Oregon.

This adjustment to State and local cost sharing applies only to Public Assistance costs and direct Federal assistance eligible for such adjustments under the law. The Robert T. Stafford Disaster Relief and Emergency Assistance Act specifically prohibits a similar adjustment for funds provided for Other Needs Assistance (Section 408) and the Hazard Mitigation Grant Program (Section 404). These funds will continue to be reimbursed at 75 percent of total eligible costs.

(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. 2021–15628 Filed 7–21–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4586–DR; Docket ID FEMA–2021–0001]

Texas; 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 State of Texas (FEMA–4586–DR), dated February 19, 2021, and related determinations.

DATES: This amendment was issued June 24, 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 Texas 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 February 19, 2021.

Kerr, Lamar, and Shackelford Counties 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. 2021–15632 Filed 7–21–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4601–DR: Docket ID FEMA–2021–0001]

Tennessee; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Homeland Security (DHS).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Tennessee (FEMA–4601–DR), dated May 8, 2021, and related determinations.

DATES: This amendment was issued June 22, 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 Tennessee 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 May 8, 2021.

Marion 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. 2021–15637 Filed 7–21–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4491–DR; Docket ID FEMA–2021–0001]

Maryland; 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 Maryland (FEMA–4491–DR), dated March 26, 2020, and related determinations.

DATES: This change occurred on July 6, 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, MaryAnn Tierney, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Janice P. Barlow 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. 2021–15622 Filed 7–21–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4517–DR; Docket ID FEMA–2021–0001]

West Virginia; 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 West Virginia (FEMA–4517–DR), dated April 3, 2020, and related determinations.

DATES: This change occurred on July 6, 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, MaryAnn Tierney, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Janice P. Barlow 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. 2021–15626 Filed 7–21–21; 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. 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 Commonwealth of Kentucky (FEMA–4595–DR), dated April 23, 2021, and related determinations.

DATES: This amendment was issued June 23, 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.

Ballard 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. 2021–15635 Filed 7–21–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3561–EM; Docket ID FEMA–2021–0001]

Florida; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, Homeland Security (DHS).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Florida (FEMA–3561–EM), dated July 4, 2021, and related determinations.

DATES: The declaration was issued July 4, 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: Notice is hereby given that, in a letter dated July 4, 2021, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of Florida resulting from Tropical Storm Elsa beginning on July 4, 2021, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (''the Stafford Act''). Therefore, I declare that such an emergency exists in the State of Florida.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), limited to direct Federal assistance and reimbursement for mass care including evacuation and shelter support.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Kevin A. Wallace, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of Florida have been designated as adversely affected by this declared emergency:

Charlotte, Citrus, Collier, DeSoto, Hardee, Hernando, Hillsborough, Lee, Levy, Manatee, Miami-Dade, Monroe, Pasco, Pinellas, and Sarasota Counties for emergency protective measures (Category B), limited to direct Federal assistance and reimbursement for mass care including evacuation and shelter support.

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. 2021–15618 Filed 7–21–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4598–DR; Docket ID FEMA–2021–0001]

Mississippi; 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 Mississippi (FEMA–4598–DR), dated May 4, 2021, and related determinations.

DATES: This amendment was issued July 7, 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 Mississippi 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 May 4, 2021.

Clay, Holmes, Quitman, Webster, and Wilkinson Counties 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. 2021–15636 Filed 7–21–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3560–EM; Docket ID FEMA–2021–0001]

Florida; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of Florida (FEMA–3560–EM), dated June 25, 2021, and related determinations.

DATES: This amendment was issued July 2, 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: Notice is hereby given that, in a letter dated July 2, 2021, the President amended the cost-sharing arrangements regarding Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), in a letter to Deanne Criswell, Administrator, Federal Emergency Management Agency, Department of Homeland Security, under Executive Order 12148, as follows:

I have determined that the damage in certain areas of the State of Florida resulting from the Surfside Building Collapse beginning on June 24, 2021, and continuing, is of sufficient severity and magnitude that special cost sharing arrangements are warranted regarding Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act'').

Therefore, I amend the declaration of June 25, 2021, to authorize a 100 percent Federal cost share for debris removal and emergency protective measures, including direct Federal assistance, under the Public Assistance program for a continuous period of 30 days beginning June 24, 2021.

This adjustment to State and local cost sharing applies only to Public Assistance costs and direct Federal assistance eligible for such adjustments under the law. The Stafford Act specifically prohibits a similar adjustment for funds provided for Other Needs Assistance (Section 408). These funds will continue to be provided at 75 percent federal share.

(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. 2021–15617 Filed 7–21–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3560–EM; Docket ID FEMA–2021–0001]

Florida; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Florida (FEMA–3560–EM), dated June 25, 2021, and related determinations.

DATES: The declaration was issued June 25, 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: Notice is hereby given that, in a letter dated June 25, 2021, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of Florida resulting from the Surfside Building Collapse beginning on June 24, 2021, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (''the Stafford Act''). Therefore, I declare that such an emergency exists in the State of Florida.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide the Individuals and Households Program under Section 408 of the Stafford Act and assistance for debris removal and emergency protective measures, including direct Federal assistance, under the Public Assistance program.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Other Needs Assistance under section 408 will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved

assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Thomas J. McCool, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of Florida have been designated as adversely affected by this declared emergency:

The Individuals and Households Program under Section 408 of the Stafford Act and assistance for debris removal and emergency protective measures (Categories A and B), including direct federal assistance, under the Public Assistance program for Miami-Dade County.

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. 2021–15616 Filed 7–21–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4583–DR; Docket ID FEMA–2021–0001]

Maryland; 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 Maryland (FEMA–4583–DR), dated February 4, 2021, and related determinations.

DATES: This change occurred on June 1, 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, Timothy S. Pheil, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of E. Craig Levy, Sr., 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. 2021–15631 Filed 7–21–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. ICEB–2021–0006]

RIN 1653–ZA21

Employment Authorization for Somali F–1 Nonimmigrant Students Experiencing Severe Economic Hardship as a Direct Result of the Current Crisis in Somalia

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 Somalia (regardless of country of birth) and who are experiencing severe economic hardship as a direct result of the current crisis in Somalia. The Secretary is taking action to provide relief to Somali citizens (regardless of country of birth) who are lawful F–1 nonimmigrant students so that 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 notice takes effect on September 18, 2021 and will remain in effect through March 17, 2023.

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 Somalia (regardless of country of birth), who are present in the United States in lawful F–1 nonimmigrant student status as of September 18, 2021, and who are experiencing severe economic hardship as a direct result of the ongoing crisis in Somalia. Effective with this publication, suspension of the employment limitations is available through March 17, 2023 for those who are in lawful F–1 nonimmigrant status as of September 18, 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).

[1] Because the suspension of requirements under this notice 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 effective to be engaging in a ''full course of study,'' *see* 8 CFR 214.2(f)(6), and eligible for employment authorization, through the

Continued

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 Somalia, regardless of country of birth;

(2) Are lawfully present in the United States in an F–1 nonimmigrant status on September 18, 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 maintaining F–1 nonimmigrant status; and

(5) Are experiencing severe economic hardship as a direct result of the current crisis in Somalia.

This notice applies to F–1 nonimmigrant students in an approved private school in grades kindergarten through grade 12, public school in grades 9 through 12, and undergraduate and graduate education. An F–1 nonimmigrant student covered by this notice who transfers to another SEVP-certified academic institutions remains eligible for the relief provided by means of this notice.

Why is DHS taking this action?

DHS initially designated Somalia for Temporary Protected Status (TPS) on September 16, 1991 and since has extended and issued new designations based on extraordinary and temporary conditions that prevented Somalian nationals from safely returning, as well as, since 2012, ongoing armed conflict.[2] As a result of the ongoing armed conflict and extraordinary and temporary conditions, including a humanitarian crisis in Somalia, the Secretary is redesignating Somalia for TPS for 18 months, effective September 18, 2021. DHS has reviewed conditions in Somalia and determined that making employment authorization available for eligible F–1 nonimmigrant students is warranted due to conditions of wide ranging emergencies, such as political and civil unrest, terrorist attack, drought, floods, locust infestation, and lack of humanitarian aid, among other factors.

Consistent with the Secretary's redesignation of Somalia for TPS, this notice provides relief to Somali F–1 nonimmigrant students (regardless of country of birth) experiencing severe economic hardship as a direct result of the ongoing crisis in Somalia. 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.

The armed conflict in Somalia, compounded by drought and other natural hazards, challenges the resilience and the coping mechanisms of Somalia's most vulnerable citizens.[3] Somalia has consistently had a very large internally displaced population (IDP), reaching 884,000 in 2018, 770,000 in 2019, and 1.2 million in 2020.[4] As of April 2021, the United Nations High Commissioner for Refugees (UNHCR) reported Somalia has 2.95 million IDPs, of which 2.2 million live in highly congested urban and semi-urban settlements, and all of whom continue to face serious risks of marginalization, forced eviction, and exclusion.[5] Internal displacement remains largely driven by internal conflict, including Interclan conflicts, and terrorist threats, and is worsened by floods, drought, and periodic cyclones.[6] Providing humanitarian aid and assistance, including in response to high levels of acute food insecurity, is difficult, limited, and constrained due to lack of security, attacks on aid workers, generalized violence, and restrictions imposed by parties to the conflict.[7] Al-Shabaab, a terrorist, jihadist fundamentalist group based in East Africa and Yemen, continues to prohibit many nongovernmental organizations and all United Nations agencies from working in areas under its control, blockading some government-controlled towns.[8] The number of people in need of humanitarian aid has consistently increased over the last three years, from 4.2 million in 2019 to 5.2 million in 2020.[9] In 2021, the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) reported 5.9 million people in Somalia require immediate humanitarian assistance due to the combined impact of conflict, unpredictable climatic shocks (*e.g.,* due to drought and flooding), the COVID–19 pandemic, and others problems, such as desert locust infestation causing crop damage.[10]

As of May 23, 2021, 76 F–1 nonimmigrant students whose country of citizenship is Somalia were physically present in the United States and enrolled in SEVP-certified academic institutions. Given the extent of the crisis in Somalia, affected F–1 nonimmigrant students whose primary means of financial support comes from Somalia, may need to be exempt from the normal student employment requirements to continue their studies in the United States. The crisis has created financial barriers for F–1 nonimmigrant students to be able to support themselves and return to Somalia 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.[11] A graduate level F–1 nonimmigrant student who receives on-campus or off-campus employment authorization under this notice must

end of any academic term for which such student is matriculated as of March 17, 2023, provided the student satisfies 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 May 2021].

[2] *See* Designation of Nationals of Somalia for Temporary Protected Status, 56 FR 46804 (Sept. 16, 1991) and Extension and Redesignation of Somalia for Temporary Protected Status, 77 FR 25723 (May 1, 2012).

[3] United Nations High Commissioner for Refugees (UNHCR) Somalia available at *https://www.unhcr.org/en-us/somalia.html* [last visited May 2021].

[4] UN High Commissioner for Refugees (UNHCR), Somalia: UNHCR Submission for the Universal Periodic Review—Somalia—UPR 38th Session (2021), October 2020, available at: *https://www.refworld.org/docid/60760b4e4.html* [last visited May 2021].

[5] UN Office for the Coordination of Humanitarian Affairs, *2021 Somalia Humanitarian Needs Overview—Somalia ReliefWeb* available at *https://reliefweb.int/report/somalia/2021-somalia-humanitarian-needs-overview* [last visited May 2021].

[6] UN High Commissioner for Refugees (UNHCR), Somalia: UNHCR Submission for the Universal Periodic Review—Somalia—UPR 38th Session (2021), October 2020, available at: *https://www.refworld.org/docid/60760b4e4.html* [last visited May 2021].

[7] Human Rights Watch World Report 2020 available at *https://www.hrw.org/world-report/2020/country-chapters/somalia#* [last visited May 2021].

[8] Id.

[9] United Nations Office for the Coordination of Humanitarian Affairs (OCHA), *2021 Somalia Humanitarian Needs Overview—Somalia* ReliefWeb available at *https://reliefweb.int/report/somalia/2021-somalia-humanitarian-needs-overview* [last visited May 2021].

[10] UN OCHA *Somalia Humanitarian Bulletin, April 2021* available at *https://reliefweb.int/report/somalia/somalia-humanitarian-bulletin-april-2021* [last visited May 2021].

[11] 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).

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.[12] *See* 8 CFR 214.2(f)(6)(i)(G). An F–1 nonimmigrant student who attends an approved private school in grades kindergarten through grade 12 or public high school in grades 9 through 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). Nothing in this notice affects the applicability of federal and state labor laws limiting the employment of minors.

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. An 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 certain regulatory requirements relating to the minimum course load requirement under 8 CFR 214.2(f)(6)(i)(A) and (B) and certain employment eligibility requirements under 8 CFR 214.2(f)(9). 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, the F–1 nonimmigrant student must request that the designated school official (DSO) enter the following statement in the remarks field of the student's Student and Exchange Visitor Information System (SEVIS) record so the student's Form I–20, Certificate of Eligibility for Nonimmigrant (F–1) Student Status, will reflect:

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 his or her ''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'' [13] for the duration of the student's 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.[14] *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 they are 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 the effective date 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 Somalia, regardless of country of birth;

(2) Are lawfully present in the United States in F–1 nonimmigrant status on September 18, 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 maintaining F–1 nonimmigrant status; and

(5) Are experiencing severe economic hardship as a direct result of the current crisis in Somalia.

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 (even if experiencing severe economic hardship as a direct result of the current crisis in Somalia).

Does this notice apply to a continuing F–1 nonimmigrant student who departs the United States after the effective date of this notice in the Federal Register, September 18, 2021, 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 student's 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 F–1 nonimmigrant students enrolled in private kindergarten through grade 12, or public high school grades 9 through 12. Such Somali 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

[12] 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 May 2021].

[13] *See* 8 CFR 214.2(f)(6)(F).

[14] 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).

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. Thus, eligible F–1 nonimmigrant students from Somalia 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 have authorization to work more than 20 hours per week while school is in session?

Yes. For an F–1 nonimmigrant student covered in 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 students employment, whichever date is later] until [DSO must insert the student's program end date or the end date of the notice, whichever date comes first].

To obtain on-campus employment authorization, the F–1 nonimmigrant student must demonstrate to the DSO that the employment is necessary to avoid severe economic hardship directly resulting from the current crisis in Somalia. A nonimmigrant student authorized by the DSO to engage in on-campus employment by means of this notice does not need to file any applications with 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 his or her F–1 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'' [15] for the purpose of maintaining F–1 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 student to take a reduced course load if the reduction would not meet the school's minimum course load requirement for continued enrollment.[16]

Off-Campus Employment Authorization

What regulatory requirements does this notice temporarily suspend relating to off-campus employment?

For an F–1 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 status for one full academic year in order 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 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'' [17] for purposes of maintaining F–1 nonimmigrant student status for the duration of the student's 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 status. Nothing in this notice mandates that school officials allow an F–1 nonimmigrant student to take a reduced course load if such reduced course load would not meet the school's minimum course load requirement.[18]

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 crisis in Somalia. Filing instructions are 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 Somalia.

[15] *See* 8 CFR 214.2(f)(6)(F).

[16] 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.

[17] *See* 8 CFR 214.2(f)(6)(F).

[18] 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.

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 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 a 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 is carrying a ''full course of study'' [19] at the time of the request for employment authorization;

(b) The F–1 nonimmigrant student is a citizen of Somalia (regardless of country of birth) and is experiencing severe economic hardship as a direct result of the current crisis in Somalia, 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 the student is 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 Somalia.

Application filing. 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 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, Form I–912;

(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 that is 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, USCIS will send the student an EAD as evidence of 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 reduces the student's course load per term and permits an increase number of work hours per week, such as the Special Student Relief,[20] under this notice has two options.

Under the first option, the student may file the TPS application according to the instructions in the **Federal Register** notice designating Somalia for TPS. All TPS applicants must file a Form I–821, Application for Temporary Protected Status. Although not required to do so, if an F–1 nonimmigrant student wants to obtain an EAD valid through March 17, 2023 based on their TPS application, and to be eligible for EAD extensions that may be available to EADs with an A–12 or C–19 category code, the student must file Form I–765 and pay the Form I–765 fee and pay the Form I–821 fee (or request for a Fee Waiver). 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 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 Somalia for TPS. If the F–1 nonimmigrant student has already 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-related EAD in light of certain extensions that may be available to EADs with an A–12 or C–19 category code. *See* 8 CFR 274a.12(a)(12) and (c)(19). The nonimmigrant student should check the appropriate box when filling out Form I–821 to request a TPS-related EAD. Again, so long as the nonimmigrant student maintains the minimum course load described in this notice and does not otherwise violate the student's nonimmigrant status, including as provided under 8 CFR 214.1(g), the nonimmigrant will be able to maintain compliance requirements for F–1 student status while having 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'' [21] 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 for a minimum of three semester or quarter credit hours of instruction per academic term if at the graduate level). *See* 8 CFR

[19] *See* 8 CFR 214.2(f)(6).

[20] DHS Study in the States, Special Student Relief *available at https://studyinthestates.dhs.gov/students/special-student-relief* [last visited May 2021].

[21] *See* 8 CFR 214.2(f)(6).

214.2(f)(5)(v), 214.2(f)(6), 214.2(f)(9)(i) and (ii).

How does an F–1 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 with USCIS if a student has been approved for a TPS-related EAD. However, the F–1 nonimmigrant student must demonstrate and provide documentation to the DSO of the direct economic hardship resulting from the crisis in Somalia. The DSO will then verify and update the student's record in SEVIS to enable the F–1 nonimmigrant student with TPS to reduce their 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 student who has been granted TPS apply for reinstatement to F–1 student status after his or her F–1 status has lapsed?

Yes. Current regulations permit certain students who fall out of F–1 student status to apply for reinstatement. *See* 8 CFR 214.2(f)(16). This provision might apply to a student who worked on a TPS-related EAD or dropped their course load before publication of this notice, and therefore fell out of student status. The student must satisfy the criteria set forth in the F–1 student status reinstatement regulations.

How long will this notice remain in effect?

This notice grants temporary relief through March 17, 2023 [22] to eligible F–1 nonimmigrant students. DHS will continue to monitor the situation in Somalia. 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 eligible F–1 nonimmigrant students 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. 2021–15605 Filed 7–21–21; 8:45 am]

BILLING CODE 9111–28–P

[22] Because the suspension of requirements under this notice 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 effective 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 March 17, 2023, provided the student satisfies 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 May 2021].

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2698–21; DHS Docket No. USCIS–2013–0006]

RIN 1615–ZB77

Extension and Redesignation of Somalia for Temporary Protected Status

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Notice of temporary protected status extension and redesignation.

SUMMARY: Through this notice, the Department of Homeland Security (DHS) announces that the Secretary of Homeland Security (Secretary) is extending the designation of Somalia for Temporary Protected Status (TPS) for 18 months, from September 18, 2021, through March 17, 2023, and redesignating Somalia for 18 months, effective September 18, 2021 through March 17, 2023. The extension allows currently eligible TPS beneficiaries to retain TPS through March 17, 2023, so long as they otherwise continue to meet the eligibility requirements for TPS. The redesignation of Somalia allows additional individuals who have been continuously residing in the United States since July 19, 2021 to obtain TPS, if otherwise eligible.

DATES: *Extension of Designation of Somalia for TPS:* The 18-month extension of the TPS designation of Somalia is effective September 18, 2021, and will remain in effect through March 17, 2023. The 60-day re-registration period for existing beneficiaries runs from July 22, 2021 through September 20, 2021. (Note: It is important for re-registrants to timely re-register during this 60-day period and not to wait until their EADs expire.)

Redesignation of Somalia for TPS: The 18-month redesignation of Somalia for TPS is effective September 18, 2021, and will remain in effect through March 17, 2023. The initial registration period for new applicants under the Somalia TPS redesignation begins on July 22, 2021 and will remain in effect through March 17, 2023. For more information, *see* **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: You may contact Andria Strano, Acting Chief, Humanitarian Affairs Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security, by mail at 5900 Capital Gateway Drive,

Camp Springs, MD 20746, or by phone at 800–375–5283.

ADDRESSES: For further information on TPS, including guidance on the registration and re-registration process and additional information on eligibility, please visit the USCIS TPS web page at *http://www.uscis.gov/tps.* You can find specific information about this extension of Somalia's TPS designation by selecting ''Somalia'' 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 *http://www.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: In general, individuals must be given an initial registration period of no less than 180 days to register for TPS, but the Secretary has discretion to provide for a longer registration period. *See* 8 U.S.C. 1254a(c)(1)(A)(iv). Historically, the length of the initial registration period has varied. *Compare* 66 FR 14214 (March 9, 2001) (18 months initial registration period for applicants under TPS designation for El Salvador) *with* 80 FR 36346 (June 24, 2015) (180-day initial registration period for applicants under TPS designation for Nepal). In recent years this period has generally been limited to the statutory minimum of 180 days, although later extensions of the initial registration period have also been announced for some countries. *See, e.g.,* 81 FR 4051 (Jan. 25, 2016) (setting 180-day initial registration period during extension and redesignation of South Sudan for TPS); 78 FR 1866 (Jan. 9, 2013) (setting 180-day initial registration period during extension and redesignation of Sudan for TPS); *but see* 75 FR 39957 (July 13, 2010) (extension of previously announced initial 180-day registration period for Haiti TPS applicants to allow more time for individuals to apply). After evaluating whether to limit the initial registration period for TPS under this new designation of Somalia to the statutory minimum of 180 days, DHS has determined that it will provide the full 18 months of this designation for applicants to file their initial registration Form I–821 and, if desired, Form I–765 to obtain employment authorization documentation. Limiting the initial registration period to 180-days may place a burden on applicants who may be otherwise eligible for TPS. In addition, permitting registration throughout the entirety of the designation period could reduce the operational burden on USCIS, as incoming applications may be spread out over a longer period of time. This extended registration period is both in keeping with the humanitarian purpose of TPS and will better advance the goal of ensuring ''the Federal Government eliminates sources of fear and other barriers that prevent immigrants from accessing government services available to them.'' *See Executive Order 14012, Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans,* 86 FR 8277.

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
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

Through this notice, DHS sets forth procedures necessary for eligible nationals of Somalia (or individuals having no nationality who last habitually resided in Somalia) to (1) re-register for TPS and to apply for renewal of their EADs with USCIS or (2) submit an initial registration application under the redesignation and apply for an EAD.

Re-registration is limited to individuals who have previously registered for TPS under the designation of Somalia and whose applications have been granted.

For individuals who have already been granted TPS under Somalia's designation, the 60-day re-registration period runs from July 22, 2021 through September 20, 2021. USCIS will issue new EADs with a March 17, 2023 expiration date to eligible Somali TPS beneficiaries who timely re-register and apply for EADs. Given the time frames involved with processing TPS re-registration applications, DHS recognizes that not all re-registrants may receive new EADs before their current EADs expire on September 17, 2021. Accordingly, through this **Federal Register** notice, DHS automatically extends the validity of EADs previously issued under the TPS designation of Somalia for 180 days, through March 16, 2022. Therefore, TPS beneficiaries can show their EADs with: (1) A September 17, 2021, expiration date on the face of the card and (2) an A–12 or C–19 category code, as proof of continued employment authorization through March 16, 2022. This notice explains how TPS beneficiaries and their employers may determine which EADs are automatically extended and how this affects the Form I–9, Employment Eligibility Verification, E-Verify, and USCIS Systematic Alien Verification for Entitlements (SAVE) processes.

Individuals who have a Somalia TPS application (Form I–821) and/or Application for Employment Authorization (Form I–765) that was still pending as of July 22, 2021 do not need to file either application again. If USCIS approves an individual's Form I–821, USCIS will grant the individual TPS through March 17, 2023. Similarly, if USCIS approves a pending TPS-related Form I–765, USCIS will issue the individual a new EAD that will be valid through the same date. There are currently approximately 447 beneficiaries under Somalia's TPS designation.

Under the redesignation, individuals who currently do not have TPS may submit an initial application during the initial registration period that runs from July 22, 2021 and runs through the full length of the redesignation period ending March 17, 2023. In addition to demonstrating continuous residence in the United States since July 19, 2021 and meeting other eligibility criteria, initial applicants for TPS under this redesignation must demonstrate that they have been continuously physically present in the United States since September 18, 2021, the effective date of this redesignation of Somalia, before USCIS may grant them TPS. The DHS

Office of Immigration Statistics has estimated that approximately 100 individuals may become newly eligible for TPS under the redesignation of Somalia.

What is Temporary Protected Status (TPS)?

- TPS is a temporary immigration status granted to eligible nationals of a country designated for TPS under the INA, or to eligible individuals without nationality who last habitually resided in the designated country.
- 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 prior to the travel.
- 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 country'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.

When was Somalia designated for TPS?

Somalia was initially designated on September 16, 1991, on the basis of extraordinary and temporary conditions in Somalia that prevented nationals of Somalia from safely returning. *See Designation of Nationals of Somalia for Temporary Protected Status,* 56 FR 46804 (Sept. 16, 1991). Somalia's designation for TPS has been consecutively extended by multiple administrations since its initial designation in 1991. Additionally, Somalia was redesignated for TPS in 2001, based on extraordinary and temporary conditions. *See Extension and Redesignation of Somalia under Temporary Protected Status Program,* 66 FR 46288 (Sept. 4, 2001). In 2012, Somalia was again redesignated for TPS on the basis of extraordinary and temporary conditions and under the separate basis of ongoing armed conflict. *See Extension and Redesignation of Somalia for Temporary Protected Status,* 77 FR 25723 (May 1, 2012). Somalia's 2012 TPS designation was subsequently extended in 2013, 2015, 2017, 2018, and most recently in 2020 for 18 months based on ongoing armed conflict and extraordinary and temporary conditions. *See Extension of the Designation of Somalia for Temporary Protected Status,* 85 FR 14229 (March 11, 2020).

What authority does the Secretary have to extend the designation of Somalia for TPS?

Section 244(b)(1) of the INA, 8 U.S.C. 1254a(b)(1), authorizes the Secretary, after consultation with appropriate agencies of the U.S. Government (Government), to designate a foreign state (or part thereof) for TPS if the Secretary determines that certain country conditions exist.[1] The decision to designate any foreign state (or part thereof) is a discretionary decision, and the TPS statute states there is no judicial review of any determination with respect to the designation, extension, or termination of a designation.[2] The Secretary, in his or her discretion, may then grant TPS to eligible nationals of that foreign state (or individuals having no nationality who last habitually resided in the designated country). *See* INA section 244(a)(1)(A), 8 U.S.C. 1254a(a)(1)(A).

At least 60 days before the expiration of a country'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).

What is the Secretary's authority to redesignate Somalia for TPS?

In addition to extending an existing TPS designation, the Secretary, after consultation with appropriate Government agencies, may redesignate a country (or part thereof) for TPS. *See* section 244(b)(1) of the Act, 8 U.S.C. 1254a(b)(1); *see also* section 244(c)(1)(A)(i) of the Act, 8 U.S.C. 1254a(c)(1)(A)(i) (requiring that ''the alien has been continuously physically present since the effective date of *the most recent designation of the state*'') (emphasis added).[3]

When the Secretary designates or redesignates a country for TPS, the Secretary also has the discretion to establish the date from which initial TPS applicants must demonstrate that they have been ''continuously resid[ing]'' in the United States. *See* section 244(c)(1)(A)(ii) of the Act, 8 U.S.C. 1254a(c)(1)(A)(ii). The Secretary has determined that the ''continuous residence'' date for applicants for TPS under the redesignation of Somalia shall be July 19, 2021. Initial applicants for TPS under this redesignation must also show they have been ''continuously physically present'' in the United States since September 18, 2021, which is the effective date of the Secretary's redesignation, of Somalia. *See* section 244(c)(1)(A)(i) of the Act, 8 U.S.C. 1254a(c)(1)(A)(i). For each initial TPS application filed under the redesignation, the final determination of whether the applicant has met the ''continuous physical presence'' requirement cannot be made until September 18, 2021. USCIS, however, will issue employment authorization documentation, as appropriate, during the registration period in accordance with 8 CFR 244.5(b).

Why is the Secretary extending the TPS designation for Somalia and simultaneously redesignating Somalia for TPS through March 17, 2023?

DHS has reviewed country conditions in Somalia. Based on the review,

[1] As of March 1, 2003, in accordance with section 1517 of title XV of the Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135, any reference to the Attorney General in a provision of the INA describing functions transferred from the Department of Justice to DHS ''shall be deemed to refer to the Secretary'' of Homeland Security. *See* 6 U.S.C. 557 (codifying the Homeland Security Act of 2002, tit. XV, section 1517).

[2] *See* INA, section 244(b)(5)(A). This issue of judicial review remains the subject of ongoing litigation. *See, e.g., Ramos* v. *Wolf*, 975 F.3d 872 (9th Cir. 2020), petition for en banc rehearing filed Nov. 30, 2020 (No. 18–16981); *Saget* v. *Trump*, 375 F. Supp. 3d 280 (E.D.N.Y. 2019), appeal pending, No. No. 19–1685 (2d Cir.).

[3] The extension and redesignation of TPS for Somalia is one of several instances in which the Secretary and, prior to the establishment of DHS, the Attorney General have simultaneously extended a country's TPS designation and redesignated the country for TPS. *See, e.g.,* 76 FR 29000 (May 19, 2011) (extension and redesignation for Haiti); 69 FR 60168 (Oct. 7, 2004) (extension and redesignation for Sudan); 62 FR 16608 (Apr. 7, 1997) (extension and redesignation for Liberia).

including input received from DOS, the Secretary has determined that an 18-month extension is warranted because the ongoing armed conflict and extraordinary and temporary conditions supporting Somalia's 2012 TPS redesignation persist. The Secretary has further determined that the conditions support redesignating Somalia for TPS under section 244(b)(1)(A) and (C) of the Act and is changing the ''continuous residence'' and ''continuous physical presence'' dates that applicants must meet to be eligible for TPS.

The ongoing armed conflict in Somalia, along with natural disasters and contagious disease outbreaks, have worsened an already severe humanitarian crisis. Since DHS last extended TPS for Somalia, a dramatic upsurge in violence, severe drought, flooding, and the spread of desert locusts have contributed to worsening food insecurity and internal displacement.[4] Moreover, an outbreak of cholera in conjunction with the COVID–19 pandemic presented major challenges for a healthcare system that had already been severely weakened by ongoing conflict. These conditions have left a large portion of the population in need of humanitarian assistance.[5] Numerous factors impede the delivery of humanitarian aid, including difficulty accessing areas affected by climate-related disasters, general insecurity, and most notably threats to aid workers and restrictions on the presence and work of humanitarian agencies. [6]

The insurgent group Al-Shabaab continues to present a significant risk. Becoming bolder since early 2019, Al-Shabaab regularly attacks major towns and conducts deadly attacks on civilian and military targets alike.[7] The organization continues to maintain its capability to infiltrate Mogadishu and carry out high-profile attacks.[8] The group conducted a monthly average of 140 attacks between November 2020 and February 2021.[9] The group continues to maintain a stronghold in the southern parts of Somalia, such as the Lower Juba and Lower Shabelle regions, and also retains operational military capacity in the northern federal member states of Puntland [10] and Somaliland.[11]

Interclan [12] conflicts remain a major concern, particularly in Hiiraan, Galmudug, Lower Shabelle, and Middle Shabelle regions in southern and central Somalia, and in the Sool region, bordering Puntland and Somaliland.[13] Beginning in April 2020 and throughout the year, the area around Wanlaweyn in Lower Shabelle region saw fierce interclan fighting between clan militias.[14] Civilians continue to bear the brunt of the ongoing interclan violence.[15] This violence led to the destruction of property and livelihoods, including via land grabbing; limited free movement and access to humanitarian assistance; and taxation of communities (including through forced child recruitment).[16]

Security forces and private landowners continued to forcibly evict [17] internally displaced persons (IDPs).[18] In September of 2020, 100,000 IDPs reportedly were evicted from their temporary homes through that point in the year.[19]

Women and girls in Somalia face high rates of gender-based violence, and IDPs are disproportionately impacted.[20] This includes abductions, female genital mutilation/cutting (FGM/C), and early and forced marriage, as well as reported incidents of rape and gang rape by state agents, militias associated with clans, and unidentified armed men.[21] Al-Shabaab also committed gender-based violence,[22] including forced marriages in areas under its control.[23] There are also reports of rape and sexual exploitation and abuse by government forces, including by the Somali National Army (SNA) and the African Union Mission in Somalia (AMISOM) forces.[24]

All parties to the conflict in Somalia continued to commit serious abuses against children, including those involving killings, maiming, and recruitment and use of child soldiers.[25] Between November 2020 and February 2021, some 1,112 children (924 boys and 188 girls) were affected by serious abuses.[26] During this period, 395 children were abducted, 254 children were killed or maimed, 375 children were recruited and used as child soldiers, and 88 girls were victims of rape and other forms of sexual violence.[27] Al-Shabaab was responsible for most of these abuses.[28] Al-Shabaab also continued to recruit and use children to directly participate in hostilities, and used them in suicide attacks and, at times, as human shields

[4] Humanitarian Response Plan Somalia, The UN Office for the Coordination of Humanitarian Affairs, February 2021, pg. 7.

[5] Somalia Key Figures, The UN Office for the Coordination of Humanitarian Affairs, *https://m.reliefweb.int/country/216/som?figures-display=all* (last visited May 5, 2021).

[6] Humanitarian Response Plan Somalia, The UN Office for the Coordination of Humanitarian Affairs, February 2021, pg. 5; 2020 Country Reports on Human Rights Practices: Somalia, U.S. Department of State, April 7, 2021, pg. 15.

[7] Felbab-Brown, Vanda, The Problem with Militias in Somalia, United Nations Center for Policy Research, 2020 pg. 120.

[8] Situation in Somalia Report of the Secretary-General (November 2020–February 2021), UN Security Council, February 17, 2021 pg. 3.

[9] Situation in Somalia Report of the Secretary-General (November 2020–February 2021), UN Security Council, February 17, 2021, pg.4.

[10] Puntland is a region in the north-east part of Somalia that declared itself as an autonomous state in August 1998. *Puntland Profile,* BBC News, last updated on March 11, 2019.

[11] Somaliland declared independence from Somalia in 1991. While not internationally recognized as an independent state, Somaliland has a political system, government institutions, a police force, and its own currency. *Somaliland Profile,* BBC News, last updated on December 14, 2017; Felbab-Brown, Vanda, The Problem with Militias in Somalia, United Nations Center for Policy Research, 2020, pg. 12.

[12] Information on Somali clans and sub-clan divisions is available in the Genealogical Table of Somali Clans, UNHCR, March 15, 2004.

[13] Humanitarian Response Plan Somalia, The UN Office for the Coordination of Humanitarian Affairs, February 2021, pg.13.

[14] 2020 Country Reports on Human Rights Practices: Somalia, U.S. Department of State, April 7, 2021, pg. 4.

[15] 2020 Country Reports on Human Rights Practices: Somalia, U.S. Department of State, April 7, 2021, pg. 5.

[16] Humanitarian Response Plan Somalia, The UN Office for the Coordination of Humanitarian Affairs, February 2021, pg. 12–13.

[17] Internally displaced persons (IDPs) are generally most affected by forced evictions in Mogadishu, Somalia's capital. Generally, these IDPs—fleeing from insecurity and natural disasters in rural areas—establish temporary settlements in abandoned areas in Mogadishu, where they pay rent to ''gatekeepers''—the de facto managers of these informal settlements. These evictions are linked to rising land and property values, and clan power dynamics among one of the most powerful clans—the Hawiye clan in the Mogadishu area. The combination of these factors has led to forced evictions of IDPs, usually with force and without any prior notice. UnSettlement: Urban displacement in the 21st century, Internal Displacement Monitoring Centre, November 2018, pg. 5–7.

[18] Somalia 2020, Amnesty International, 2021.

[19] Somalia 2020, Amnesty International, 2021.

[20] 2020 Country Reports on Human Rights Practices: Somalia, U.S. Department of State, April 7, 2021, pg. 30–31.

[21] 2020 Country Reports on Human Rights Practices: Somalia, U.S. Department of State, April 7, 2021, pg. 30–31.

[22] 2020 Country Reports on Human Rights Practices: Somalia, U.S. Department of State, April 7, 2021, pg. 14.

[23] Situation in Somalia Report of the Secretary-General (November 2020–February 2021), UN Security Council, February 17, 2021, pg. 10.

[24] 2020 Country Reports on Human Rights Practices: Somalia, U.S. Department of State, April 7, 2021, pg. 5.

[25] Somalia Word Report: Events of 2020, Human Rights Watch, 2021.

[26] Situation in Somalia Report of the Secretary-General (November 2020–February 2021), UN Security Council, February 17, 2021, pg. 9–10.

[27] Situation in Somalia Report of the Secretary-General (November 2020–February 2021), UN Security Council, February 17, 2021, pg. 9–10.

[28] Situation in Somalia Report of the Secretary-General (November 2020–February 2021), UN Security Council, February 17, 2021, pg. 9–10.

for other fighters.[29] Al-Shabaab's recruitment practices included raiding schools, madrassas, and mosques, and harassing and coercing clan elders to recruit children.[30]

In April 2021, the UN Office for the Coordination of Humanitarian Affairs (UNOCHA) reported that ''80 percent of the country is experiencing drought conditions,'' [31] with drought affecting the three main regions of Somalia—South/Central, Puntland and Somaliland.[32] Below average rainfall from October to December 2020, followed by harsher and unusually warm temperatures in January to March 2021, worsened drought conditions across the country in March and April 2021.[33] Ongoing water shortages linked to drought are driving steep water price increases in many regions, and a growing number of people rely on expensive water delivered by trucks to meet their basic needs, contributing to worsening humanitarian conditions.[34] As of April 2021, more than 116,000 people have been displaced due to drought and resultant water scarcity.[35]

Somalia has also experienced ongoing problems related to flooding. In October 2019, heavy rains displaced close to 270,000 people; the worst affected region was in Hiiraan, in central Somalia.[36] In 2020, ongoing flooding events displaced 919,000 people and destroyed infrastructure, property and 144,000 hectares of agricultural fields.[37]

In December 2020, locust swarms began forming in central regions of Somalia,[38] spreading to southern and northern regions in early 2021 and affecting close to 300,000 hectares of land and 700,000 people.[39] On February 2, 2020, the Somali government declared a national state of emergency due to the impact of the locusts.[40] UNOCHA reported in February 2021 that Somalia experienced its worst desert locust upsurge in 25 years, damaging tens of thousands of hectares of cropland and pasture with potentially severe consequences for agriculture and pastoral-based livelihoods.[41]

In an October 2020 report, the Food and Agriculture Organization of the United Nations (FAO) and the World Food Programme (WFP) identified Somalia as one of 20 ''acute food insecurity hotspots,'' [42] and noted that Somalia is facing ''high levels of acute food insecurity.'' [43] The Food Security Nutrition Analysis Unit (FSNAU) for Somalia assessed that the ''drivers of acute food insecurity in Somalia included the compounding effects of poor and erratic rainfall distribution, flooding, Desert Locust infestation, socioeconomic impacts of COVID–19, and conflict.'' [44] As of March 2021, an estimated 2.7 million people are facing acute food insecurity.[45] Moreover, in March 2021, UNOCHA also reported that in 2020, children constitute over 60% of those in need in Somalia, and malnutrition rates among children remain among the worst in the world.[46]

COVID–19 has directly impacted Somalia's health care system, which is limited.[47] In June 2020, the World Health Organization (WHO) assessed that Somalia's health system, decimated by decades of civil war, ranked 194 out of 195 on the Global Health Security Index.[48] While the global standard for healthcare workers is 25 per 100,000 people, Somalia has only 2 healthcare workers per 100,000 people.[49] With only 15 ICU beds for a population of more than 15 million, it is listed among the least-prepared countries in the world to detect and report epidemics, or to execute a rapid response that might mitigate further spread of disease.[50]

Somalia has also been experiencing a cholera outbreak since December 2017, following floods that affected areas near the Jubba and Shabelle rivers in southern and central Somalia.[51] According to WHO, in 2020 Somalia had 6,589 suspected cases of cholera and 33 reported deaths.[52] In April 2020, flash floods caused by heavy rains led to the contamination of water sources, thus causing an increase in the number of cholera cases.[53]

Humanitarian organizations operating in Somalia face heightened challenges, as security constraints continued to hinder the delivery of humanitarian assistance.[54] UNOCHA reported that in 2020, ''a staggering 255 incidents occurred impacting humanitarian operations, in which 15 humanitarian workers were killed, compared to 151 incidents in 2019.'' [55]

In December 2019, the World Bank reported that ''[d]ecades of civil war and political fragmentation have made Somalia one of the poorest countries in Sub-Saharan Africa. Nearly seven of 10 Somalis live in poverty, the sixth-highest rate in the region.'' [56] While the World Bank stated in March 2020 that ''Somalia reached a key economic milestone in obtaining debt relief,'' [57] the African Development Bank assessed

[29] 2020 Country Reports on Human Rights Practices: Somalia, U.S. Department of State, April 7, 2021, pg. 14.

[30] 2020 Country Reports on Human Rights Practices: Somalia, U.S. Department of State, April 7, 2021, pg. 14.

[31] Somalia: Drought Conditions Update, The UN Office for the Coordination of Humanitarian Affairs, April 26, 2021.

[32] Somalia Drought Update, Food and Agriculture Organization of the United Nations, April 22, 2021, pg. 1.

[33] Somalia Drought Update, Food and Agriculture Organization of the United Nations, April 22, 2021, pg. 1.

[34] Fact Sheet #2: Somalia-Complex Emergency, U.S. Agency for International Development, April 28, 2021, pg. 2.

[35] Fact Sheet #2: Somalia-Complex Emergency, U.S. Agency for International Development, April 28, 2021, pg. 2.

[36] Hundreds of thousands of people affected by floods in central Somalia, MSF, November 5, 2019.

[37] Humanitarian Response Plan Somalia, The UN Office for the Coordination of Humanitarian Affairs, February 2021, pg. 11.

[38] Humanitarian Response Plan Somalia, The UN Office for the Coordination of Humanitarian Affairs, February 2021, pg. 12.

[39] Situation in Somalia Report of the Secretary-General (November 2020–February 2021), UN Security Council, February 17, 2021 pg. 10.

[40] Situation in Somalia—Report of the Secretary-General (S/2020/121), UN Security Council, February 13, 2020, pg. 11.

[41] Humanitarian Response Plan Somalia, The UN Office for the Coordination of Humanitarian Affairs, February 2021, pg. 12.

[42] FAO–WFP early warning analysis of acute food insecurity hotspots: October 2020, Food and Agriculture Organization of the United Nations and the World Food Programme, Nov. 2020, pg. 6.

[43] FAO–WFP early warning analysis of acute food insecurity hotspots: October 2020, Food and Agriculture Organization of the United Nations and the World Food Programme, Nov. 2020, pg. 13.

[44] Up to 2.7 million in Somalia face acute food insecurity Crisis (IPC Phase 3) or worse outcomes through mid-2021, Food Security and Nutrition Analysis Unit, February 4, 2021.

[45] Fact Sheet #2: Somalia-Complex Emergency, U.S. Agency for International Development, April 28, 2021, pg. 1.

[46] 2021 Somalia Humanitarian Needs Overview, The UN Office for the Coordination of Humanitarian Affairs pg. 7.

[47] COVID–19, locusts, flooding: WHO and triple threat in Somalia, World Health Organization, June 23, 2020.

[48] COVID–19, locusts, flooding: WHO and triple threat in Somalia, World Health Organization, June 23, 2020.

[49] COVID–19, locusts, flooding: WHO and triple threat in Somalia, World Health Organization, June 23, 2020.

[50] COVID–19, locusts, flooding: WHO and triple threat in Somalia, World Health Organization, June 23, 2020.

[51] Outbreak update—Cholera in Somalia, World Health Organization, March 23, 2021.

[52] Outbreak update—Cholera in Somalia, World Health Organization, December 27, 2020.

[53] Outbreak update—Cholera in Somalia, World Health Organization, March 23, 2021.

[54] Humanitarian Response Plan Somalia, The UN Office for the Coordination of Humanitarian Affairs, February 2021, pg. 5.

[55] Humanitarian Response Plan Somalia, The UN Office for the Coordination of Humanitarian Affairs, February 2021, pg. 5.

[56] From data to development: Poverty and policy in Somalia, World Bank Blogs, December 09, 2019.

[57] The International Monetary Fund and the World Bank determined that Somalia had taken the necessary steps to begin receiving debt relief. For additional details on these requirements, please see Somalia to Receive Debt Relief under the Enhanced HIPC Initiative, World Bank, March 25, 2020.

that Somalia's economy was also affected by ''reduced foreign direct investment, as investors shied away during contentious elections that were postponed, a shrinkage in remittances because of the global recession, and bans on livestock exports by the Gulf countries.'' [58]

Based upon this review and after consultation with appropriate U.S. Government agencies, the Secretary has determined that:

- The conditions supporting Somalia's designation for TPS continue to be met. *See* INA section 244(b)(3)(A) and (C), 8 U.S.C. 1254a(b)(3)(A) and (C).
- There continues to be an ongoing armed conflict in Somalia and, due to such conflict and the accompanying humanitarian crisis that has been worsened by, among other things, the COVID–19 pandemic, requiring the return to Somalia of Somali nationals (or individuals having no nationality who last habitually resided in Somalia) would pose a serious threat to their personal safety. *See* INA section 244(b)(1)(A), 8 U.S.C. 1254a(b)(1)(A).
- There continue to be extraordinary and temporary conditions in Somalia that prevent Somali nationals (or individuals having no nationality who last habitually resided in Somalia) from returning to Somalia in safety, and it is not contrary to the national interest of the United States to permit Somali TPS beneficiaries to remain in the United States temporarily. *See* INA section 244(b)(1)(C), 8 U.S.C. 1254a(b)(1)(C).
- The designation of Somalia for TPS should be extended for an 18-month period, from September 18, 2021, through March 17, 2023. *See* INA section 244(b)(3)(C), 8 U.S.C. 1254a(b)(3)(C).
- Due to the conditions described above, Somalia should be simultaneously redesignated for TPS effective September 18, 2021, through March 17, 2023. *See* section 244(b)(1)(A) and (C) and (b)(2) of the Act, 8 U.S.C. 1254a(b)(1)(A) and (C) and (b)(2).
- For the redesignation, the Secretary has determined that initial TPS applicants must demonstrate that they have continuously resided in the United States since July 19, 2021.
- Initial TPS applicants under the redesignation must demonstrate that they have been continuously physically present in the United States since September 18, 2021, the effective date of the redesignation of Somalia for TPS.
- There are approximately 447 current Somalia TPS beneficiaries who are expected to be eligible to re-register for TPS under the extension.
- It is estimated that approximately 100 additional individuals may be eligible for TPS under the redesignation of Somalia. This population includes Somali nationals in the United States in nonimmigrant status or without immigration status.

[58] Somalia Economic Outlook, African Development Bank (last visited on May 7, 2021).

Notice of Extension of the TPS Designation and Redesignation of Somalia 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 Government agencies, the conditions supporting Somalia's designation for TPS continue to be met. *See* INA section 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A). On the basis of this determination, I am simultaneously extending the existing designation of TPS for Somalia for 18 months, from September 18, 2021, through March 17, 2023, and redesignating Somalia for TPS for the same 18-month period. *See* INA section 244(b)(1)(A), (b)(1)(C) and (b)(2); 8 U.S.C. 1254a(b)(1)(A), (b)(1)(C), and (b)(2).

Alejandro N. Mayorkas,

Secretary, U.S. Department of Homeland Security.

Required Application Forms and Application Fees To Register or Re-Register for TPS

To register or re-register for TPS based on the designation of Somalia, you *must* submit an Application for Temporary Protected Status (Form I–821). If you are filing an initial application, you must pay the fee for the Form I–821. If you can demonstrate an inability to pay the fee, you may request a fee waiver by submitting a Request for a Fee Waiver (Form I–912). If you are filing an application for re-registration, you do not need to pay the fee for the Form I–821. There is no Form I–821 fee for re-registration. See 8 CFR 244.17. You may be required to pay the biometric services fee. If you can demonstrate an inability to pay the biometric services fee, you may request to have the fee waived. Please see additional information under the ''Biometric Services Fee'' section of this notice.

Through this **Federal Register** notice, your existing EAD issued under the TPS designation of Somalia with the expiration date of September 17, 2021, is automatically extended for 180 days, through March 16, 2022. If you want to obtain a new EAD valid through March 17, 2023, you must file an Application for Employment Authorization (Form I–765) and pay the Form I–765 fee (or request a fee waiver). If you do not want a new EAD, you do not have to file Form I–765 and pay the Form I–765 fee. If you do not want to request a new 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. However, you are strongly encouraged to file your application for a new EAD as early as possible to avoid gaps in the validity of your employment authorization documentation and to ensure that you receive your new EAD by March 16, 2022.

If you are applying for initial registration and want an EAD, you must file and pay the fee for the Form I–765. 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. You may file the application for a new EAD either prior to or after your current EAD has expired.

Everyone must provide their employer with documentation showing that they have the legal right to work in the United States. You do not need to have an EAD, but you can obtain one and it will prove your legal right to work.

If you have a Form I–821 or Form I–765 that was still pending as of July 22, 2021, then you do not need to file either application again. If USCIS approves your pending TPS application, USCIS will grant you TPS through March 17, 2023. Similarly, if USCIS approves your pending TPS-related Form I–765, it will be valid through the same date.

For more information on the application forms and fees for TPS, please visit the USCIS TPS web page at *http://www.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 generally submit a biometric services fee. As previously stated, if you can demonstrate an inability to pay the biometric services fee, you may be able to have the fee waived. You can request a fee waiver by submitting 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 *www.uscis.gov/tps.* USCIS may require you to visit an Application Support Center so we can capture your biometrics. For additional information on the USCIS biometrics

screening process, please see the USCIS Customer Profile Management Service Privacy Impact Assessment, available at *www.dhs.gov/privacy.*

Refiling a TPS Initial Registration Application After Receiving Notice That USCIS Did Not Grant the Fee Waiver Request

You should file as soon as possible so USCIS can process your application and issue any EAD promptly, if you requested one. If USCIS denies your fee waiver request related to your initial TPS application, you must refile your Form I–821 for TPS along with the required fees no later than March 17, 2023, to continue seeking initial TPS. If USCIS does not grant 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 as long as it is within the period that Somalia is designated for TPS, if you choose.

Note: An initial applicant for TPS must pay the Form I–821 filing fee and applicants age 14 or older must also pay the biometric services fee, unless USCIS grants a fee waiver. However, if you decide to wait to request an EAD, 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. You may wait to seek an EAD until after USCIS has approved your TPS registration application or at any later date you decide you want to request an EAD as long as TPS for Somalia continues. To register for TPS, you only need to file the Form I–821 with the $50 filing fee and the biometric services fee, if applicable (or request a fee waiver).

Refiling a TPS Re-Registration Application After Receiving Notice That the Fee Waiver Request Was Not Granted

You should file as soon as possible so USCIS can process your application and issue any EAD promptly, if you requested one. Properly filing early will also give you time to refile your application before the deadline, if USCIS does not grant your fee waiver request. If you receive a notice that USCIS did not grant your fee waiver request, and you are unable to refile by the re-registration deadline, you may still refile your Form I–821 with the biometrics fee. USCIS will review this situation to determine whether you established good cause for late TPS re-registration. However, if possible, we urge you to refile within 45 days of the date on any USCIS notice that we did not grant you a fee waiver. *See* INA section 244(c)(3)(C); 8 U.S.C. 1254a(c)(3)(C); 8 CFR 244.17(b). For more information on good cause for late re-registration, visit the USCIS TPS web page at *http://www.uscis.gov/tps.* If USCIS does not grant your fee waiver request, you may also refile your Form I–765 with the fee either with your Form I–821 or at a later time, if you choose.

Note: A re-registering TPS beneficiary age 14 and older must pay the biometric services fee (but not the Form I–821 filing fee), or request a fee waiver, when filing a TPS re-registration application. However, if you decide to wait to request an EAD, 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 re-registration. You may wait to seek an EAD until after USCIS has approved your TPS re-registration application or at any later date you decide you want to request an EAD. To re-register for TPS, you only need to file the Form I–821 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

If you would like to send your application by:	Then, mail your application to:
U.S. Postal Service	U.S. Citizenship and Immigration Services, Attn: TPS Somalia, P.O. Box 6943, Chicago, IL 60680–6943.
FedEx, UPS, or DHL	U.S. Citizenship and Immigration Services, Attn: TPS Somalia (Box 6943), 131 S Dearborn St., 3rd Floor, Chicago, IL 60603–5517.

If you were granted TPS by an Immigration Judge (IJ) or the Board of Immigration Appeals (BIA) and you wish to request an EAD or are re-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 you are re-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 us to verify your grant of TPS and process your application.

Supporting Documents

The filing instructions on the 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 *www.uscis.gov/tps* under ''Somalia.''

Employment Authorization Document (EAD)

How can I obtain information on the status of my TPS application and EAD request?

To get case status information about your TPS application, including the status of an EAD request, you can check Case Status Online at *http://www.uscis.gov,* or visit the USCIS Contact Center at *uscis.gov/contactcenter.* If your 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).

Am I eligible to receive an automatic 180-day extension of my current EAD through March 16, 2022, using this ***Federal Register*** *notice?*

Yes. Regardless of your country of birth, provided that you currently have a Somalia TPS-based EAD with an expiration date of September 17, 2021, on the face of the card, bearing the notation A–12 or C–19 under Category, this notice automatically extends your EAD through March 16, 2022. Although this **Federal Register** notice automatically extends your EAD through March 16, 2022, you must re-register timely for TPS in accordance with the procedures described in this **Federal Register** notice to maintain your TPS and employment authorization.

When hired, what documentation may I show to my employer as evidence of employment authorization and identity when completing Form I–9?

You can find the Lists of Acceptable Documents on the third page of Form I–9 as well as the Acceptable Documents web page at *https://www.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 for List A, List B, or List C documents 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 *http://www.uscis.gov/I-9Central.*

An EAD is an acceptable document under List A. See the section ''How do my employer and I complete Form I–9 using my automatically extended EAD for a new job?'' of this **Federal Register** notice for further information. If your EAD has an expiration date of September 17, 2021, and states A–12 or C–19 under Category, it has been extended automatically by virtue of this **Federal Register** notice and you may choose to present your EAD to your employer as proof of identity and employment eligibility for Form I–9 through March 16, 2022, unless your TPS has been withdrawn or your request for TPS has been denied.

What documentation may I present to my employer for Form I–9 if I am already employed but my current TPS-related EAD is set to expire?

Even though we have automatically extended your EAD, your employer is required by law to ask you about your continued employment authorization. Your employer may need to re-inspect your automatically extended EAD to check the Card Expires date and Category code if your employer did not keep a copy of your EAD when you initially presented it. Once your employer has reviewed the Card Expiration date and Category code, your employer should update the EAD expiration date in Section 2 of Form I–9. See the section ''What updates should my current employer make to Form I–9 if my EAD has been automatically extended?'' of this **Federal Register** notice for further information. You may show this **Federal Register** notice to your employer to explain what to do for Form I–9 and to show that USCIS has automatically extended your EAD through March 16, 2022, but you are not required to do so. The last day of the automatic EAD extension is March 16, 2022. Before you start work on March 17, 2022, your employer is required by law to reverify your employment authorization in Section 3 of Form I–9. By that time, you must present any document from List A or any document from List C on Form I–9 Lists of Acceptable Documents, or an acceptable List A or List C receipt described in the Form I–9 instructions to reverify employment authorization.

Your employer may not specify which List A or List C document you must present and cannot reject an acceptable receipt.

Can my employer require that I provide any other documentation to prove my status, such as proof of my Somali citizenship or a Form I–797C showing I re-registered for TPS?

No. When completing Form I–9, including reverifying employment authorization, employers must accept any documentation that appears on 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 do not need to reverify List B identity documents. Therefore, employers may not request proof of Somali citizenship or proof of re-registration for TPS when completing Form I–9 for new hires or reverifying the employment authorization of current employees. If you present an EAD that USCIS has automatically extended, employers should accept it as a valid List A document so long as the EAD reasonably appears to be genuine and relates to you. 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.

How do my employer and I complete Form I–9 using my automatically extended EAD for a new job?

When using an automatically extended EAD to complete Form I–9 for a new job before March 17, 2022:

1. For Section 1, you should:

a. Check ''An alien authorized to work until'' and enter March 16, 2022, as the ''expiration date''; and

b. Enter your Alien Number/USCIS number or A-Number where indicated. (Your EAD or other document from DHS will have your USCIS number or A-Number printed on it; the USCIS number is the same as your A-Number without the A prefix.)

2. For Section 2, employers should:

a. Determine if the EAD is auto-extended by ensuring it is in category A–12 or C–19 and has a Card Expires date of September 17, 2021;

b. Write in the document title;

c. Enter the issuing authority;

d. Provide the document number; and

e. Write March 16, 2022, as the expiration date.

Before the start of work on March 17, 2022, employers must reverify the employee's employment authorization in Section 3 of Form I–9.

What updates should my current employer make to Form I–9 if my EAD has been automatically extended?

If you presented a TPS-related EAD that was valid when you first started your job and USCIS has now automatically extended your EAD, your employer may need to re-inspect your current EAD if they do not have a copy of the EAD on file. Your employer should determine if your EAD is automatically extended by ensuring that it contains Category A–12 or C–19 and has a Card Expires date of September 17, 2021, on the front of the card.

If your employer determines that USCIS has automatically extended your EAD, your employer should update Section 2 of your previously completed Form I–9 as follows:

1. Write EAD EXT and March 16, 2022, as the last day of the automatic extension in the Additional Information field; and

2. Initial and date the correction.

Note: This is not considered a reverification. Employers do not complete Section 3 until either the 180-day automatic extension has ended, or the employee presents a new document to show continued employment authorization, whichever is sooner. By March 17, 2022, when the employee's automatically extended EAD has expired, employers are required by law to reverify the employee's employment authorization in Section 3.

If I am an employer enrolled in E-Verify, how do I verify a new employee whose EAD has been automatically extended?

Employers may create a case in E-Verify for a new employee by entering the number from the Document Number field on Form I–9 into the document number field in E-Verify. Employers should enter March 16, 2022, as the expiration date for an EAD that has been extended under this **Federal Register** notice.

If I am an employer enrolled in E-Verify, what do I do when I receive a ''Work Authorization Documents Expiring'' alert for an automatically extended EAD?

E-Verify automated the verification process for TPS-related EADs that are automatically extended. If you have employees who provided a TPS-related EAD when they first started working for you, you will receive a ''Work Authorization Documents Expiring'' case alert when the auto-extension period for this EAD is about to expire. Before this employee starts work on March 17, 2022, you must reverify their employment authorization in Section 3 of Form I–9. Employers may not use E-Verify for reverification.

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.* Calls are accepted in English, Spanish, and many other languages. Employees or 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 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 an employee's Form I–9 differs from Federal or State government records.

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 verify 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 *https://www.justice.gov/ier* and on the USCIS and E-Verify websites at *https://www.uscis.gov/i-9-central* and *https://www.e-verify.gov.*

Note Regarding Federal, State, and Local Government Agencies (Such as Departments of Motor Vehicles)

For Federal purposes, TPS beneficiaries presenting an automatically extended EAD referenced in this **Federal Register** notice do not need to show any other document, such as an I–797C Notice of Action or this **Federal Register** notice, to prove that they qualify for this extension. 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 you need 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 a TPS beneficiary, show you are authorized to work based on TPS or other status, or that may be used by DHS to determine whether you have TPS or other immigration status. Examples of such documents are:

- Your current EAD;
- Your Form I–797, Notice of Action, reflecting approval of your Form I–765; or
- Your Form I–797, the notice of approval, for a past or current 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 USCIS' Systematic Alien Verification for Entitlements (SAVE) program to confirm the current immigration status of applicants for public benefits. While SAVE can verify when an individual has TPS, each agency's procedures govern whether they will accept an unexpired EAD, Form I–797, or Form I–94, Arrival/Departure Record. If an agency accepts the type of TPS-related document you are presenting, such as an EAD, the agency should accept your automatically extended EAD. It may assist the agency if you:

a. Present the agency with a copy of the relevant **Federal Register** notice showing the extension of TPS-related documentation in addition to your recent TPS-related document with your A-number, USCIS number or Form I–94 number;

b. Explain that SAVE will be able to verify the continuation of your TPS using this information; and

c. Ask the agency to initiate a SAVE query with your information and follow through with additional verification steps, if necessary, to get a final SAVE response verifying your TPS.

You can also ask the agency to look for SAVE notices or contact SAVE if they have any questions about your immigration status or automatic

extension of TPS-related documentation. 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 *save.uscis.gov/casecheck/.* CaseCheck is a free service that lets you follow the progress of your SAVE verification case using your date of birth and one immigration identifier number (A-number, USCIS number or Form I–94 number) or Verification Case Number. 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 upon or will act upon a SAVE verification and you do not believe the SAVE response is correct, the SAVE website, *www.uscis.gov/save,* has detailed information on how to make corrections or update your immigration record, make an appointment, or submit a written request to correct records.

[FR Doc. 2021–15595 Filed 7–21–21; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

[DT64101000.DSB4A0000.T7AC00.24IA; OMB Control Number 1035–0005]

Agency Information Collection Activities; Tribal Trust Evaluations for Public Law 93–638 Compact Tribes

AGENCY: Department of the Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Trust Funds Administration (BTFA), are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before August 23, 2021.

ADDRESSES: Send written comments on this information collection request (ICR) by mail to Nina Alexander, Bureau of Trust Funds Administration, Director of Federal Information Resources, 400 Masthead Street NE, Albuquerque, NM 87109; or by email to *Nina_Alexander@btfa.gov.* Please reference Office of Management and Budget (OMB) Control Number 1035–0005 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Nina Alexander, Director, Federal Information Resources, Bureau of Trust Funds Administration at 4400 Masthead Street, NE, Albuquerque, NM 87109; or by email at *Nina_Alexander@btfa.gov* or via telephone at 505–273–1620.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA), we provide the general public and other federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice (86 FR 16390) with a 60-day public comment period soliciting on this collection of information was published on March 29, 2021. No comments were received in response to that notice.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following: (1) Whether the collection of information is necessary for the proper performance of the functions of the BTFA, including whether or not the information will have practical utility; (2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: As codified in 25 U.S.C. 4001 *et seq.,* The American Indian Trust Fund Management Reform Act of 1994 (the Reform Act) makes provisions for the Bureau of Trust Funds Administration (formerly known as the Office of the Special Trustee for American Indians) to administer trust fund accounts for individuals and Tribes. This collection of information is required to fulfill the mission of the Bureau of Trust Funds Administration (BTFA) and the Secretary of the Interior's responsibility for evaluating all Public Law 93–638 Compact Tribes administering or managing trust programs, functions, services, and/or activities on behalf of the Secretary of the Interior. This responsibility is federally mandated pursuant to 25 U.S.C. 458cc(d) and 25 CFR 1000.350. BTFA is responsible under 25 U.S.C. 4041 for overseeing the implementation of trust reforms, trust accounting, and coordination of trust policies intra-bureau-wide related to the management of Indian trust funds and assets. The BTFA, Division of Trust Evaluation and Review (DTER), formerly the Office of Trust Audit and Review (OTRA), is responsible for performing tribal trust evaluations and trust records assessments for Tribes performing Indian trust programs and functions. In addition, DTER has a congressional mandate to conduct Annual Tribal Trust Evaluations for Tribes that compact trust programs, functions, services, and/or activities under Public Law 93–638 Self-Governance Compacts on behalf of the Secretary of the Interior. This authority is contained in 25 U.S.C. 5363(d)(1) & (2) and the enabling regulations in 25 CFR 1000.350. DTER currently collects Indian trust data and documentation from Tribes in fulfillment of performing Tribal trust evaluations for compacted Tribes. These evaluations are enabled by performing desk reviews (via email electronic questionnaires), and on-site visits to Tribes and federal agencies for the trust records assessments (although federal agencies are exempt from the provisions of the PRA).

Under 25 CFR 1000.355, the Secretary's designated representative will conduct trust evaluations for each self-governance Tribe that has an annual funding agreement. The end result is the issuance of a report, which is required by 25 CFR 1000.365. Currently, DTER conducts either desk reviews and/or on-site reviews (pre- and post-COVID–19 pandemic) of trust operations where a Tribe has compacted a trust program. During that review, under current methodology, interviews are conducted and documents are requested. A draft report is written and provided to the Tribe for comment where applicable. Comments received back are

incorporated into the report, and a final report is issued to the Tribe.

Title of Collection: Tribal Trust Evaluations for Public Law 93–639 Compact Tribes.

OMB Control Number: 1035–0005.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Tribes that have an annual funding agreement in place to compact Indian trust programs.

Total Estimated Number of Annual Respondents: 64 Tribes. Federal agencies are exempt from the PRA and are not included in the total annual respondents/responses/burden hour estimates.

Total Estimated Number of Annual Responses: 1,024.

Estimated Completion Time per Response: 2 hours for reporting and 1 hour for recordkeeping.

Total Estimated Number of Annual Burden Hours: 3,072.

Respondent's Obligation: Mandatory.

Frequency of Collection: Once per fiscal or calendar year (year the respective Tribe operates under).

Total Estimated Annual Non-Hour Burden Cost: None.

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

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Jeffrey Parrillo,

Departmental Information Collection Clearance Officer.

[FR Doc. 2021–15572 Filed 7–21–21; 8:45 am]

BILLING CODE 4334–63–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0032323; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, Bureau of Land Management, Alaska State Office, Anchorage, AK

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior, Bureau of Land Management, Alaska State Office (BLM) has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the BLM. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the BLM at the address in this notice by August 23, 2021.

FOR FURTHER INFORMATION CONTACT: Robert E. King, Bureau of Land Management, Alaska State Office, 222 W 7th Avenue, #13, Anchorage, AK 99513, telephone (907) 271–5510, email *r2king@blm.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the U.S. Department of the Interior, Bureau of Land Management, Alaska State Office, Anchorage, AK. The human remains and associated funerary objects were removed from Unalaska Island and Amaknak Island in the Eastern Aleutian Islands, AK.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the BLM with the help of the University of Alaska Museum of the North professional staff in consultation with representatives of the Qawalangin Tribe of Unalaska.

History and Description of the Remains

In 1948, human remains representing at minimum, one individual were removed from the Chernofski site on Unalaska Island, Eastern Aleutian Islands, AK. The work was done as part of the Harvard Peabody Museum's Aleutian Expedition of 1948, led by Harvard University graduate student William S. Laughlin. The Harvard Peabody Museum felt it had authorization for the work under a contract to partially fund the 1948 Expedition, but it obtained an Antiquities Act Permit for work during a second season in 1949, due to uncertainty about the authorization for the 1948 work. The human remains of the one individual removed in 1948 were accessioned by the Harvard Peabody Museum, where they remained until 2017, when they were transferred to the Bureau of Land Management in Alaska and placed in their current location at the University of Alaska Museum of the North. The human remains consist of a single mandible from an adult of unknown sex. No known individual was identified. The one associated funerary object is the fragment of a ground stone lamp.

The site is more than 200 years old; its actual age unknown. The stone lamp fragment is consistent with items found in other archeological sites more than 200 years old in the Eastern Aleutian Islands. Based on genetic studies as well as a continuity in artifact styles, scientists view the current aboriginal Unangan population of the Eastern Aleutian Islands as direct descendants of the people who first came to the region 9,000 or more years ago and were never replaced by any other people. This view is consistent with oral traditional information provided by today's Unangan people.

In 1950, human remains representing at minimum, five individuals were removed from the Eider Point Site on Unalaska Island, Eastern Aleutian Islands, AK. That same year, human remains representing one individual were removed from the Amaknak Burial Site on Amaknak Island, near Unalaska Island. Both removals were carried out by Ted P. Bank II, of the University of Michigan, under a Federal permit. Initially, the human remains were placed at the University of Michigan. Around the late 1990s, these six sets of human remains were moved to the Museum of the Aleutians, Unalaska, Alaska. Until 2018, the human remains were believed to be under the control of the U.S. Fish and Wildlife Service (FWS). Accordingly, FWS moved the remains from the Museum of the

Aleutians to Anchorage, Alaska sometime prior to 2012. In 2018, when the human remains were transferred to the Bureau of Land Management in Anchorage, AK, the BLM placed them at the University Museum of the North, Fairbanks, AK, where they are currently located. The human remains for each of the six individuals vary as to completeness with none more than 10–15% complete. One individual is represented by a single mandible. The others are represented predominately by smaller bones, including some complete or fragmentary vertebrae, ribs, ulnas, femurs, metatarsals, and tibias. Some of the six individuals are also represented by innominate fragments, one pubis, one sacrum, and one scapula. No known individuals were identified. No associated funerary objects are present.

The remains of the six individuals removed from the Eider Point Site and the Amaknak Burial Site are all over 200 years old; their actual age is unknown. The connection between the remains of these six individuals and today's Unangan people is based on the above cited information.

Sometime between the late 1940s and late 1970s, human remains representing, at minimum, four individuals were removed from an unknown site on Amaknak Island by William Laughlin who, during these years, was associated variously with several universities. These four sets of human remains were found at the Museum of Anthropological Archaeology at the University of Michigan, Ann Arbor, MI. They had been placed there at an unknown date due to Laughlin's collaboration on Eastern Aleutian archeological work with Ted P. Bank II of the University of Michigan. The four individuals are represented by 13 teeth and a single long bone fragment. The four individuals include three adults and one subadult, all of unknown sex. No known individuals were identified. No associated funerary objects are present.

The remains of the four individuals removed from Amaknak Island are all over 200 years old; their actual age is unknown. The connection between the remains of these six individuals and today's Unangan people is based on the above cited information.

Determinations Made by the U.S. Department of the Interior, Bureau of Land Management, Alaska State Office

Officials of the U.S. Department of the Interior, Bureau of Land Management, Alaska State Office have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 11 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the one object described in this notice is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary object and the Qawalangin Tribe of Unalaska.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary object should submit a written request with information in support of the request to Robert E. King, Bureau of Land Management, Alaska State Office, 222 W 7th Avenue, #13, Anchorage, AK 99513, telephone (907) 271–5510, email *r2king@blm.gov,* by August 23, 2021. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary object to the Qawalangin Tribe of Unalaska may proceed.

The U.S. Department of the Interior, Bureau of Land Management, Alaska State Office is responsible for notifying the Qawalangin Tribe of Unalaska that this notice has been published.

Dated: July 14, 2021.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2021–15566 Filed 7–21–21; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0032324; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: University of Denver Museum of Anthropology, Denver, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The University of Denver Museum of Anthropology, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of objects of cultural patrimony. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the University of Denver Museum of Anthropology. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to the University of Denver Museum of Anthropology at the address in this notice by August 23, 2021.

FOR FURTHER INFORMATION CONTACT: Anne Amati, University of Denver Museum of Anthropology, 2000 E Asbury Avenue, Sturm Hall 146, Denver, CO 80208, telephone (303) 871–2687, email *anne.amati@du.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the University of Denver Museum of Anthropology, Denver, CO, that meet the definition of objects of cultural patrimony under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

At an unknown date, one cultural item was removed from an unknown site in the state of Arizona. At an unknown date, the item came into the possession of Kohlberg's Antique Store in Denver, CO, where it was purchased by Fallis F. Rees. In 1967, Mr. Rees donated the item to the University of Denver Museum of Anthropology. The one object of cultural patrimony is a dipper (DU# 3887). It is in the Gila Plain style and was likely produced between A.D. 200–1450, which encompasses the Hohokam cultural sequence.

At unknown dates, 16 cultural items were removed from unknown sites in the state of Arizona. At unknown dates, the items came into the possession of

Fallis F. Rees who, in 1967, donated the items to the University of Denver Museum of Anthropology. The 16 objects of cultural patrimony are one effigy bowl (DU# 3902), one miniature bowl (DU# 3906), one jar (DU# 3908), one shell needle (DU# 3916), one shell pendant (DU#3917a), two medicine stones (DU#3919a and b), one bowl (DU# 3926), one ax (DU# 3951), two figurine fragments (DU#3980 and 3981b), one basket (DU# 5762), one jar (DU#3881), one miniature pitcher (DU#4108), one fragment of amber (DU#2669), and one stone ruler (DU#2671). The 16 objects of cultural patrimony are consistent with the material type and manufacture techniques of Hohokam material culture.

At an unknown date, one cultural item was removed from an unknown site in the state of Arizona. At an unknown date, the one item came into the possession of the Original Curio Store in Santa Fe, NM, where it was purchased by Fallis F. Rees. In 1967, Mr. Rees donated the item to the University of Denver Museum of Anthropology. The one object of cultural patrimony is a ceremonial container (DU# 3922). It is consistent with the material type and manufacture techniques of Hohokam material culture.

At an unknown date, one cultural item was removed from an unknown site in the state of Arizona. At an unknown date, the item came into the possession of Gladys Hicks, who gifted it to Fallis F. Rees. In 1967, Mr. Rees donated the item to the University of Denver Museum of Anthropology. The one object of cultural patrimony is a pipe stem (DU# 4092). It is consistent with the material type and manufacture techniques of Hohokam material culture.

At an unknown date, one cultural item was removed from Casa Malpais, near Springerville in Apache County, AZ. At an unknown date, the item came into the possession of Fallis F. Rees who, in 1967, donated the item to the University of Denver Museum of Anthropology. The one object of cultural patrimony is a vesicular basalt phallus (DU# 3940). Casa Malpais is a late Mogollon habitation site which was occupied from A.D. 1250 to 1400 and encompasses the Hohokam sequence.

At an unknown date, one cultural item was removed from an unknown site in the Mojave Desert, either in Arizona or California. At an unknown date, G. and T. Cox obtained the item from the E.R. Callahan Collection. At an unknown date, G. and T. Cox gifted the item to Fallis F. Rees, and in 1967, Mr. Rees donated it to the University of Denver Museum of Anthropology. The one object of cultural patrimony is a human figure jar (DU#4109). It is consistent with the material type and manufacture techniques of Hohokam material culture.

At an unknown date, one cultural item was removed from an unknown site at Roosevelt Lake in Gila County, AZ. At an unknown date, the item came into the possession of Fallis F. Rees who, in 1967, donated the item to the University of Denver Museum of Anthropology. The one object of cultural patrimony is a stone phallus (DU# 3977). It is consistent with the material type and manufacture techniques of Hohokam material culture.

At an unknown date, one cultural item was removed from an unknown site in Maricopa County, AZ. In 1951, the item was accessioned by the University of Denver Museum of Anthropology. The one object of cultural patrimony is a drum basket (DU#1675). It is consistent with the material type and manufacture techniques of Hohokam material culture. The form and decoration are consistent with items attributable to the Akimel O'odham, aka Pima, of the Gila River Indian Community of the Gila River Indian Reservation, Arizona.

At an unknown date, two cultural items were removed from the Agua Fria River Cliffs in Maricopa County, AZ. According to museum records, the items were found ''seven miles north of Highway 70, 80, and 93.'' At an unknown date, the items came into the possession of Omar Turney, a Phoenix archeologist and engineer who studied prehistoric irrigation canals in the Salt River Valley. At an unknown date, Turney transferred the two items to Frank Midvale, a Casa Grande Monument ranger and archeologist who had been Turney's student at Arizona State University (ASU). In 1963, Midvale was dispersing his collection to various museums and began sending material to Fallis F. Rees. In 1967, Mr. Rees donated the item to the University of Denver Museum of Anthropology. The two objects of cultural patrimony are petroglyphs (DU# 4295a–b). They are consistent with the material type and manufacture techniques of Hohokam material culture.

At an unknown date, two cultural items were removed from a location near La Ciudad (Grande) Ruin in Maricopa County, AZ. At unknown dates, one of the cultural items came into the possession of Fallis F. Rees and the other cultural item came into the possession of Frank Midvale. In 1963, Midvale was dispersing his collection to various museums and began sending material to Fallis F. Rees. In 1967, Mr. Rees donated the two items to the University of Denver Museum of Anthropology. The two objects of cultural patrimony are: One medicine stone (DU# 3979) and one stone phallus (DU#3975). La Ciudad (Grande) Ruin is a prehistoric Hohokam habitation site which was occupied from A.D. 200–1450.

At an unknown date, two cultural items were removed from ''Gila Bend Pyramid'' in Maricopa County, AZ, by Dr. William Wasley. Based on archival research, museum staff believes that ''Gila Bend Pyramid'' is a reference to the Hohokam Platform Mound at the Gatlin Site, located three miles north of Gila Bend, AZ. At an unknown date the items came into the possession of Frank Midvale. In 1963, Midvale was dispersing his collection to various museums and began sending material to Fallis F. Rees. In 1967, Mr. Rees donated the items to the University of Denver Museum of Anthropology. The two objects of cultural patrimony are copper bells (DU# 3914a&b). Gatlin site is a prehistoric Hohokam habitation site which was occupied from A.D. 800–1200.

At an unknown date, two cultural items were removed from a ditch near Mesa Grande Ruin in Maricopa County, AZ. At an unknown date, the items came into the possession of Frank Midvale. In 1963, Midvale was dispersing his collection to various museums and began sending material to Fallis F. Rees. In 1967, Mr. Rees donated the two items to the University of Denver Museum of Anthropology. The two objects of cultural patrimony are one jar (DU# 3888a) and one bowl sherd (DU# 3888b). Mesa Grande Ruin is a prehistoric Hohokam habitation site which was occupied from A.D. 1100–1400.

At an unknown date, one cultural item was removed from an unknown site near Phoenix in Maricopa County, AZ. At an unknown date, the item came into the possession of Fallis F. Rees who, in 1967, donated the item to the University of Denver Museum of Anthropology. The one object of cultural patrimony is a stone censer (DU# 3978) identified as belonging to the Santa Cruz-Sacaton period—an identification consistent with the Hohokam cultural sequence—and produced between A.D. 800–1100.

At an unknown date, one cultural item was removed from the ruins on the north side of the Salt River opposite Mesa, in Maricopa County, AZ. At an unknown date, the item came into the

possession of Frank Midvale. In 1963, Midvale was dispersing his collection to various museums and began sending material to Fallis F. Rees. In 1967, Mr. Rees donated the item to the University of Denver Museum of Anthropology. The one object of cultural patrimony is a shell bracelet fragment (DU# 3982). It is consistent with the material type and manufacture techniques of Hohokam material culture.

Between 1920 and 1947, three cultural items were removed from an unknown site northwest of Peoria in Maricopa County, AZ, by E.B. Renaud, during an archeological expedition sponsored by the University of Denver. Museum records document the site as ''on first level above wash, half mile square, pit house of transitional type (oblong with rounded corners) colonial and sedentary Hohokam.'' The three objects of cultural patrimony are three stone palette fragments (DU# misc. coll. AZ25–2.2) identified as belonging to the Colonial-Sedentary period—an identification consistent with the Hohokam cultural sequence—and produced between A.D. 700–1150.

At an unknown date, one cultural item was removed from Walker School Ruin near Phoenix, in Maricopa County, AZ. At an unknown date, the item came into the possession of Fallis F. Rees who, in 1967, donated the item to the University of Denver Museum of Anthropology. The one object of cultural patrimony is red ochre (DU# 3936). It is consistent with the material type and manufacture techniques of Hohokam material culture.

At an unknown date, one cultural item was removed from the Salt River Valley near Phoenix, in Maricopa County, AZ. At an unknown date, the item came into the possession of Fallis F. Rees who, in 1967, donated the item to the University of Denver Museum of Anthropology. The one object of cultural patrimony is a stone palette fragment (DU# 3985). The form and decoration are consistent with the Hohokam cultural sequence between 300 B.C. to A.D. 1100.

At an unknown date, two cultural items were removed from Cashion Ruin near the juncture of the Gila, Salt, and Fria Rivers, in Maricopa County, AZ. At an unknown date, the items came into the possession of Fallis F. Rees who, in 1967, donated the items to the University of Denver Museum of Anthropology. The two objects of cultural patrimony are figurine fragments (DU# 3918a & b). They are consistent with the material type and manufacture techniques of Hohokam material culture.

At an unknown date, one cultural item was removed from an unknown site at Blackwater in Pinal County, AZ. At an unknown date, the item came into the possession of Frank Midvale. In 1963, Midvale was dispersing his collection to various museums and began sending material to Fallis F. Rees. In 1967, Rees donated the item to the University of Denver Museum of Anthropology. The one object of cultural patrimony is a bird figurine (DU# 4106). It is consistent with the material type and manufacture techniques of Hohokam material culture.

At unknown dates, two cultural items were removed from unknown sites in the state of Arizona. At unknown dates, the items came into the possession of Frank Midvale, Casa Grande Monument ranger and archeologist. In 1963, Midvale was dispersing his collection to various museums and began sending material to Fallis F. Rees. In 1967, Rees donated the items to the University of Denver Museum of Anthropology. The two objects of cultural patrimony are one figurine fragment (DU# 3983) and one bowl (DU# 3912). The figurine fragment (DU# 3983) is identified as belonging to the Estrella period and was produced between 300 B.C. to A.D. 550. The bowl (DU#3912) is identified as Santa Cruz red-on-buff ware and was produced between A.D. 700–900. Both objects fall within the Hohokam cultural sequence.

At an unknown date, one cultural item was removed from an unknown site in either southeastern Arizona or southwestern New Mexico. At an unknown date, the item came into the possession of Fallis F. Rees who, in 1967, donated the item to the University of Denver Museum of Anthropology. The one object of cultural patrimony is one lot of beads (DU# 4299). This object is consistent with the material type and manufacture techniques of Hohokam material culture.

At unknown dates, eight cultural items were removed from unknown sites either near the Gila River or in the Gila Valley, in southwestern Arizona. At unknown dates, the items came into the possession of Fallis F. Rees who, in 1967, donated them to the University of Denver Museum of Anthropology. The eight objects of cultural patrimony are one sandstone ball (DU# 3964), one mano (DU# 3974), one medicine stone (DU# 4204), four pendants (DU# 3931a–b & e–f), and one ram-head figurine (DU# 3981a).

The ram-head figurine (DU# 3981a) is an effigy form associated with the Gila River area near the Estrella Mountains (Komadke) and South Mountain Range (Muahadag).The sandstone ball (DU# 3964) is culturally affiliated with the Akimel O'odham, aka Pima, of the Gila River Indian Community of the Gila River Indian Reservation, Arizona. The mano (DU# 3974), medicine stone (DU# 4204), and four pendants (DU# 3931a–b & e–f) are consistent with the material type and manufacture techniques of Hohokam material culture.

All of the cultural items described above have ongoing historical, traditional, or cultural importance central to the Gila River Indian Community of the Gila River Reservation, Arizona and the Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona rather than being property owned by an individual.

The Gila River Indian Community of the Gila River Indian Reservation, Arizona, and the Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona have requested the repatriation of the cultural items described above as follows: The Gila River Indian Community of the Gila River Indian Reservation, Arizona, has requested DU#s 1675, 1691, 2669, 2671, 3881, 3906, 3908, 3912, 3936, 3940, 3951, 3964, 3974, 3978, 3979, 3982, 3983, 3985, 4106, 4204, 4299, 3917a, 3918a–b, 3931a–b, 3931e–f, 3981a–b, and misc. coll. AZ25–2.2; the Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona, has requested DU#s 3926, 3975, 3977, 3888a–b, 3914a–b, 3919a–b, and 4295a–b; and jointly, the Gila River Indian Community of the Gila River Indian Reservation, Arizona, and the Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona, have requested DU#s 3887, 3902, 3916, 3922, 3980, 4092, 4108, 4109, and 5762.

Determinations Made by the University of Denver Museum of Anthropology

Officials of the University of Denver Museum of Anthropology have determined that:

- Pursuant to 25 U.S.C. 3001(3)(D), the 52 cultural items described above have ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the objects of cultural patrimony and the Gila River Indian Community of the Gila River Reservation, Arizona and the Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona (hereafter referred to as ''The Tribes'').

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Anne Amati, University of Denver Museum of Anthropology, 2000 E Asbury Avenue, Sturm Hall 146, Denver, CO 80208, telephone (303) 871–2687, email *anne.amati@du.edu,* by August 23, 2021. After that date, if no additional claimants have come forward, transfer of control of the objects of cultural patrimony to The Tribes may proceed.

The University of Denver Museum of Anthropology is responsible for notifying The Tribes that this notice has been published.

Dated: July 14, 2021.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2021–15571 Filed 7–21–21; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0032322; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: California Department of Transportation, Sacramento, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The California Department of Transportation (Caltrans), assisted by the Fowler Museum at the University of California Los Angeles (UCLA) and the San Luis Obispo County Archaeological Society Research and Collections Facility (SLOCAS), in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of unassociated funerary objects. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the California Department of Transportation. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to the California Department of Transportation at the address in this notice by August 23, 2021.

FOR FURTHER INFORMATION CONTACT: Sarah Allred, California Department of Transportation, P.O. Box 942874, MS 27, Sacramento, CA 94271, telephone (916) 956–5506, email *Sarah.Allred@dot.ca.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the California Department of Transportation, Sacramento, CA, and in the physical custody of the Fowler Museum at the University of California Los Angeles, Los Angeles, CA, and the San Luis Obispo County Archaeological Society Research and Collections Facility, San Luis Obispo, CA, that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

In 1965 and 1966, a total of 2,589 unassociated funerary objects were removed from CA–SLO–175 in San Luis Obispo County, CA. David Abrams and Nelson Leonard, in association with the University of California Archeological Survey, began excavations when Caltrans sought to widen Highway 1, which would significantly impact this Middle-to-Late Period site. The land was originally owned by the Hearst Corporation. Caltrans purchased the right-of-way in June 1966. All laboratory work was completed at UCLA. Abrams reported on the site and the excavations in the MA thesis he submitted to the University of California Davis.

In March of 1973, UCLA sent the materials collected from CA–SLO–175 to SLOCAS (then located at Cuesta College) for further study and analysis, with the exception of the human remains and associated funerary objects. Subsequently, additional materials associated with the site were found at UCLA, and in May 1978, they were sent to SLOCAS for permanent curation. On July 14, 2017, UCLA sent the human remains and associated funerary objects to SLOCAS to unite the entire collection for an inventory, and to look for missing and loaned artifacts with the assistance of Chumash community members. The 2,589 unassociated funerary objects are composed of 2,463 objects present in the UCLA collections and 126 objects that are currently missing. The 2,463 unassociated funerary objects are seven pieces and one bag of asphaltum, one bag of charcoal, 717 pieces and 77 bags of unmodified faunal bone, one modified shell, 18 pieces of modified bone, 11 awls, 375 flakes, one etched stone, 367 scrapers, 179 cores, 34 choppers, 19 anvils, 160 points, one arrow shaft straightener, seven stone balls, 33 bifaces, 55 shell beads, three stone pendants and one bag of stone beads, one sharpening stone, 54 stone bowls, six burins, nine pieces of debitage, 14 drills, two fishhooks, two pieces of ochre, one quartz crystal, six perforators/picks, 18 pieces and five bags of unmodified shell, 104 knives, 35 grinding stones, 24 hammerstones, 61 manos/pestles, 32 net weights, 10 pecked stones, six tarring pebbles, and five other stone tools. The California Department of Transportation continues to look for the missing 126 unassociated funerary objects, which are two unmodified animal bones, one mortar, two stone bowls, four hammerstones, 13 knives, three manos, one net weight, three pestles, 26 points, three tarring pebbles, two shell beads, 33 stone flakes, two shells with asphaltum, eight cores, three scrapers, one pick, one drill, 11 pieces of charcoal, three modified animal bones, three burins, and one chopper.

Following consultation with representatives of the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California and three non-federally recognized Indian groups—the Barbareño/Ventureño Band of Mission Indians, the *yak tityu tityu yak tiłhini*/Northern Chumash Tribe, and the Salinan Tribe of San Luis Obispo and Monterey Counties—(hereafter referred to as ''The Consulted Tribes and Groups''), the California Department of Transportation has determined that CA–SLO–175 lies within the traditional territory of the Chumash and Salinan people. This determination is based on geographical, ethnographic, historical, oral traditional, and archeological information.

Determinations Made by the California Department of Transportation

Officials of the California Department of Transportation have determined that:

• Pursuant to 25 U.S.C. 3001(3)(B), the 2,589 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.

• Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Sarah Allred, California Department of Transportation, P.O. Box 942874, MS 27, Sacramento, CA 94271–0001, telephone (916) 956–5506, email *Sarah.Allred@dot.ca.gov,* by August 23, 2021. After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary objects to the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California may proceed.

The California Department of Transportation is responsible for notifying The Consulted Tribes and Groups that this notice has been published.

Dated: July 14, 2021.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2021–15565 Filed 7–21–21; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0032318; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Pennsylvania Museum of Archaeology and Anthropology, Philadelphia, PA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The University of Pennsylvania Museum of Archaeology and Anthropology has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the University of Pennsylvania Museum of Archaeology and Anthropology. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the University of Pennsylvania Museum of Archaeology and Anthropology at the address in this notice by August 23, 2021.

FOR FURTHER INFORMATION CONTACT: Dr. Christopher Woods, Williams Director, University of Pennsylvania Museum of Archaeology and Anthropology, 3260 South Street, Philadelphia, PA 19104–6324, telephone (215) 898–4050, email *director@pennmuseum.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the University of Pennsylvania Museum of Archaeology and Anthropology, Philadelphia, PA. The human remains were removed from unknown sites in Muskogee County, OK; Philadelphia County, PA; Burlington County, NJ; Madison County, IN and other areas in the United States.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the University of Pennsylvania Museum of Archaeology and Anthropology professional staff in consultation with representatives of the Delaware Nation, Oklahoma; Delaware Tribe of Indians; and the Stockbridge Munsee Community, Wisconsin (hereafter referred to as ''The Tribes'').

History and Description of the Remains

Sometime prior to 1839, human remains representing, at minimum, one individual [catalog number 97–606–568] were removed from an unknown location in the United States by Mr. Witmer or an unknown 3rd party. Mr. Witmer transferred the human remains to Dr. Samuel G. Morton (b. 1799–d. 1851) who, by 1839, had accessioned them into his collection. The human remains belong to a female individual between 30 and 40 years of age. No known individual was identified. No associated funerary objects are present.

Between 1832 and March of 1834, human remains representing, at minimum, one individual [catalog number 97–606–40] were obtained by Dr. Zina Pitcher (b. 1797–d. 1872) who, at that time, was serving as the Army surgeon at Fort Gibson, in Muskogee County, Oklahoma. Dr. Pitcher transferred the human remains to Dr. Samuel G. Morton who, by 1839, had accessioned them into his collection. The human remains belong to a female between 35 and 50 years of age. Archival documents indicate that she was from a ''little colony on the Neosho River, near Fort Gibson.'' No known individual was identified. No associated funerary objects are present.

Between 1838 and 1843, human remains representing, at minimum, one individual [catalog number 97–606–1264] were removed from an unknown location in Indiana by Dr. Edwin Fussell [b. 1799–d. 1851], while he was living in Pendleton, Madison County, Indiana. By 1849, Dr. Fussell had transferred the human remains to Dr. Samuel G. Morton, who accessioned them into his collection. The human remains belong to a female between 40 and 50 years of age. Historical, published documents indicate she had been ''massacred by the whites at a settlement on White River, Indiana.'' No known individual was identified. No associated funerary objects are present.

In 1847, human remains representing, at minimum, one individual [catalog number 97–606–1263] were removed from a Native cemetery in the Port Richmond neighborhood of Philadelphia, Philadelphia County, PA, by Mr. Isaac Paschall Morris [b. 1803–d. 1869]. By 1849, Mr. Morris had transferred the human remains to Dr. Samuel G. Morton, who accessioned them into his collection. The human remains belong to a probable female between 30 and 40 years of age. No

known individual was identified. No associated funerary objects are present.

Sometime prior to 1839, human remains representing, at minimum, one individual [catalog number 97–606–418] were found near the bank of the Delaware River in New Jersey, about four miles above Burlington. According to historical, published information, the decedent had been buried in a seated position together with other individuals and associated objects. By 1839, Dr. Edward Swain (d. 1839) had transferred the human remains to Dr. Morton, who accessioned them into his collection. The human remains belong to a female about 50 years of age. No known individual was identified. No associated funerary objects are present.

Sometime prior to 1852, human remains representing, at minimum, two individuals [catalog numbers 97–606–205 and 97–606–206] were removed from an unidentified street in Philadelphia, Philadelphia County, PA, by Dr. George P. Olivier [b. 1824–d. 1884]. The human remains were transferred to the Academy of Natural Sciences of Philadelphia (today the Academy of Natural Sciences of Drexel University) on November 9, 1852, where they were added to Dr. Samuel G. Morton's collection. The human remains belong to female between 25 and 35 years of age and female about 50 years of age. No known individual was identified. No associated funerary objects are present.

In 1853, Dr. Morton's collection, including the human remains of the seven above listed individuals, was purchased from his estate and formally presented to the Academy of Natural Sciences of Philadelphia.

Sometime prior to 1857, human remains representing, at minimum, three individuals [catalog numbers 97–606–115, 97–606–118, and 97–606–1265] were removed from unknown locations by unidentified individuals. The human remains belong to a female individual between 25 and 30 years of age, a female individual about 50 years of age, and a female individual between 40 and 50 years of age. By 1857, the human remains had been transferred to the Academy of Natural Sciences and added to the Morton collection.

In 1966, the Morton collection, including the human remains of all ten above listed individuals, was loaned to the University of Pennsylvania Museum of Archaeology and Anthropology. In 1997, it was formally gifted to the University of Pennsylvania.

The human remains have been identified as Native American based on specific cultural and geographic attributions contained in the museum's records. Collector records, museum documentation, and published sources (Morton 1839, 1840, 1844, 1849; Meigs 1857) all identify the human remains as Lenape or Delaware. The Lenape (Delaware) are represented by The Tribes.

Determinations Made by the University of Pennsylvania Museum of Archaeology and Anthropology

Officials of the University of Pennsylvania Museum of Archaeology and Anthropology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 10 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and The Tribes.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Dr. Christopher Woods, Williams Director, University of Pennsylvania Museum of Archaeology and Anthropology, 3260 South Street, Philadelphia, PA 19104–6324, telephone (215) 898–4050, email *director@pennmuseum.org,* by August 23, 2021. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Tribes may proceed.

The University of Pennsylvania Museum of Archaeology and Anthropology is responsible for notifying The Tribes that this notice has been published.

Dated: July 14, 2021.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2021–15564 Filed 7–21–21; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0032326; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: University of Denver Museum of Anthropology, Denver, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The University of Denver Museum of Anthropology, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of unassociated funerary objects. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the University of Denver Museum of Anthropology. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to the University of Denver Museum of Anthropology at the address in this notice by August 23, 2021.

FOR FURTHER INFORMATION CONTACT: Anne Amati, University of Denver Museum of Anthropology, 2000 E Asbury Avenue, Sturm Hall 146, Denver, CO 80208, telephone (303) 871–2687, email *anne.amati@du.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the University of Denver Museum of Anthropology, Denver, CO, that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

At an unknown date, one cultural item was removed from an unknown site in Arizona. At an unknown date, the item came into the possession of the Fred Harvey Company, a Native American art collector and dealer headquartered in Santa Fe, NM. At an

unknown date, the item was transferred to Kohlberg's Antique Store in Denver, Colorado, where, at an unknown date, the item was purchased by Fallis F. Rees. In 1967, Mr. Rees donated the item to the University of Denver Museum of Anthropology. The one unassociated funerary object is a cremation bowl cap (DU# 3886) identified as belonging to the Gila Plain pottery style. Gila Plain pottery was produced between A.D. 200 to 1450, which encompasses the Hohokam sequence. Museum records indicate the object was from a cremation.

At an unknown date, one cultural item was removed from an unknown site near Gila Bend in Maricopa County, AZ. At an unknown date, the item came into the possession of Fallis Reese who, in 1967, donated the item to the University of Denver Museum of Anthropology. The one unassociated funerary object is an effigy paint mortar (DU# 3990) identified as belonging to the Santa Cruz style. Santa Cruz pottery was produced between A.D. 800–900, which encompasses the Hohokam sequence. Museum records indicate the object was removed from a cremation.

At an unknown date, one cultural item was removed from ''Middle Verde'' in Arizona. Based on archival research, museum, staff believes that ''Middle Verde'' could refer to the Verde River, which runs through Yavapai and Maricopa Counties. The river is divided into three designated areas—the upper, middle, and lower. At an unknown date, the item came into the possession of Omar Turney, a Phoenix archeologist and engineer who studied prehistoric irrigation canals in the Salt River Valley and in 1901, wrote the report ''Water Supply and Irrigation on the Verde River and Tributaries.'' At an unknown date, Turney transferred the item to Fallis Reese who, in 1967, donated the item to the University of Denver Museum of Anthropology. The one unassociated funerary object is a blade (DU# 3910). During recent excavations at sites along the Middle Gila Valley, a similar blade form has been found placed over the face in Hohokam burials.

At an unknown date, one cultural item was removed from Snaketown in Pinal County, AZ. At an unknown date, the item came into the possession of Fallis Reese who, in 1967, donated the item to the University of Denver Museum of Anthropology. The one unassociated funerary object is a shell bracelet fragment (DU# misc. coll. 18–RE49–3). The item is burnt, signifying it is from a cremation context. Shell bracelets are consistent with the Hohokam cultural group.

At an unknown date, one cultural item was removed from Pinal County, AZ, by E.B. Renaud, during an archeological expedition sponsored by the University of Denver. The one unassociated funerary object is a lot of ceramic sherds (DU# AZ37). The sherds are consistent with the material type and manufacture techniques of the Hohokam cultural group.

At unknown dates, two cultural items were removed from unknown sites either near the Gila River or in the Gila Valley, in southwestern Arizona. At unknown dates, the items came into the possession of Fallis Reese who, in 1967, donated them to the University of Denver Museum of Anthropology. The two unassociated funerary objects are two shells (DU# 3931c&d). The items are burnt, signifying they are from a cremation context. Shells are consistent with the Hohokam cultural group.

At unknown dates, two cultural items were removed from unknown sites. On March 26, 1972, the items were included in a box of objects anonymously left at the door of the University of Denver Anthropology Laboratory. The objects were later accessioned into the University of Denver Museum collection. The two unassociated funerary objects are shell bracelets (DU# 5740a–b). Shell bracelets of this type have been found in Hohokam burials of infants, children, and adults.

The Gila River Indian Community of the Gila River Indian Reservation, Arizona, and the Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona, have requested the repatriation of the cultural items described above as follows: The Gila River Indian Community of the Gila River Indian Reservation, Arizona, has requested DU#s 3886, 3990, 3931c–d, misc. coll. 18–RE49–3, and misc. coll. AZ37; and the Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona, has requested DU#s 3910 and 5740a–b.

Determinations Bade by the University of Denver Museum of Anthropology

Officials of the University of Denver Museum of Anthropology have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the nine cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Gila River Indian Community of the Gila River Reservation, Arizona and the Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona (hereafter referred to as ''The Tribes'').

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Anne Amati, University of Denver Museum of Anthropology, 2000 E Asbury Avenue, Sturm Hall 146, Denver, CO 80208, telephone (303) 871–2687, email *anne.amati@du.edu,* by August 23, 2021. After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary objects The Tribes may proceed.

The University of Denver Museum of Anthropology is responsible for notifying The Tribes that this notice has been published.

Dated: July 14, 2021.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2021–15570 Filed 7–21–21; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0032325; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: University of Denver Museum of Anthropology, Denver, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The University of Denver Museum of Anthropology, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, has determined that the cultural item listed in this notice meets the definition of an object of cultural patrimony. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request to the University of Denver Museum of Anthropology. If no additional claimants come forward, transfer of control of the cultural item to the lineal descendants, Indian Tribes, or

Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request with information in support of the claim to the University of Denver Museum of Anthropology at the address in this notice by August 23, 2021.

FOR FURTHER INFORMATION CONTACT: Anne Amati, University of Denver Museum of Anthropology, 2000 E Asbury Avenue, Sturm Hall 146, Denver, CO 80208, telephone (303) 871–2687, email *anne.amati@du.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate a cultural item under the control of the University of Denver Museum of Anthropology, Denver, CO, that meets the definition of an object of cultural patrimony under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural item. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Item

At an unknown date, one cultural item was removed from the state of Arizona. In 1951, the item was accessioned by the University of Denver Museum of Anthropology. The one object of cultural patrimony is a tripod bowl (DU#1691). The form and decoration of this object is consistent with items attributable to the Maricopa culture of the Gila River Indian Community of the Gila River Indian Reservation, Arizona and the Salt River Pima-Maricopa Indian Community of the Salt River Indian Reservation, Arizona. The object of cultural patrimony has ongoing historical, traditional, or cultural importance central to the Gila River Indian Community of the Gila River Indian Reservation, Arizona and the Salt River Pima-Maricopa Indian Community of the Salt River Indian Reservation, Arizona rather than being property owned by an individual.

Determinations Made by the University of Denver Museum of Anthropology

Officials of the University of Denver Museum of Anthropology have determined that:

- Pursuant to 25 U.S.C. 3001(3)(D), the one cultural item described above has ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the object of cultural patrimony and the Gila River Indian Community of the Gila River Indian Reservation, Arizona and the Salt River Pima-Maricopa Indian Community of the Salt River Indian Reservation, Arizona (hereafter referred to as ''The Tribes'').

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request with information in support of the claim to Anne Amati, University of Denver Museum of Anthropology, 2000 E Asbury Avenue, Sturm Hall 146, Denver, CO 80208, telephone (303) 871–2687, email *anne.amati@du.edu,* by August 23, 2021. After that date, if no additional claimants have come forward, transfer of control of the object of cultural patrimony to The Tribes may proceed.

The University of Denver Museum of Anthropology is responsible for notifying The Tribes that this notice has been published.

Dated: July 14, 2021.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2021–15567 Filed 7–21–21; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1170]

Certain Mobile Devices With Multifunction Emulators; Notice of Commission Determination Finding No Violation of Section 337; Termination of Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to affirm, with modifications, the Administrative Law Judge's (''ALJ'') final initial determination (''ID'') issued on March 16, 2021, finding no violation of section 337 in the above-referenced investigation. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3042. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: On August 16, the Commission instituted this investigation based on a complaint filed by Dynamics Inc. (''Dynamics'') of Cheswick, Pennsylvania. 84 FR 42009–10 (Aug. 16, 2019). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain mobile devices with multifunction emulators by reason of infringement of one or more of claims 1 and 5–8 of U.S. Patent No. 8,827,153 (''the '153 patent''); claims 1–20 of U.S. Patent No. 10,032,100 (''the '100 patent''); claims 1–7, 9–13, 19, 21, and 22 of U.S. Patent No. 10,223,631 (''the '631 patent''); and claims 1–16 of U.S. Patent No. 10,255,545 (''the '545 patent''). *Id.* at 42010. The Commission's notice of investigation named as respondents Samsung Electronics Co., Ltd of Gyeonggi, Republic of Korea and Samsung Electronics America, Inc. of Ridgefield Park, New Jersey (collectively, ''Samsung''). *Id.* The Office of Unfair Import Investigations is not participating in this investigation.

On September 3, 2019, the ALJ set a sixteen-month target date of December 16, 2020 for completion of the investigation. Order No. 3 (Sept. 3, 2019). The Order set an evidentiary hearing for May 11–15, 2020.

On November 26, 2019, the ALJ held a *Markman* hearing, and on January 31, 2020, issued Order No. 7, construing

certain claim terms of the asserted patents.

On May 20, 2020, the ALJ issued an initial determination granting Dynamics' unopposed motion for partial termination of the investigation as to claims 5, 6, and 8 of the '153 patent, claims 2, 3, 5, 7, 9–11, 13–17, 19, and 20 of the '100 patent, claims 2, 3, 5, 7, 9–13, 19, and 21 of the '631 patent, and claims 2, 4, and 6–16 of the '545 patent. Order No. 15 (May 20, 2020), *unreviewed by* Notice (June 15, 2020).

Due to the COVID–19 pandemic, the ALJ amended the procedural schedule several times. On March 12, 2020, the Commission postponed all in-person hearings under section 337 scheduled within the next sixty days. *See* 85 FR 15498 (Mar. 18, 2020). Thus, the ALJ issued Order No. 10, rescheduling the evidentiary hearing for June 22–26, 2020.

On April 6, 2020, the ALJ issued Order No. 12, resetting the target date to February 23, 2021 due to the COVID–19 pandemic. Order No. 12 (Apr. 6, 2020), *unreviewed by* Notice (Apr. 24, 2020).

On May 14, 2020, the Commission extended the postponement of all section 337 hearings. *See* 85 FR 30734–5 (May 20, 2020). On June 22, 2020, the Commission further extended the postponement of all in-person section 337 hearings. 85 FR 38388–9 (June 26, 2020).

On August 11, 2020, the ALJ scheduled a virtual hearing for November 16–20, 2020 and reset the target date for July 16, 2021. Order No. 24 (Aug. 11, 2020), *unreviewed by* Notice (Sept. 8, 2020).

On March 16, 2021, the ALJ issued the final ID, finding no violation of section 337. The ID found that the importation requirement under 19 U.S.C. 1337(a)(1)(B) is satisfied. ID at 28. Specifically, the ID found that ''[t]he parties stipulated to facts establishing the importation requirement is met for both respondents'' and that ''Samsung does not dispute the Commission's jurisdiction over this investigation or that the requisite importation or sale in connection with importation has taken place for each Accused Product.'' *Id.* Accordingly, the ID found that the Commission has jurisdiction over this investigation and that the importation requirement has been satisfied. *Id.*

With respect to the domestic industry requirement, the ID found that Dynamics had satisfied the domestic industry requirement for the '100 patent, but not the '153, '631, and '545 patents. ID at 183–84. For the '153 patent, the ID found that Dynamics failed to show it practiced any claim of the patent, but had shown it made significant investments under section 337(a)(3)(A) and (B), 19 U.S.C. 1337(a)(3)(A)–(B). *Id.* at 60–64, 158–79. Likewise, as to the '631 patent, the ID found that Dynamics failed to show it practiced any claim of the patent, but had made significant investments for purposes of subsections (a)(3)(A) and (B). *Id.* at 127–31, 158–79. For the '545 patent, the ID found that Dynamics had shown it was ''in the process'' of practicing claim 1, but had not shown it was ''in the process'' of establishing a U.S. industry. *Id.* at 148–52, 180–83; *see also* 19 U.S.C. 1337(a)(2).

With respect to infringement and validity, the ID found that Samsung infringes claims 1 and 7 of the '153 patent and that Samsung failed to establish that those claims are invalid. ID at 45–58, 64–69. The ID also found that Samsung infringes claims 1, 4, 6, 12, and 18 of the '100 patent (except for claim 6 as to certain modified products), but that the asserted claims, except for claim 4 are invalid as anticipated or obvious by prior art. *Id.* at 83–88, 96–115. The ID further found that Samsung directly infringes claims 1, 4, 6, and 22 of the '631 patent, but that those claims are invalid as anticipated or obvious by prior art. *Id.* at 121–127, 131–140. The ID also found that Samsung directly infringes claims 1, 3, and 5 of the '545 patent, but that those claims are invalid for anticipation. Finally, the ID found that Samsung failed to carry its burden with respect to various additional affirmative defenses under 35 U.S.C. 102(f), 116 (inventorship), or 112 (written description and enablement).

The ALJ recommended that the Commission should issue a limited exclusion order and cease and desist orders if it finds a violation but that no bond should be imposed on covered products that may be imported during the period of Presidential review. ID/RD at 186–91, 193.

On March 29, 2021, Dynamics filed a petition for review of the ID, and Samsung filed a contingent petition for review. On April 8, 2021, Dynamics and Samsung submitted responses to each other's petitions.

On May 17, 2021, the Commission determined to review the ID in part. 86 FR 27651–53 (May 21, 2021). Specifically, the Commission determined to review the ID with respect to the following: (1) For the '153 patent, claim construction of the term ''analog waveform'' as well as the related infringement and technical prong analyses and the ID's finding that the combination of Shoemaker and Gutman fails to render the asserted claims obvious; (2) for the '100 patent, whether Doughty in combination with VivoTech renders obvious claim 4 and whether such issue was waived, whether claims 4 and 6 are infringed, and whether the domestic industry requirement is satisfied; and (3) for the '545 patent, the ID's domestic industry findings. *Id.* at 27652. In connection with its review, the Commission requested that the parties brief their positions on certain issues.

Having examined the record of this investigation, including the ID, the parties' submissions and the responses thereto, the Commission has determined to affirm, with modifications, the ID's finding of no violation of section 337 in this investigation. With respect to the issues under review, for the '153 patent, the Commission has determined to (1) adopt Samsung's proposed construction of the claim limitation ''analog waveform'' to mean ''a wave shape whose amplitude changes in a continuous fashion,'' but clarify that the construction encompasses so-called real-world square waves; (2) affirm the ID's finding that the accused Samsung Products infringe the asserted claims; (3) affirm the ID's finding that Dynamics failed to adduce sufficient evidence to establish that its DI products practice any claims of the patent; and (4) reverse the ID's finding that the combination of Shoemaker and Gutman fails to render the asserted claims obvious. For the '100 patent, the Commission has determined to (1) reverse the finding that Samsung failed to show that Doughty in combination with VivoTech renders claim 4 obvious; (2) clarify that claims 4 and 6 are infringed; and (3) find the domestic industry requirement not met because the domestic industry claim has been found invalid. For the '545 patent, the Commission has determined to take no position on the ID's domestic industry findings related to a domestic industry in the process of being established.

Accordingly, the Commission has determined to terminate the investigation with a finding of no violation of section 337.

The Commission's vote on this determination took place on July 16, 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 210).

By order of the Commission.

Issued: July 16, 2021.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2021–15552 Filed 7–21–21; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Amended Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received an amended complaint entitled *Certain Light-Based Physiological Measurement Devices and Components Thereof, DN 3554;* the Commission is soliciting comments on any public interest issues raised by the amended complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.*

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received an amended complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Masimo Corporation and Cercacor Laboratories, Inc. on July 12, 2021. The original complaint was filed on June 30, 2021 and a notice of receipt of complaint; solicitation of comments relating to the public interest published in the **Federal Register** on July 6, 2021. The amended complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain light-based physiological measurement devices and components thereof. The amended complaint names as respondent: Apple Inc. of Cupertino, CA. The complaint and amended complaint allege infringement of certain claims of U.S. Patent No. U.S. Patent No. 10,912,501 (''the '501 Patent''); U.S. Patent No. 10,912,502 (''the '502 Patent''); U.S. Patent No. 10,945,648 (''the '648 Patent''); U.S. Patent No. 10,687,745 (''the '745 Patent''); and U.S. Patent No. 7,761,127 (''the '127 Patent'') (collectively, ''the Asserted Patents''). The asserted claims of the '502 patent include claim 19. However, a certificate of correction was issued for claim 19 on July 6, 2021, by the United States Patent and Trademark Office, and the amended complaint reflects changes to the allegations relating to that claim. The complainant requests that the Commission issue an exclusion order, a cease and desist order, and impose a bond upon respondent alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the amended complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3554'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

programs, personnel, and operations of the Commission including under 5 U.S.C. appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: July 16, 2021.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2021–15553 Filed 7–21–21; 8:45 am]

BILLING CODE 7020–02–P

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–372]

Exempt Chemical Preparations Under the Controlled Substances Act

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Order with opportunity for comment.

SUMMARY: The applications for exempt chemical preparations received by the Drug Enforcement Administration (DEA) between September 1, 2020, and March 31, 2021, as listed below, were accepted for filing and have been approved or denied as indicated.

DATES: Interested persons may file written comments on this order in accordance with 21 CFR 1308.23(e). Electronic comments must be submitted, and written comments must be postmarked, on or before September 20, 2021. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–372'' on all correspondence, including any attachments.

Electronic comments: DEA encourages that all comments be submitted through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or to attach a file for lengthier comments. Please go to *http://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon completion of your submission you will receive a Comment Tracking Number for your comment. Please be aware that submitted comments are not instantaneously available for public view on *Regulations.gov.* If you have received a comment tracking number, your comment has been successfully submitted and there is no need to resubmit the same comment.

Paper comments: Paper comments that duplicate the electronic submission are not necessary and are discouraged. Should you wish to mail a comment *in lieu of* an electronic comment, it should be sent via regular or express mail to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DRW, 8701 Morrissette Drive, Springfield, Virginia 22152.

FOR FURTHER INFORMATION CONTACT: Terrence L. Boos, Ph.D., Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (571) 362–8201.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov* and in the DEA's public docket. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter. The Freedom of Information Act applies to all comments received.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all the personal identifying information you do not want posted online or made available in the public docket in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment.

Comments containing personal identifying information and confidential business information identified as directed above will generally be made publicly available in redacted form. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be made publicly available. Comments posted to *http://www.regulations.gov* may include any personal identifying information (such as name, address, and phone number) included in the text of your electronic submission that is not identified as directed above as confidential.

An electronic copy of this document is available at *http://www.regulations.gov* for easy reference.

Legal Authority

Section 201 of the Controlled Substances Act (CSA) (21 U.S.C. 811) authorizes the Attorney General, by regulation, to exempt from certain provisions of the CSA certain compounds, mixtures, or preparations containing a controlled substance, if he finds that such compounds, mixtures, or preparations meet the requirements detailed in 21 U.S.C. 811(g)(3)(B).[1] DEA regulations at 21 CFR 1308.23 and 1308.24 further detail the criteria by which DEA's Assistant Administrator may exempt a chemical preparation or mixture from certain provisions of the CSA. The Assistant Administrator may, pursuant to 21 CFR 1308.23(f), modify or revoke the criteria by which exemptions are granted and modify the scope of exemptions at any time.

Exempt Chemical Preparation Applications Submitted Between September 1, 2020, and March 31, 2021

The Assistant Administrator received applications between September 1, 2020, and March 31, 2021, requesting exempt chemical preparation status detailed in 21 CFR 1308.23. Pursuant to the criteria stated in 21 U.S.C. 811(g)(3)(B) and in 21 CFR 1308.23, the Assistant Administrator has found that each of the compounds, mixtures, and preparations described in Chart I below is intended for laboratory, industrial, educational, or special research purposes and not for general administration to a human being or animal and either: (1) Contains no

[1] This authority has been delegated from the Attorney General to the Administrator of the DEA by 28 CFR 0.100, and subsequently redelegated to the Deputy Assistant Administrator pursuant to 28 CFR 0.104 and Section 7 of the appendix to subpart R of part 0.

narcotic controlled substance and is packaged in such a form or concentration that the packaged quantity does not present any significant potential for abuse; or (2) contains either a narcotic or non-narcotic controlled substance and one or more adulterating or denaturing agents in such a manner, combination, quantity, proportion, or concentration that the preparation or mixture does not present any potential for abuse and, if the preparation or mixture contains a narcotic controlled substance, is formulated in such a manner that it incorporates methods of denaturing or other means so that the preparation or mixture is not liable to be abused or have ill effects, if abused, and so that the narcotic substance cannot in practice be removed.

Accordingly, pursuant to 21 U.S.C. 811(g)(3)(B), 21 CFR 1308.23, and 21 CFR 1308.24, the Assistant Administrator has determined that each of the chemical preparations or mixtures generally described in Chart I below and specifically described in the application materials received by DEA is exempt, to the extent described in 21 CFR 1308.24, from application of sections 302, 303, 305, 306, 307, 308, 309, 1002, 1003, and 1004 (21 U.S.C. 822–823, 825–829, and 952–954) of the CSA, and 21 CFR 1301.74, as of the date that was provided in the approval letters to the individual requesters.

Scope of Approval

The exemptions are applicable only to the precise preparation or mixture described in the application submitted to DEA in the form(s) listed in this order and only for those above mentioned sections of the CSA and the CFR. In accordance with 21 CFR 1308.24(h), any change in the quantitative or qualitative composition of the preparation or mixture, or change in the trade name or other designation of the preparation or mixture after the date of application requires a new application. The requirements set forth in 21 CFR 1308.24(b)–(e) apply to the exempted materials. In accordance with 21 CFR 1308.24(g), DEA may prescribe requirements other than those set forth in 21 CFR 1308.24(b)–(e) on a case-by-case basis for materials exempted in bulk quantities. Accordingly, in order to limit opportunity for diversion from the larger bulk quantities, DEA has determined that each of the exempted bulk products listed in this order may only be used in-house by the manufacturer, and may not be distributed for any purpose, or transported to other facilities.

Additional exempt chemical preparation requests received between September 1, 2020, and March 31, 2021, and not otherwise referenced in this order, may remain under consideration until DEA receives additional information required, pursuant to 21 CFR 1308.23(d), as detailed in separate correspondence to individual requesters. DEA's order on such requests will be communicated to the public in a future **Federal Register** publication.

DEA also notes that these exemptions are limited to exemption from only those sections of the CSA and the CFR that are specifically identified in 21 CFR 1308.24(a). All other requirements of the CSA and the CFR apply, including registration as an importer as required by 21 U.S.C. 957.

CHART I

Supplier	Product name	Form	Application date
Aalto Scientific, Ltd	Cal Ver FLQ Drugs of Abuse for Roche Systems Level 1	Glass vial: 3 mL	2/23/2021
Aalto Scientific, Ltd	Cal Ver FLQ Drugs of Abuse for Roche Systems Level 2	Glass vial: 3 mL	2/23/2021
Aalto Scientific, Ltd	Cal Ver FLQ Drugs of Abuse for Roche Systems Level 3	Glass vial: 3 mL	2/23/2021
Aalto Scientific, Ltd	Linearity FD Fertility Siemens Centaur	Kit: 10 vials; 3 mL each	3/29/2021
Aalto Scientific, Ltd	Linearity FLQ TDM for Ortho Vitros	Kit: 5 dropper bottles; 4 mL each	3/31/2021
Agilent Technologies	Custom Organic Std—11 analytes at 250 μg/mL	Amber ampule: 1 mL	2/19/2021
Cambridge Isotope Laboratories, Inc	Labeled Steroid Mix 40X Set S NSK-S-40X	Glass vial: 1 mL	3/1/2021
Cambridge Isotopes Laboratories, Inc.	Delta-9-tetrahydrocannabinol (THC) Unlabeled (95% CP), 1000 μg/mL in methanol (0.1%).	Glass ampule: 1.2 mL	2/19/2021
Cambridge Isotopes Laboratories, Inc.	Delta-9-Trans-tetrahydrocannabinol (THC) (Methyl-D3, 98%), 100 μg/mL in methanol (0.01%).	Glass ampule: 1.2 mL	2/19/2021
Cambridge Isotopes Laboratories, Inc.	Testosterone (2,3,4-13C3, 99%) 100 μg/mL in acetonitrile	Glass ampule: 1 mL	2/19/2021
Cayman Chemical Company	(+/−)-11-hydroxy-d8-THC (CRM) 1 mg/ml, 1 mL in acetonitrile	Glass ampule: 1 mL	2/3/2021
Cayman Chemical Company	(+/−)-11-hydroxy-d8-THC (CRM) 1 mg/ml, 1 mL in methanol	Glass ampule: 1 mL	2/3/2021
Cayman Chemical Company	(+/−)-11-hydroxy-d8-THC (CRM) 100 μg/mL, 1 mL in acetonitrile	Glass ampule: 1 mL	2/3/2021
Cayman Chemical Company	(+/−)-11-hydroxy-d8-THC (CRM) 100 μg/mL, 1 mL in methanol	Glass ampule: 1 mL	2/3/2021
Cayman Chemical Company	Benzoylecgonine (CRM) 1 mg/mL, 1 mL in methanol	Glass ampule: 1 mL	2/23/2021
Cayman Chemical Company	Benzoylecgonine (CRM) 100 μg/mL, 1 mL in methanol	Glass ampule: 1 mL	2/23/2021
Cayman Chemical Company	Benzoylecgonine-d3 (CRM) 1 mg/mL, 1 mL in methanol	Glass ampule: 1 mL	2/23/2021
Cayman Chemical Company	Benzoylecgonine-d3 (CRM) 100 μg/mL, 1 mL in methanol	Glass ampule: 1 mL	2/23/2021
Cayman Chemical Company	Cocaine-d3 (CRM) 1 mg/mL, 1 mL in acetonitrile	Glass ampule: 1 mL	2/23/2021
Cayman Chemical Company	Cocaine-d3 (CRM) 100 μg/mL, 1 mL in acetonitrile	Glass ampule: 1 mL	2/23/2021
Cayman Chemical Company	D8-THCB (CRM) 100 μg/mL, 1 mL acetonitrile	Glass ampule: 1 mL	2/3/2021
Cayman Chemical Company	D8-THCB (CRM) 1 mg/ml, 1 mL in acetonitrile	Glass ampule: 1 mL	2/3/2021
Cayman Chemical Company	D8-THCB (CRM) 1 mg/ml, 1 mL methanol	Glass ampule: 1 mL	2/3/2021
Cayman Chemical Company	D8-THCB (CRM) 100 μg/mL, 1 mL methanol	Glass ampule: 1 mL	2/3/2021
Cayman Chemical Company	D8-THCP (CRM) 1 mg/ml, 1 mL in acetonitrile	Glass ampule: 1 mL	2/3/2021
Cayman Chemical Company	D8-THCP (CRM) 1 mg/ml, 1 mL methanol	Glass ampule: 1 mL	2/3/2021
Cayman Chemical Company	D8-THCP (CRM) 100 μg/mL, 1 mL acetonitrile	Glass ampule: 1 mL	2/3/2021
Cayman Chemical Company	D8-THCP (CRM) 100 μg/mL, 1 mL methanol	Glass ampule: 1 mL	2/3/2021
Cayman Chemical Company	D9-THC Acetate (CRM) 1 mg/mL, 1 mL in acetonitrile	Glass ampule: 1 mL	2/23/2021
Cayman Chemical Company	D9-THC Acetate (CRM) 1 mg/mL, 1 mL in methanol	Glass ampule: 1 mL	2/23/2021
Cayman Chemical Company	D9-THC Acetate (CRM) 100 μg/mL, 1 mL in acetonitrile	Glass ampule: 1 mL	2/23/2021
Cayman Chemical Company	D9-THC Acetate (CRM) 100 μg/mL, 1 mL in methanol	Glass ampule: 1 mL	2/23/2021
Cayman Chemical Company	Norfentanyl-d5 (CRM) 1 mg/mL, 1 mL in methanol	Glass ampule: 1 mL	2/23/2021
Cayman Chemical Company	Norfentanyl-d5 (CRM) 100 μg/mL, 1 mL in methanol	Glass ampule: 1 mL	2/23/2021
Cayman Chemical Company	Phytocannabinoid Acids Mixture 5 (CRM) 100 μg/mL 0.5 mL in 1:99 DIPEA: acetonitrile with 0.05% ascorbic acid.	Glass ampule: 0.5 mL	2/23/2021
Cayman Chemical Company	Phytocannabinoid Acids Mixture 5 (CRM) 100 μg/mL 0.5 mL in acetonitrile.	Glass ampule: 0.5 mL	2/3/2021
Cayman Chemical Company	Phytocannabinoid Acids Mixture 6 (CRM) 1 mg/mL 0.5 mL in 1:99 DIPEA: acetonitrile with 0.05% ascorbic acid.	Glass ampule: 0.5 mL	2/23/2021

CHART I—Continued

Supplier	Product name	Form	Application date
Cayman Chemical Company	Phytocannabinoid Acids Mixture 6 (CRM) 1 mg/mL 0.5 mL in acetonitrile	Glass ampule: 0.5 mL	2/3/2021
Cayman Chemical Company	Phytocannabinoid Acids Mixture 6 (CRM) 1 mg/mL 1 mL in 1:99 DIPEA: acetonitrile with 0.05% ascorbic acid.	Glass ampule: 1 mL	2/23/2021
Cayman Chemical Company	Phytocannabinoid Acids Mixture 6 (CRM) 1 mg/mL 1 mL in acetonitrile	Glass ampule: 1 mL	2/3/2021
Cayman Chemical Company	Phytocannabinoid Acids Mixture 6 (CRM) 100 μg/mL 1 mL in 1:99 DIPEA: acetonitrile with 0.05% ascorbic acid.	Glass ampule: 1 mL	2/23/2021
Cayman Chemical Company	Phytocannabinoid Acids Mixture 6 (CRM) 100 μg/mL 1 mL in acetonitrile	Glass ampule: 1 mL	2/3/2021
Cayman Chemical Company	Phytocannabinoid Acids Mixture 6 (CRM) 250 μg/mL 0.5 mL in 1:99 DIPEA: acetonitrile with 0.05% ascorbic acid.	Glass ampule: 0.5 mL	2/23/2021
Cayman Chemical Company	Phytocannabinoid Acids Mixture 6 (CRM) 250 μg/mL 0.5 mL in acetonitrile.	Glass ampule: 0.5 mL	2/3/2021
Cayman Chemical Company	Phytocannabinoid Acids Mixture 6 (CRM) 250 μg/mL 1 mL in 1:99 DIPEA: acetonitrile with 0.05% ascorbic acid.	Glass ampule: 1 mL	2/23/2021
Cayman Chemical Company	Phytocannabinoid Acids Mixture 6 (CRM) 250 μg/mL 1 mL in acetonitrile	Glass ampule: 1 mL	2/3/2021
Cayman Chemical Company	Phytocannabinoid Acids Mixture 6 (CRM) 500 μg/mL 0.5 mL in 1:99 DIPEA: acetonitrile with 0.05% ascorbic acid.	Glass ampule: 0.5 mL	2/23/2021
Cayman Chemical Company	Phytocannabinoid Acids Mixture 6 (CRM) 500 μg/mL 0.5 mL in acetonitrile.	Glass ampule: 0.5 mL	2/3/2021
Cayman Chemical Company	Phytocannabinoid Acids Mixture 6 (CRM) 500 μg/mL 1 mL in 1:99 DIPEA: acetonitrile with 0.05% ascorbic acid.	Glass ampule: 1 mL	2/23/2021
Cayman Chemical Company	Phytocannabinoid Acids Mixture 6 (CRM) 500 μg/mL 1 mL in acetonitrile	Glass ampule: 1 mL	2/3/2021
Cayman Chemical Company	Phytocannabinoid Acids Mixture 7 (CRM) 1 mg/mL 0.5 mL in 1:99 DIPEA: acetonitrile with 0.05% ascorbic acid.	Glass ampule: 0.5 mL	2/23/2021
Cayman Chemical Company	Phytocannabinoid Acids Mixture 7 (CRM) 1 mg/mL 0.5 mL in acetonitrile	Glass ampule: 0.5 mL	2/3/2021
Cayman Chemical Company	Phytocannabinoid Acids Mixture 7 (CRM) 1 mg/mL, 1 mL in 1:99 DIPEA: acetonitrile with 0.05% ascorbic acid.	Glass ampule: 1 mL	2/23/2021
Cayman Chemical Company	Phytocannabinoid Acids Mixture 7 (CRM) 1 mg/mL, 1 mL in acetonitrile	Glass ampule: 1 mL	2/3/2021
Cayman Chemical Company	Phytocannabinoid Acids Mixture 7 (CRM) 100 μg/mL 0.5 mL in 1:99 DIPEA: acetonitrile with 0.05% ascorbic acid.	Glass ampule: 0.5 mL	2/23/2021
Cayman Chemical Company	Phytocannabinoid Acids Mixture 7 (CRM) 100 μg/mL 0.5 mL in acetonitrile.	Glass ampule: 0.5 mL	2/3/2021
Cayman Chemical Company	Phytocannabinoid Acids Mixture 7 (CRM) 100 μg/mL, 1 mL in 1:99 DIPEA: acetonitrile with 0.05% ascorbic acid.	Glass ampule: 1 mL	2/23/2021
Cayman Chemical Company	Phytocannabinoid Acids Mixture 7 (CRM) 100 μg/mL, 1 mL in acetonitrile.	Glass ampule: 1 mL	2/3/2021
Cayman Chemical Company	Phytocannabinoid Acids Mixture 7 (CRM) 250 μg/mL 0.5 mL in 1:99 DIPEA: acetonitrile with 0.05% ascorbic acid.	Glass ampule: 0.5 mL	2/23/2021
Cayman Chemical Company	Phytocannabinoid Acids Mixture 7 (CRM) 250 μg/mL 0.5 mL in acetonitrile.	Glass ampule: 0.5 mL	2/3/2021
Cayman Chemical Company	Phytocannabinoid Acids Mixture 7 (CRM) 250 μg/mL, 1 mL in 1:99 DIPEA: acetonitrile with 0.05% ascorbic acid.	Glass ampule: 1 mL	2/23/2021
Cayman Chemical Company	Phytocannabinoid Acids Mixture 7 (CRM) 250 μg/mL, 1 mL in acetonitrile.	Glass ampule: 1 mL	2/3/2021
Cayman Chemical Company	Phytocannabinoid Acids Mixture 7 (CRM) 500 μg/mL, 1 mL in 1:99 DIPEA: acetonitrile with 0.05% ascorbic acid.	Glass ampule: 1 mL	2/23/2021
Cayman Chemical Company	Phytocannabinoid Acids Mixture 7 (CRM) 500 μg/mL, 1 mL in acetonitrile.	Glass ampule: 1 mL	2/3/2021
Cayman Chemical Company	Phytocannabinoid Acids Mixture 7 (CRM) 500 μg/mL 0.5 mL in 1:99 DIPEA: acetonitrile with 0.05% ascorbic acid.	Glass ampule: 0.5 mL	2/23/2021
Cayman Chemical Company	Phytocannabinoid Acids Mixture 7 (CRM) 500 μg/mL 0.5 mL in acetonitrile.	Glass ampule: 0.5 mL	2/3/2021
Cayman Chemical Company	Psilocin (CRM) 1 mg/mL in Acetonitrile	Glass ampule: 1.0 mL	2/24/2021
Cayman Chemical Company	Psilocin (CRM) 100 μg/mL in Acetonitrile	Glass ampule: 0.5 mL	2/24/2021
Cayman Chemical Company	Psilocin-d10 (CRM) 1 mg/mL in Acetonitrile	Glass ampule: 1.0 mL	2/24/2021
Cayman Chemical Company	Psilocin-d10 (CRM) 100 μg/mL in Acetonitrile	Glass ampule: 1.0 mL	2/24/2021
Cayman Chemical Company	Psilocin-d4 (CRM) 1 mg/mL in Acetonitrile	Glass ampule: 1.0 mL	2/24/2021
Cayman Chemical Company	Psilocin-d4 (CRM) 100 μg/mL in Acetonitrile	Glass ampule: 1.0 mL	2/24/2021
Cayman Chemical Company	Psilocybin (CRM) 1 mg/mL in 1:1 Acetonitrile:H2O	Glass ampule: 1.0 mL	2/24/2021
Cayman Chemical Company	Psilocybin (CRM) 100 μg/mL in 1:1 Acetonitrile:H2O	Glass ampule: 0.5 mL	2/24/2021
Cayman Chemical Company	Psilocybin-d10 (CRM) 1 mg/mL in 1:1 Acetonitrile:H2O	Glass ampule: 1.0 mL	2/24/2021
Cayman Chemical Company	Psilocybin-d10 (CRM) 100 μg/mL in 1:1 Acetonitrile:H2O	Glass ampule: 1.0 mL	2/24/2021
Cayman Chemical Company	Psilocybin-d4 (CRM) 1 mg/mL in 1:1 Acetonitrile:H2O	Glass ampule: 0.5 mL	2/24/2021
Cayman Chemical Company	Psilocybin-d4 (CRM) 100 μg/mL in 1:1 Acetonitrile:H2O	Glass ampule: 0.5 mL	2/24/2021
Cayman Chemical Company	U-47700 (CRM) 1 mg/mL, 1 mL in methanol	Glass ampule: 1 mL	2/23/2021
Cayman Chemical Company	U-47700 (CRM) 100 μg/mL, 1 mL in methanol	Glass ampule: 1 mL	2/23/2021
Cayman Chemical Company	U-47700-d6 (CRM) 1 mg/mL, 1 mL in methanol	Glass ampule: 1 mL	2/23/2021
Cayman Chemical Company	U-47700-d6 (CRM) 100 μg/mL, 1 mL in methanol	Glass ampule: 1 mL	2/23/2021
Cerilliant Corporation	(−)-delta8-THC-D3	Glass ampule: 1 mL	1/26/2021
Cerilliant Corporation	4-Methyl-alpha-pyrrolidinobutiophenone HCl (MPBP HCl) (1.0 mg/mL)	Glass ampule: 1 mL	3/4/2021
Cerilliant Corporation	Tetrahydrocannabivarin-D5 (THCV-D5)	Glass ampule: 1 mL	1/26/2021
Cerilliant Corporation	Tetrahydrocannabivarinic acid-D5 (THCVA-D5)	Glass ampule: 1 mL	1/26/2021
Immunalysis Corporation	AMP/6-AM Oral Fluid Calibrator 1	Amber vial: 10 mL	2/10/2021
Immunalysis Corporation	AMP/6-AM Oral Fluid Calibrator 2	Amber vial: 10 mL	2/10/2021
Immunalysis Corporation	AMP/6-AM Oral Fluid Calibrator 3	Amber vial: 10 mL	2/10/2021
Immunalysis Corporation	AMP/6-AM Oral Fluid Calibrator 4	Amber vial: 10 mL	2/10/2021
Immunalysis Corporation	AMP/6-AM Oral Fluid Set	Kit: 2 vials, 10 mL each	2/10/2021
LGC—Dr. Ehrenstorfer	Cannabinoids Acid/Neutrals Mixture 202 Kit 250 μg/mL in Acetonitrile	1 kit: 2 vials × 0.4 mL	3/19/2021
LGC—Dr. Ehrenstorfer	Cannabinoids Acid/Neutrals Mixture 203 Kit 500 μg/mL in Acetonitrile	1 kit: 2 vials × 0.4 mL	3/19/2021
LGC—Dr. Ehrenstorfer	Cannabinoids Acid/Neutrals Mixture 204 Kit 1000 μg/mL in Acetonitrile	1 kit: 2 vials × 0.4 mL	3/19/2021
LGC—Dr. Ehrenstorfer	Cannabinoids Acid/Neutrals Mixture 205 Kit 250 μg/mL in Acetonitrile	1 kit: 2 vials × 0.4 mL	3/19/2021

CHART I—Continued

Supplier	Product name	Form	Application date
LGC—Dr. Ehrenstorfer	Cannabinoids Acid/Neutrals Mixture 206 Kit 500 μg/mL in Acetonitrile	1 kit: 2 vials × 0.4 mL	3/19/2021
LGC—Dr. Ehrenstorfer	Cannabinoids Acid/Neutrals Mixture 207 Kit 1000 μg/mL in Acetonitrile	1 kit: 2 vials × 0.4 mL	3/19/2021
LGC—Dr. Ehrenstorfer	Cannabinoids Acid/Neutrals Mixture 214 Kit 250 μg/mL in Acetonitrile	1 kit: 2 vials × 0.4 mL	3/19/2021
LGC—Dr. Ehrenstorfer	Cannabinoids Acid/Neutrals Mixture 214 Kit 250 μg/mL in Acetonitrile	1 Kit: 2 vials × 0.4 mL	10/9/2020
LGC—Dr. Ehrenstorfer	Cannabinoids Acid/Neutrals Mixture 215 Kit 500 μg/mL in Acetonitrile	1 kit: 2 vials × 0.4 mL	3/19/2021
LGC—Dr. Ehrenstorfer	Cannabinoids Acid/Neutrals Mixture 215 Kit 500 μg/mL in Acetonitrile	1 Kit: 2 vials × 0.4 mL	10/9/2020
LGC—Dr. Ehrenstorfer	Cannabinoids Acid/Neutrals Mixture 216 Kit 1000 μg/mL in Acetonitrile	1 kit: 2 vials × 0.4 mL	3/19/2021
LGC—Dr. Ehrenstorfer	Cannabinoids Acid/Neutrals Mixture 216 Kit 1000 μg/mL in Acetonitrile	1 Kit: 2 vials × 0.4 mL	10/9/2020
LGC—Dr. Ehrenstorfer	Cannabinoids Acid/Neutrals Mixture 250 Kit 1000 μg/mL in Acetonitrile	1 kit: 2 vials × 0.4 mL	3/19/2021
LGC—Dr. Ehrenstorfer	Cannabinoids Acid/Neutrals Mixture 250 Kit 1000 μg/mL in Acetonitrile	1 Kit: 2 vials × 0.4 mL	10/9/2020
LGC—Dr. Ehrenstorfer	Cannabinoids Acids Mixture 184 1000 μg/mL in Acetonitrile	Amber ampule: 0.4 mL	3/19/2021
LGC—Dr. Ehrenstorfer	Cannabinoids Acids Mixture 185 500 μg/mL in Acetonitrile	Amber ampule: 0.4 mL	3/19/2021
LGC—Dr. Ehrenstorfer	Cannabinoids Acids Mixture 186 250 μg/mL in Acetonitrile	Amber ampule: 0.4 mL	3/19/2021
LGC—Dr. Ehrenstorfer	Cannabinoids Acids Mixture 194 250 μg/mL in Acetonitrile	Amber ampule: 0.4 mL	3/19/2021
LGC—Dr. Ehrenstorfer	Cannabinoids Acids Mixture 195 500 μg/mL in Acetonitrile	Amber ampule: 0.4 mL	3/19/2021
LGC—Dr. Ehrenstorfer	Cannabinoids Acids Mixture 200 1000 μg/mL in Acetonitrile	Amber ampule: 0.4 mL	3/19/2021
LGC—Dr. Ehrenstorfer	Cannabinoids Acids Mixture 210 250 μg/mL in Acetonitrile	Amber ampule: 0.4 mL	3/19/2021
LGC—Dr. Ehrenstorfer	Cannabinoids Acids Mixture 210 250 μg/mL in Acetonitrile	Amber ampule: 0.4 mL	10/9/2020
LGC—Dr. Ehrenstorfer	Cannabinoids Acids Mixture 211 500 μg/mL in Acetonitrile	Amber ampule: 0.4 mL	3/19/2021
LGC—Dr. Ehrenstorfer	Cannabinoids Acids Mixture 211 500 μg/mL in Acetonitrile	Amber ampule: 0.4 mL	10/9/2020
LGC—Dr. Ehrenstorfer	Cannabinoids Acids Mixture 212 1000 μg/mL in Acetonitrile	Amber ampule: 0.4 mL	3/19/2021
LGC—Dr. Ehrenstorfer	Cannabinoids Acids Mixture 212 1000 μg/mL in Acetonitrile	Amber ampule: 0.4 mL	10/9/2020
LGC—Dr. Ehrenstorfer	Cannabinoids Mixture 187 100 μg/mL in Acetonitrile	Amber ampule: 0.4 mL	3/19/2021
LGC—Dr. Ehrenstorfer	Cannabinoids Mixture 188 500 μg/mL in Acetonitrile	Amber ampule: 0.4 mL	3/19/2021
LGC—Dr. Ehrenstorfer	Cannabinoids Mixture 189 1000 μg/mL in Acetonitrile	Amber ampule: 0.4 mL	3/19/2021
LGC—Dr. Ehrenstorfer	Cannabinoids Mixture 190 50 μg/mL in Acetonitrile	Amber ampule: 0.4 mL	3/19/2021
LGC—Dr. Ehrenstorfer	Cannabinoids Mixture 191 100 μg/mL in Acetonitrile	Amber ampule: 0.4 mL	3/19/2021
LGC—Dr. Ehrenstorfer	Cannabinoids Mixture 192 500 μg/mL in Acetonitrile	Amber ampule: 0.4 mL	3/19/2021
LGC—Dr. Ehrenstorfer	Cannabinoids Mixture 193 1000 μg/mL in Acetonitrile	Amber ampule: 0.4 mL	3/19/2021
LGC—Dr. Ehrenstorfer	Cannabinoids Mixture 197 500 μg/mL in Acetonitrile	Amber ampule: 0.4 mL	3/19/2021
LGC—Dr. Ehrenstorfer	Cannabinoids Mixture 198 500 μg/mL in Acetonitrile	Amber ampule: 0.4 mL	3/19/2021
LGC—Dr. Ehrenstorfer	Cannabinoids Mixture 213 500 μg/mL in Acetonitrile	Amber ampule: 0.4 mL	3/19/2021
LGC—Dr. Ehrenstorfer	Cannabinoids Mixture 254 250 μg/mL in Acetonitrile	Amber ampule: 0.4 mL	3/19/2021
LGC—Dr. Ehrenstorfer	Cannabinoids Mixture 254 250 μg/mL in Acetonitrile	Amber ampule: 0.4 mL	10/9/2020
LGC—Dr. Ehrenstorfer	Cannabinoids Mixture 255 500 μg/mL in Acetonitrile	Amber ampule: 0.4 mL	3/19/2021
LGC—Dr. Ehrenstorfer	Cannabinoids Mixture 255 500 μg/mL in Acetonitrile	Amber ampule: 0.4 mL	10/9/2020
LGC—Dr. Ehrenstorfer	Cannabinoids Mixture 256 250 μg/mL in Acetonitrile	Amber ampule: 0.4 mL	3/19/2021
LGC—Dr. Ehrenstorfer	Cannabinoids Mixture 256 250 μg/mL in Acetonitrile	Amber ampule: 0.4 mL	3/10/2021
LGC—Dr. Ehrenstorfer	Cannabinoids Mixture 257 500 μg/mL in Acetonitrile	Amber ampule: 0.4 mL	3/19/2021
LGC—Dr. Ehrenstorfer	Cannabinoids Mixture 257 500 μg/mL in Acetonitrile	Amber ampule: 0.4 mL	3/10/2021
LGC—Dr. Ehrenstorfer	Cannabinoids Mixture 258 Kit 250 μg/mL in Acetonitrile	1 kit: 2 vials × 0.4 mL	3/31/2021
LGC—Dr. Ehrenstorfer	Cannabinoids Mixture 258 Kit 250 μg/mL in Acetonitrile	1 Kit: 2 vials × 0.4 mL	3/10/2021
LGC—Dr. Ehrenstorfer	Cannabinoids Mixture 259 Kit 500 μg/mL in Acetonitrile	1 kit: 2 vials × 0.4 mL	3/19/2021
LGC—Dr. Ehrenstorfer	Cannabinoids Mixture 259 Kit 500 μg/mL in Acetonitrile	1 Kit: 2 vials × 0.4 mL	3/10/2021
LGC—Dr. Ehrenstorfer	Custom Δ9-Tetrahydrocannabivarin (THCV) 1000 ug/mL in Acetonitrile	Amber ampule: 1 mL	1/19/2021
LGC—Dr. Ehrenstorfer	Δ9-Tetrahydrocannabivarinic acid (THCVA) 100 ug/mL in Acetonitrile	Amber ampule: 1 mL	3/10/2021
o2si smart solutions	Chloral Hydrate 1000 μg/mL in methanol	Amber ampule: 1 mL	3/24/2021
o2si smart solutions	Custom Pharmaceutical Mixture CCV 16–0260, 10.0 μg/mL, 300 μL with a 2 mL silanized vial (ISO17034).	Amber ampule: 300 μL	3/1/2021
o2si smart solutions	Custom Pharmaceutical Mixture ICV (second source), 16–0260, 10.0 μg/mL, 300 μL with a 2 mL silanized vial (ISO17034).	Amber ampule: 300 μL	3/1/2021
o2si smart solutions	Custom Pharmaceutical Mixture Level #1, 16–0260, 0.3 μg/mL, 300 μL with a 2 mL silanized vial (ISO17034).	Amber ampule: 300 μL	3/1/2021
o2si smart solutions	Custom Pharmaceutical Mixture Level #2, 16–0260, 1.0 μg/mL, 300 μL with a 2 mL silanized vial (ISO17034).	Amber ampule: 300 μL	3/1/2021
o2si smart solutions	Custom Pharmaceutical Mixture Level #3, 16–0260, 5.0 μg/mL, 300 μL with a 2 mL silanized vial (ISO17034).	Amber ampule: 300 μL	3/1/2021
o2si smart solutions	Custom Pharmaceutical Mixture Level #4, 16–0260, 10.0 μg/mL, 300 μL with a 2 mL silanized vial (ISO17034).	Amber ampule: 300 μL	3/1/2021
o2si smart solutions	Custom Pharmaceutical Mixture Level #5, 16–0260, 25.0 μg/mL, 300 μL with a 2 mL silanized vial (ISO17034).	Amber ampule: 300 μL	3/1/2021
o2si smart solutions	Custom Pharmaceutical Mixture Level #6, 16–0260, 50.0 μg/mL, 300 μL with a 2 mL silanized vial (ISO17034).	Amber ampule: 300 μL	3/1/2021
o2si smart solutions	Custom Pharmaceutical Mixture Level #7, 16–0260, 100.0 μg/mL, 300 μL with a 2 mL silanized vial (ISO17034).	Amber ampule: 300 μL	3/1/2021
o2si smart solutions	Custom Pharmaceutical Mixture Level #8, 16–0260, 250.0 μg/mL, 300 μL with a 2 mL silanized vial (ISO17034).	Amber ampule: 300 μL	3/1/2021
o2si smart solutions	Custom Pharmaceutical Mixture Calibration Kit 16–0260, (2 × G34–140260–98).	1 kit; 26 amber ampules × 300 μL	3/1/2021
o2si smart solutions	Custom Pharmaceutical Mixture Calibration Pack 16–0260, 13 × 1 ml	1 pack; 13 amber ampules × 300 μL	3/1/2021
o2si smart solutions	Custom Pharmaceutical Mixture LCS, 16–0260, 10.0 ug/mL, 1 mL with a 2 ml Silanized Vial (ISO17034).	Amber ampule: 1 mL	3/1/2021
Research Triangle Institute	0584, 7232, 6089, 8785, 7227, 8588, 7541, 4336, 1817, 0737, 5340, 2985, 8470, 3501, 7362, 6850, 5497, 4097, 2479, 1536, 7431, 9541, 1585, 8534, 2113, 9789, 2482, 1013, 1483, 8092, 6365, 2209, 5434, 4035, 9222, 9674, 5622, 3806, 1798, 9820.	HDPE tubes: 5 mL	3/11/2021
Research Triangle Institute	3370, 1411, 5883, 5713, 8800, 3630, 8683, 4541, 8161, 0359, 9704, 2184, 0341, 2901, 0790, 6548, 3466, 0352, 5288, 8594, 0279, 8762, 3687, 2819, 8743, 7197, 5064, 0199, 1609, 8643, 6467, 2245, 0706, 0147, 6876, 3732, 9314, 1059, 8245, 8685.	HDPE tubes: 5 mL	3/11/2021

CHART I—Continued

Supplier	Product name	Form	Application date
Research Triangle Institute	4118, 3472, 9120, 3742, 9323, 4475, 5116, 7455, 3780, 9052, 4910, 2630, 6141, 9351, 5220, 2730, 6408, 3560, 4063, 0427, 0669, 8350, 9163, 6359, 0113, 1893, 4552, 2951, 1357, 8372, 9203, 3150, 9587, 9290, 4399, 2454, 2468, 7560, 6645, 8756.	HDPE tubes: 5 mL	3/11/2021
Research Triangle Institute	4761, 2869, 4267, 9207, 1568, 8723, 7042, 6810, 0605, 7181, 8624, 0015, 5050, 7046, 3626, 7515, 9023, 8821, 6767, 0861, 0689, 5934, 2105, 2006, 1040, 5645, 2749, 7908, 9154, 8450, 5251, 6608, 3152, 9027, 2731, 7530, 1329, 0320, 5833, 7580.	HDPE tubes: 5 mL	3/11/2021
Research Triangle Institute	4946, 2135, 7589, 456, 2617, 2224, 5066, 4134, 9514, 0206, 2691, 2807, 1571, 2201, 0943, 6995, 1299, 3729, 9561, 2552, 1248, 7138, 1634, 0813, 6352, 3567, 2017, 6701, 6915, 4448, 1967, 3179, 2480, 5144, 8826, 5515, 0949, 6109, 4040, 8632.	HDPE tubes: 5 mL	3/11/2021
Research Triangle Institute	6673, 1920, 9080, 9040, 1769, 9824, 8015, 4813, 1535, 4285, 5824, 7430, 3338, 2989, 2743, 1537, 6009, 4808, 0243, 7097, 5533, 6638, 3414, 8238, 2573, 6806, 3959, 7896, 3448, 5652, 5273, 1341, 1063, 6664, 9471, 7136, 3571, 8916, 8617, 8946.	HDPE tubes: 5 mL	3/11/2021
Research Triangle Institute	7155, 9763, 5721, 5161, 0009, 8118, 7420, 0527, 4415, 6892, 6896, 8988, 6477, 9903, 6688, 0292, 9380, 4579, 9601, 7337, 1518, 2189, 8886, 8880, 6963, 9446, 7721, 9988, 7688, 2525, 4017, 6826, 3426, 4128, 6270, 4207, 0646, 5741, 6086, 0528.	HDPE tubes: 5 mL	3/11/2021
Research Triangle Institute	7938, 8287, 2990, 7693, 6858, 5995, 1929, 3740, 4461, 0196, 4271, 9853, 5024, 6378, 3409, 2702, 7629, 6194, 4553, 2871, 0203, 4812, 7073, 0834, 2732, 1841, 9545, 5063, 5062, 6234, 0210, 9740, 9472, 9938, 5122, 8677, 3537, 5198, 5977, 8203.	HDPE tubes: 5 mL	3/11/2021
Research Triangle Institute	8497, 8384, 3406, 0324, 6930, 3165, 1564, 8858, 4968, 8840, 7836, 9412, 9009, 0109, 0695, 0923, 0912, 3228, 6855, 5103, 8580, 4499, 8347, 7831, 8420, 2875, 6778, 6680, 9098, 1987, 6813, 6572, 9943, 6165, 0958, 5884, 1843, 2991, 3191, 1151.	HDPE tubes: 5 mL	3/11/2021
Research Triangle Institute	9493, 8564, 6768, 1670, 2733, 0560, 7822, 7495, 1290, 4534, 6583, 3937, 6596, 2599, 9164, 5702, 8328, 9643, 5747, 1923, 0976, 3416, 1445, 3834, 3069, 7609, 6580, 3945, 1726, 2891, 4325, 8970, 7248, 1981, 3906, 0989, 3648, 7769, 4122, 9050.	HDPE tubes: 5 mL	3/11/2021
Restek Corporation	Cannabinoids Acids 7 Standard	Glass ampule: 1.3 mL	3/31/2021
UTAK Laboratories, Inc	AED II MR Serum Control	Kit: 5 bottles, 5 mL each	11/20/2020
UTAK Laboratories, Inc	Amphetamines Panel Level 1 Urine Control	Kit: 5 bottles, 5 mL each	11/20/2020
UTAK Laboratories, Inc	Amphetamines Panel Level 2 Urine Control	Kit: 5 bottles, 5 mL each	11/20/2020
UTAK Laboratories, Inc	Benzodiazepines Hydrolysis QC Urine Control	Kit: 5 bottles, 3 mL each	11/20/2020
UTAK Laboratories, Inc	Benzodiazepines Plus 100 ng/mL Urine Control	Kit: 5 bottles, 5 mL each	11/20/2020
UTAK Laboratories, Inc	Benzodiazepines Plus 100 ng/mL Whole Blood Control	Kit: 5 bottles, 5 mL each	11/20/2020
UTAK Laboratories, Inc	Benzodiazepines Plus 400 ng/mL Urine Control	Kit: 5 bottles, 5 mL each	11/20/2020
UTAK Laboratories, Inc	DAU IA 1 Urine Control	Kit: 4 bottles, 10 mL each	11/20/2020
UTAK Laboratories, Inc	DAU IA 2 Urine Control	Kit: 4 bottles, 10 mL each	11/20/2020
UTAK Laboratories, Inc	DAU IA 3 Urine Control	Kit: 4 bottles, 10 mL each	11/20/2020
UTAK Laboratories, Inc	DAU IA 4 Urine Control	Kit: 4 bottles, 10 mL each	11/20/2020
UTAK Laboratories, Inc	DAU IA 5 Urine Control	Kit: 4 bottles, 10 mL each	11/20/2020
UTAK Laboratories, Inc	DHEA Plus High Serum Control	Kit: 5 bottles, 3 mL each	11/20/2020
UTAK Laboratories, Inc	DHEA Plus Low Serum Control	Kit: 5 bottles, 3 mL each	11/20/2020
UTAK Laboratories, Inc	Drugs of Abuse 200% Cutoff SMX Oral Fluid Control	Kit: 5 bottles, 3 mL each	11/20/2020
UTAK Laboratories, Inc	Drugs of Abuse 50% Cutoff SMX Oral Fluid Control	Kit: 5 bottles, 3 mL each	11/20/2020
UTAK Laboratories, Inc	Drugs of Abuse Cutoff SMX Oral Fluid Control	Kit: 5 bottles, 3 mL each	11/20/2020
UTAK Laboratories, Inc	Drugs of Abuse Level 2 Whole Blood Control	Kit: 5 bottles, 5 mL each	11/20/2020
UTAK Laboratories, Inc	Miscellaneous Panel Level 1 Urine Control	Kit: 5 bottles, 5 mL each	11/20/2020
UTAK Laboratories, Inc	Miscellaneous Panel Level 2 Urine Control	Kit: 5 bottles, 5 mL each	11/20/2020
UTAK Laboratories, Inc	Opiates Hydrolysis QC Urine Control	Kit: 5 bottles, 3 mL each	11/20/2020
UTAK Laboratories, Inc	Pentobarbital Serum Control	Kit: 5 bottles, 5 mL each	11/20/2020
UTAK Laboratories, Inc	STABBS Negative Serum Control	Kit: 5 bottles, 5 mL each	11/20/2020
UTAK Laboratories, Inc	STABBS Positive Serum Control	Kit: 5 bottles, 5 mL each	11/20/2020
UTAK Laboratories, Inc	Steroids Level 1 SMX Serum Control	Kit: 5 bottles, 3 mL each	11/20/2020
UTAK Laboratories, Inc	Steroids Level 2 SMX Serum Control	Kit: 5 bottles, 3 mL each	11/20/2020
UTAK Laboratories, Inc	Steroids Level 3 SMX Serum Control	Kit: 5 bottles, 3 mL each	11/20/2020
UTAK Laboratories, Inc	Steroids Level 4 SMX Serum Control	Kit: 5 bottles, 3 mL each	11/20/2020
UTAK Laboratories, Inc	Tapentadol Hydrolysis QC Urine Control	Kit: 5 bottles, 3 mL each	11/20/2020
UTAK Laboratories, Inc	Urine Drug Screen Urine Control	Kit: 5 bottles, 10 mL each	11/20/2020
UTAK Laboratories, Inc	Z Drugs Plus Level 1 Urine Control	Kit: 5 bottles, 3 mL each	11/20/2020
UTAK Laboratories, Inc	Z Drugs Plus Level 2 Urine Control	Kit: 5 bottles, 3 mL each	11/20/2020
Xvivo Perfusion	Supplemented XVIVO Heart Solution (SXHS)	Glass vial: 10 mL	9/11/2020
Xvivo Perfusion	XVIVO Heart Perfusion System (XHPS)	Kit: Heart Box, Disposable, Supplemented Soln.	9/11/2020

The Assistant Administrator has found that each of the compounds, mixtures, and preparations described in Chart II below is not consistent with the criteria stated in 21 U.S.C. 811(g)(3)(B) and in 21 CFR 1308.23. Accordingly, the Assistant Administrator has determined that the chemical preparations or mixtures generally described in Chart II below and specifically described in the application materials received by DEA, are not exempt from application of any part of the CSA or from application of any part of the CFR, with regard to the requested exemption pursuant to 21 CFR 1308.23, as of the date that was provided in the determination letters to the individual requesters.

CHART II

Supplier	Product name	Form	Application date
Cambridge Isotopes Laboratories, Inc.	Delta-9-tetrahydrocannabinol (THC) unlabeled (Chemical Purity 95%), 5 mg.	Glass ampule: 5 mg	2/19/2021
Cambridge Isotopes Laboratories, Inc.	Delta-9-tetrahydrocannabinol (THC) unlabeled (Chemical Purity 95%), 0.5 mg.	Glass ampule: 0.5 mg	2/19/2021
Cambridge Isotopes Laboratories, Inc.	Delta-9-tetrahydrocannabinol (THC) unlabeled (Chemical Purity 95%), 1 mg.	Glass ampule: 1 mg	2/19/2021
Cambridge Isotopes Laboratories, Inc.	Delta-9-tetrahydrocannabinol (THC) unlabeled (Chemical Purity 95%), 10 mg.	Glass ampule: 10 mg	2/19/2021
Cambridge Isotopes Laboratories, Inc.	Delta-9-Trans-tetrahydrocannabinol (THC) (Methyl-D3, 98%), 5 mg	Glass ampule: 5 mg	2/19/2021
Cambridge Isotopes Laboratories, Inc.	Delta-9-Trans-tetrahydrocannabinol (THC) (Methyl-D3, 98%), 0.5 mg	Glass ampule: 0.5 mg	2/19/2021
Cambridge Isotopes Laboratories, Inc.	Delta-9-Trans-tetrahydrocannabinol (THC) (Methyl-D3, 98%), 1 mg	Glass ampule: 1 mg	2/19/2021
Cambridge Isotopes Laboratories, Inc.	Delta-9-Trans-tetrahydrocannabinol (THC) (Methyl-D3, 98%), 10 mg	Glass ampule: 10 mg	2/19/2021
Cayman Chemical Company	Clonazepam (CRM) 1 mg/mL, 1 mL in acetonitrile	Glass ampule: 1 mL	2/23/2021
LGC—Dr. Ehrenstorher	Δ9-Tetrahydrocannabivarin 10,000 mg/L Parent stock in Methanol—NOT FOR SALE.	Boston Round, Amber glass: 14 mL	1/19/2021
LGC—Dr. Ehrenstorfer	Delta-9-THC 10000 μg/mL in Methanol	Amber ampule: 2 mL	2/16/2021

Opportunity for Comment

Pursuant to 21 CFR 1308.23(e), any interested person may submit written comments on or objections to any chemical preparation in this order that has been approved or denied as exempt. If any comments or objections raise significant issues regarding any finding of fact or conclusion of law upon which this order is based, the Assistant Administrator will immediately suspend the effectiveness of any applicable part of this order until he may reconsider the application in light of the comments and objections filed. Thereafter, the Assistant Administrator shall reinstate, revoke, or amend his original order as he determines appropriate.

Approved Exempt Chemical Preparations Are Posted on the DEA's Website

A list of all current exemptions, including those listed in this order, is available on the DEA's website at *http://www.DEAdiversion.usdoj.gov/schedules/exempt/exempt_chemlist.pdf.* The dates of applications of all current exemptions are posted for easy reference.

William T. McDermott,

Assistant Administrator.

[FR Doc. 2021–15024 Filed 7–21–21; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meeting

Record of Vote of Meeting Closure

(Public Law 94–409) (5 U.S.C. Sec. 552b)

I, Patricia K. Cushwa, Acting Chairman of the United States Parole Commission, was present at a meeting of said Commission, which started at approximately 2:30 p.m., on Tuesday, July 13, 2021, at the U.S. Parole Commission, 90 K Street NE, Third Floor, Washington, DC 20530. The purpose of the meeting was to discuss an original jurisdiction case pursuant to 28 CFR 2.25. and 28 CFR 2.68(i)(1) Two Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcement further describing the subject matter of the meeting and certifications of the General Counsel that this meeting may be closed by votes of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Patricia K. Cushwa and Charles T. Massarone.

In witness whereof, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Patricia K. Cushwa,

Acting Chairman, U.S. Parole Commission.

[FR Doc. 2021–15788 Filed 7–20–21; 4:15 pm]

BILLING CODE 4410–31–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34333; 812–15219]

Capital Southwest Corporation, et al.; Notice of Application

July 16, 2021.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 18(a) and 61(a) of the Act.

APPLICANTS: Capital Southwest Corporation (the ''Company''), Capital Southwest SBIC I, LP (the ''Capital Southwest SBIC''), and Capital Southwest SBIC I GP, LLC (the ''SBIC GP'').

SUMMARY OF THE APPLICATION: The Company requests an order to permit it to adhere to a modified asset coverage requirement.

FILING DATES: The application was filed on April 21, 2021, and amended on July 14, 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 August 10, 2021, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–

5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, *Secretarys-Office@sec.gov.* Applicants: Mr. Bowen S. Diehl, Chief Executive Officer and President, Capital Southwest Corporation, at *bdiehl@capitalsouthwest.com* and Mr. Michael S. Sarner, Chief Financial Officer, Secretary and Treasurer, Capital Southwest Corporation at *msarner@capitalsouthwest.com.*

FOR FURTHER INFORMATION CONTACT: Jean E. Minarick, Senior Counsel, at (202) 551–6811, or Kaitlin C. Bottock, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Company, a Texas corporation, is an internally managed, non-diversified, closed-end management investment company that has elected to be regulated as a business development company (''BDC'') under the Act.[1] The Company's investment objective is to produce attractive risk-adjusted returns by generating current income from its debt investments and capital appreciation from its equity and equity related investments.

2. Capital Southwest SBIC, a Delaware limited partnership, received approval for a license from the Small Business Administration (''SBA'') to operate as a small business investment company (''SBIC'') under the Small Business Investment Act of 1958 (''SBIA''). Capital Southwest SBIC relies on the exclusion from the definition of investment company contained in section 3(c)(7) of the Act. The SBIC GP is the sole general partner of Capital Southwest SBIC and the Company is the sole member of the SBIC GP. The Company is the sole limited partner of Capital Southwest SBIC. The Company, directly through the SBIC GP, wholly owns Capital Southwest SBIC.

Applicants' Legal Analysis

1. The Company requests an exemption pursuant to section 6(c) of the Act from the provisions of sections 18(a) and 61(a) of the Act to permit it to adhere to a modified asset coverage requirement with respect to any direct or indirect wholly-owned subsidiary of the Company that is licensed by the SBA to operate under the SBIA as an SBIC and relies on section 3(c)(7) for an exclusion from the definition of ''investment company'' under the Act (each, a ''SBIC Subsidiary'').[2] Applicants state that companies operating under the SBIA, such as the Capital Southwest SBIC, are subject to the SBA's substantial regulation of permissible leverage in their capital structure.

2. Section 18(a) of the Act prohibits a registered closed-end investment company from issuing any class of senior security or selling any such security of which it is the issuer unless the company complies with the asset coverage requirements set forth in that section. Section 61(a) of the Act makes section 18 applicable to BDCs, with certain modifications. Section 18(k) exempts an investment company operating as an SBIC from the asset coverage requirements for senior securities representing indebtedness that are contained in section 18(a)(1)(A) and (B).

3. Applicants state that the Company may be required to comply with the asset coverage requirements of section 18(a) (as modified by section 61(a)) on a consolidated basis because the Company may be deemed to be an indirect issuer of any class of senior security issued by Capital Southwest SBIC or another SBIC Subsidiary. Applicants state that applying section 18(a) (as modified by section 61(a)) on a consolidated basis generally would require that the Company treat as its own all assets and any liabilities held directly either by itself, by Capital Southwest SBIC, or by another SBIC Subsidiary. Accordingly, the Company requests an order under section 6(c) of the Act exempting the Company from the provisions of section 18(a) (as modified by section 61(a)), such that senior securities issued by each SBIC Subsidiary that would be excluded from its individual asset coverage ratio by section 18(k) if it were itself a BDC would also be excluded from the Company's consolidated asset coverage ratio.

4. Section 6(c) of the Act, in relevant part, permits the Commission to exempt any transaction or class of transactions from any provision of the Act if and to the extent that 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. Applicants state that the requested relief satisfies the section 6(c) standard. Applicants contend that, because the Capital Southwest SBIC would be entitled to rely on section 18(k) if it were a BDC, there is no policy reason to deny the benefit of that exemption to the Company.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

The Company will not itself issue or sell any senior security and the Company will not cause or permit Capital Southwest SBIC or any other SBIC Subsidiary to issue or sell any senior security of which the Company, Capital Southwest SBIC or any other SBIC Subsidiary is the issuer except to the extent permitted by section 18 (as modified for BDCs by section 61); provided that, immediately after the issuance or sale of any such senior security by any of the Company, Capital Southwest SBIC or any other SBIC Subsidiary, the Company, individually and on a consolidated basis, shall have the asset coverage required by section 18(a) (as modified by section 61(a)). In determining whether the Company, Capital Southwest SBIC and any other SBIC Subsidiary on a consolidated basis have the asset coverage required by section 18(a) (as modified by section 61(a)), any senior securities representing indebtedness of Capital Southwest SBIC or another SBIC Subsidiary if that SBIC Subsidiary has issued indebtedness that is held or guaranteed by the SBA shall not be considered senior securities and, for purposes of the definition of ''asset coverage'' in section 18(h), shall be treated as indebtedness not represented by senior securities.

[1] Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in section 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

[2] All existing entities that currently intend to rely on the order are named as applicants. Any other existing or future entity that may rely on the order in the future will comply with the terms and condition of the order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–15545 Filed 7–21–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92433; File No. SR–NASDAQ–2021–058]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Transaction Credits at Equity 7, Section 118(a)

July 16, 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 July 8, 2021, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's transaction credits at Equity 7, Section 118(a), as described further below. The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's schedule of credits, at Equity 7, Section 118(a). Specifically, the Exchange proposes to make the following changes with respect to its schedule of credits for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity: (1) Add a new credit of $0.0028 per share executed; (2) amend the criteria for an existing credit of $0.0029 per share executed; and (3) eliminate an existing credit of $0.0029 per share executed. The Exchange also proposes to add two new non-cumulative supplemental credits to members for displayed quotes/orders (other than Supplemental Orders) that provide liquidity, of $0.0001 and $0.00015 per share executed, respectively.

New Credit for MELO Activity and Adding Liquidity to the Exchange

The Exchange proposes to add a new credit for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity of $0.0028 per share executed to a member: (i) With shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.375% or more of Consolidated Volume[3] during the month; (ii) that executes an average daily volume (''ADV'') of at least 500,000 shares of Midpoint Extended Life Orders (''M–ELOs'')[4] during the month; and (iii) that increases the extent of its ADV of MELO orders in all securities by 100% or more during the month relative to the month of June 2021.

The purpose of this new credit is to provide a new means to incent members to provide a substantial amount of liquidity to the Exchange generally as well as to increase the extent to which they engage in MELO activity on the Exchange and grow the extent of such activity over time. An increase in MELO activity and overall liquidity stands to improve the quality of the market generally, and of MELO, in particular, to the benefit of all market participants.

Amended Displayed Credit

The Exchange proposes to amend its existing credit of $0.0029 per share executed to a member: (i) With shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.50% of Consolidated Volume during the month, including shares of liquidity provided with respect to securities that are listed on exchanges other than Nasdaq or NYSE that represent more than 0.10% of Consolidated Volume, and (ii) with at least a 15% ratio of volume that sets the NBBO provided through one or more of its Nasdaq Market Center MPIDs to all displayed volume that provides liquidity through one or more of its Nasdaq Market Center MPIDs. The Exchange first proposes to amend this credit by raising the threshold percentage of Consolidated Volume needed to qualify for the credit from 0.50% to 0.60%. This proposed amendment will encourage those participants that already qualify for the credit to increase the extent to which they add liquidity to the Exchange in order to continue to qualify for it. From time to time, the Exchange believes it is reasonable to recalibrate the criteria for credits such as this one to ensure that the credits remain appropriately challenging for participants to attain in light of changes to their levels of activity on the Exchange.

Second, the Exchange proposes to eliminate the criterion that a member must have at least a 15% ratio of volume that sets the NBBO to all displayed volume that provides liquidity to the Exchange, and to replace it with the requirement that a member add at least 0.175% of Consolidated Volume during the month in non-displayed orders (excluding midpoint orders) for securities in any tape during the month. The Exchange proposes to eliminate the existing criterion because it proved too difficult for members to meet in combination with the other criterion set forth in the credit, and has hindered the credit in achieving its intended effect. The Exchange has limited resources at its disposal to devote to incentives and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Equity 7, Section 118(a) defines ''Consolidated Volume'' to mean the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of a member's trading activity the date of the annual reconstitution of the Russell Investments Indexes is excluded from both total Consolidated Volume and the member's trading activity.

[4] Pursuant to Equity 4, Rule 4702(b)(14), a ''Midpoint Extended Life Order'' is an Order Type with a Non-Display Order Attribute that is priced at the midpoint between the NBBO and that will not be eligible to execute until a minimum period of 10 milliseconds has passed after acceptance of the Order by the System.

it periodically reassesses the allocation of those resources when they prove to be ineffective. The proposed replacement criterion will be more readily attainable for members and will also improve market quality by incenting members to add substantial volumes of non-displayed liquidity to the Exchange.

Elimination of MARS Credit

The Exchange proposes to eliminate an existing $0.0029 per share executed credit that it provides to a member (i) with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.30% of Consolidated Volume during the month and (ii) which qualifies for the NOM Market Access and Routing subsidy or ''MARS'' program.[5]

This credit has not been effective in accomplishing its intended purpose, which is to incent members to increase their liquidity adding activity on both Nasdaq and NOM. The Exchange has observed that historically, few members have received this credit, and it has served to neither meaningfully increase activity on the Exchange or NOM nor improve the quality of those markets. The Exchange therefore proposes to eliminate it. The Exchange notes that even after it eliminates this credit, it will continue to offer a similarly structured credit of $0.0030 per share executed for members that meet specified volume requirements and qualify for the Tier 4 of the MARS program.

New Supplemental Credits for MELOs and Midpoint Orders That Execute Against MELOs

The Exchange proposes to offer two new supplemental credits to a member that either (i) grows its ADV of MELO and midpoint orders (that execute against MELO orders) during a month by a threshold amount relative to a baseline month or (ii) that provides a threshold ADV through midpoint orders provided and MELO Orders and also grows its ADV in midpoint orders provided and MELO Orders by a threshold amount relative to a baseline month. These credits will be in addition to other credits otherwise available to members for adding displayed liquidity to the Exchange (other than Supplemental Orders), but a member's activity will qualify it to receive only one of the two new supplemental credits at a time, meaning that they are not cumulative.

The first supplemental credit, of $0.0001 per share executed, will be available to a member that, through one or more of its Nasdaq Market Center MPIDs, either: (i) Increases the extent to which its ADV of MELO Orders and/or midpoint orders (that executes against MELO Orders) in all securities by an ADV of 1 million shares or more during the month relative to the month of June 2021; or (ii) executes a combined volume of at least 3 million shares ADV through midpoint orders provided and MELO Orders during the month and increases the extent of its ADV of midpoint orders provided and MELO Orders in all securities by 100% or more during the month relative to the month of June 2021. A second, higher supplemental credit of $0.00015 per share executed, will be available to a member that, through one or more of its Nasdaq Market Center MPIDs, either: (i) increases the extent to which its ADV of MELO Orders and/or midpoint orders (that executes against MELO Orders) in all securities by an ADV of 2 million shares or more during the month relative to the month of June 2021; or (ii) executes a combined volume of at least 4 million shares ADV through midpoint orders provided and MELO Orders during the month and increases the extent of its ADV of midpoint orders provided and MELO Orders in all securities by 150% or more during the month relative to the month of June 2021.

The purpose of these new credits is to provide extra incentives to members to be actively involved in MELO on the Exchange, as well as to grow substantially the extent to which they submit MELO orders to the Exchange and provide midpoint orders that execute against MELO orders relative to a recent benchmark month. The Exchange believes that if such incentives are effective, then any ensuing increase in MELO activity on the Exchange will once again improve market quality, to the benefit of all participants.

2. Statutory Basis

The Exchange believes that its proposals are consistent with Section 6(b) of the Act,[6] in general, and further the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[7] in particular, in that they provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposals are also consistent with Section 11A of the Act relating to the establishment of the national market system for securities.

The Proposals Are Reasonable

The Exchange's proposals are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for equity securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers' . . . .''[8]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.''[9]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for equity security transaction services. The Exchange is only one of several equity

[5] Under the MARS program, NOM pays a subsidy to NOM Participants that provide certain order routing functionalities to other NOM Participants and/or that use such functionalities themselves. The specified MARS Payment is paid on all executed Eligible Contracts that add liquidity, which are routed to NOM through a participating NOM Participant's System and meet the requisite Eligible Contracts ADV. *See* Securities Exchange Act Release No. 79251 (November 7, 2016), 81 FR 79536 (November 14, 2016) (SR–NASDAQ–2016–149).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4) and (5).

[8] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[9] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

venues to which market participants may direct their order flow. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume thresholds.

Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. Within the foregoing context, the proposals represent reasonable attempts by the Exchange to increase its liquidity and market share relative to its competitors.

The Exchange believes that it is reasonable to establish a new $0.0028 per share executed transaction credit, at Equity 7, Section 118(a), for members that provide liquidity of at least 0.375% of Consolidated Volume, execute an ADV of at least 500,000 shares of MELO Orders during the month and increase the extent of their ADV of MELO Orders in all securities by 100% or more during the month relative to the month of June 2021. The new credit will encourage substantial activity on the Exchange as well as substantial activity and growth in MELO Orders. Any increased activity and growth will improve the quality of the market for MELOs as well as overall market quality, to the benefit of both MELO and other market participants.

The Exchange also believes that it is reasonable to amend its existing credit of $0.0029 per share executed, which applies to members that add liquidity representing 0.50% or more of Consolidated Volume during the month, including shares of liquidity in Tape B Securities of 0.10% or more of Consolidated Volume, and which achieve at least a 15% ratio of volume that sets the NBBO to all displayed liquidity provided. The proposed amendments will increase the threshold percentage of Consolidated Volume required to qualify for the credit from 0.50% to 0.60% and replace the NBBO-setting ratio criteria with a minimum non-displayed volume add requirement (exclusive of midpoint orders) of 0.175% of Consolidated Volume. The proposed increase in the Consolidated Volume threshold will encourage members that currently qualify for the credit to further increase the extent of their liquidity adding activity on the Exchange to continue to do so. From time to time, the Exchange believes it is reasonable to recalibrate the criteria for credits such as this one to ensure that the credits remain appropriately challenging for participants to attain in light of changes to their levels of activity on the Exchange. Meanwhile, the elimination of the NBBO-setting ratio requirement is reasonable because it proved too difficult for members to meet in combination with the other criterion set forth in the credit, and has hindered the credit in achieving its intended effect. The Exchange has limited resources at its disposal to devote to incentives and it periodically reassesses the allocation of those resources when they prove to be ineffective. The proposal to replace this criterion with a requirement that a member add at least 0.175% of Consolidated Volume during the month in non-displayed orders (excluding midpoint orders) is reasonable because the proposed replacement criterion will be more readily attainable for members and will also improve market quality by incenting members to add substantial volumes of non-displayed liquidity to the Exchange.

It is also reasonable for the Exchange to eliminate its existing $0.0029 per share executed credit that it provides to a member that adds liquidity representing more than 0.30% of Consolidated Volume during the month and which qualifies for the MARS program. This credit has not been effective in accomplishing its intended purpose, which is to incent members to increase their liquidity adding activity on both Nasdaq and NOM. The Exchange has observed that historically, few members have received this credit, and it has served to neither meaningfully increase activity on the Exchange or NOM nor improve the quality of those markets.

Finally, the Exchange believes it is reasonable to establish two new supplemental credits available to a member that either (i) grows its ADV of MELO and midpoint orders (that execute against MELO orders) during a month by a threshold amount relative to a baseline month or (ii) that executes during a month a threshold ADV through midpoint orders provided and MELO orders and also grows its ADV in midpoint orders provided and MELO Orders by a threshold amount relative to a baseline month. These new supplemental credits will be non-cumulative, meaning that only one of them is attainable at once. These proposals are reasonable because they will provide extra incentives to members to engage in substantial amounts of MELO-related activity on the Exchange during a month, as well as to grow substantially the extent to which they do so relative to a recent benchmark month. The Exchange believes that if such incentives are effective, then any ensuing increase in MELO Orders and executions on the Exchange will improve the quality of the MELO market, and the market overall, to the benefit of MELO and all market participants.

The Exchange notes that those market participants that are dissatisfied with the proposals are free to shift their order flow to competing venues that offer more generous pricing or less stringent qualifying criteria.

The Proposals Are Equitable Allocations of Credits

The Exchange believes that it is an equitable allocation to establish new transaction credits and otherwise modify the eligibility requirements for its transaction credits because the proposals will encourage members to increase the extent to which they add liquidity to the Exchange. To the extent that the Exchange succeeds in increasing the levels of liquidity and activity on the Exchange, including in segments for which there is an observed need or demand, such as non-displayed, MELO, and Tape B securities, then the Exchange will experience improvements in its market quality, which stands to benefit all market participants. The Exchange also believes it is equitable to recalibrate or revise existing criteria for its credits to ensure that the credits remain appropriately challenging for participants to attain in light of changes to their levels of activity on the Exchange.

It is also equitable to eliminate a MARS-related credit that has not been utilized historically and which has not fulfilled its intended purpose. The Exchange has limited resources to devote to incentive programs and periodically reallocates those resources to programs that are more likely to be utilized and effective.

Any participant that is dissatisfied with the proposals is free to shift their order flow to competing venues that provide more generous pricing or less stringent qualifying criteria.

The Proposals Are Not Unfairly Discriminatory

The Exchange believes that its proposals are not unfairly discriminatory. As an initial matter, the Exchange believes that nothing about its volume-based tiered pricing model is inherently unfair; instead, it is a rational pricing model that is well-established and ubiquitous in today's economy among firms in various industries—from co-branded credit cards to grocery stores to cellular telephone data plans—that use it to reward the loyalty of their best customers that provide high levels of business activity and incent other

customers to increase the extent of their business activity. It is also a pricing model that the Exchange and its competitors have long employed with the assent of the Commission. It is fair because it incentivizes customer activity that increases liquidity, enhances price discovery, and improves the overall quality of the equity markets.

The Exchange believes that its proposals to adopt new credits or otherwise amend the qualifying criteria for its transaction credits are not unfairly discriminatory because these credits are available to all members. Moreover, these proposals stand to improve the overall market quality of the Exchange, to the benefit of all market participants, by incentivizing members to increase the extent of their liquidity provision or activity on the Exchange, including in segments for which there is an observed need or demand, such as non-displayed, MELO, and Tape B securities. The Exchange also believes it is not unfairly discriminatory to recalibrate or revise existing criteria for its credits to ensure that the credits remain appropriately challenging for participants to attain in light of changes to their levels of activity on the Exchange.

Meanwhile, it is not unfairly discriminatory to eliminate a MARS-related credit that has not been utilized historically and which has not fulfilled its intended purpose. The Exchange has limited resources to devote to incentive programs and periodically reallocates those resources to programs that are more likely to be utilized and effective. The Exchange notes that it will continue to offer another similarly-structured credit to members that qualify for Tier 4 of the MARS program.

Any participant that is dissatisfied with the proposals is free to shift their order flow to competing venues that provide more generous pricing or less stringent qualifying criteria.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition

The Exchange does not believe that its proposals will place any category of Exchange participant at a competitive disadvantage.

As noted above, Nasdaq's proposals to add and amend transaction credits are intended to have market-improving effects, to the benefit of all members. Any member may elect to achieve the levels of liquidity or activity required in order to qualify for the new or amended credits.

Likewise, the Exchange's proposal will not duly burden competition to eliminate its $.0029 per share executed MARS credit as members have not utilized the credit historically, such that its elimination will have limited or no impact. The Exchange has limited resources to devote to incentive programs and periodically reallocates those resources to programs that are more likely to be utilized and effective. The Exchange notes that it will continue to offer another similarly-structured credit to members that qualify for Tier 4 of the MARS program.

The Exchange notes that its members are free to trade on other venues to the extent they believe that the proposed qualification criteria for or amounts of these credits are not attractive. As one can observe by looking at any market share chart, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to credit changes. The Exchange notes that its pricing tier structure is consistent with broker-dealer fee practices as well as the other industries, as described above.

Intermarket Competition

In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem credit levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its credits to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which credit changes in this market may impose any burden on competition is extremely limited.

The proposed new and amended credits are reflective of this competition because, even as one of the largest U.S. equities exchanges by volume, the Exchange has less than 20% market share, which in most markets could hardly be categorized as having enough market power to burden competition. Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to credit changes. This is in addition to free flow of order flow to and among off-exchange venues which comprises upwards of 44% of industry volume.

The Exchange's proposals to add new and amend its transaction credits are pro-competitive in that the Exchange intends for the changes to increase liquidity addition and activity on the Exchange, thereby rendering the Exchange a more attractive and vibrant venue to market participants.

In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2021–058 on the subject line.

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2021–058. 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 makeavailable publicly. All submissions should refer to File Number SR–NASDAQ–2021–058 and should be submitted on or before August 12, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–15549 Filed 7–21–21; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Investment Company Act Release No. 34334; 812–15244; MVP Private Markets Fund, et al.

July 16, 2021.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 18(a)(2), 18(c) and 18(i) of the Act and for an order pursuant to section 17(d) of the Act and rule 17d–1 under the Act.

Summary of Application: Applicants request an order to permit certain registered closed end investment companies to issue multiple classes of shares of beneficial interest with varying sales loads and to impose asset-based distribution and/or service fees.

Applicants: MVP Private Markets Fund (''Initial Fund''), and Portfolio Advisors, LLC (''Adviser'').

Filing Dates: The application was filed on June 30, 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 on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the relevant applicant with a copy of the request by email, if an email address is listed for the relevant applicant below, or personally or by mail, if a physical address is listed for the relevant applicant below.

Hearing requests should be received by the Commission by 5:30 p.m. on August 10, 2021, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary.

ADDRESSES: *joshua.deringer@faegredrinker.com.*

FOR FURTHER INFORMATION CONTACT: Lisa Reid Ragen, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and condition, please refer to Applicants' application, dated June 30, 2021, which may be obtained via the Commission's website by searching for the file number, using the Company name box, at *http://www.sec.gov/search/search.htm,* or by calling (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–15546 Filed 7–21–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92428; File No. SR–NYSE–2021–40]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Adopt on a Permanent Basis the Pilot Program for Market-Wide Circuit Breakers in Rule 7.12

July 16, 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 July 2, 2021, New York Stock Exchange LLC (''NYSE'' 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 adopt on a permanent basis the pilot program for Market-Wide Circuit Breakers in Rule 7.12. 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,

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt on a permanent basis the pilot program for Market-Wide Circuit Breakers in Rule 7.12. The Exchange understands that upon approval of this proposal, the other cash equities exchanges and FINRA (collectively, the ''SROs'') will also submit substantively identical proposals to the Commission [sic].

Rules Overview

The Market-Wide Circuit Breaker (''MWCB'') rules, including the Exchange's Rule 7.12, provide an important, automatic mechanism that is invoked to promote stability and investor confidence during periods of significant stress when cash equities securities experience extreme market-wide declines. The MWCB rules are designed to slow the effects of extreme price declines through coordinated trading halts across both cash equity and equity options securities markets.

The cash equities rules governing MWCBs were first adopted in 1988 and, in 2012, all U.S. cash equity exchanges and FINRA amended their cash equities uniform rules on a pilot basis (the ''Pilot Rules,'' *i.e.,* Rule 7.12 (a)–(d)).[4] The Pilot Rules currently provide for trading halts in all cash equity securities during a severe market decline as measured by a single-day decline in the S&P 500 Index (''SPX'').[5] Under the Pilot Rules, a market-wide trading halt will be triggered if SPX declines in price by specified percentages from the prior day's closing price of that index. The triggers are set at three circuit breaker thresholds: 7% (Level 1), 13% (Level 2), and 20% (Level 3). A market decline that triggers a Level 1 or Level 2 halt after 9:30 a.m. and before 3:25 p.m. would halt market-wide trading for 15 minutes, while a similar market decline at or after 3:25 p.m. would not halt market-wide trading. (Level 1 and Level 2 halts may occur only once a day.) A market decline that triggers a Level 3 halt at any time during the trading day would halt market-wide trading for the remainder of the trading day.

Extensions of the Pilot Rules

The Commission approved the Pilot Rules, the term of which was to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS (the ''LULD Plan''),[6] including any extensions to the pilot period for the LULD Plan.[7] In April 2019, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[8] In conjunction with the proposal to make the LULD Plan permanent, the Exchange amended Rule 80B to untie the Pilot Rules' effectiveness from that of the LULD Plan and to extend the Pilot Rules' effectiveness to the close of business on October 18, 2019.[9] The Exchange subsequently amended Rule 80B [10] and the corresponding Pillar rule, Rule 7.12, to extend the Pilot Rules' effectiveness for an additional year to the close of business on October 18, 2020,[11] and later, on October 18, 2021.[12]

The MWCB Task Force and March 2020 MWCB Events

In late 2019, Commission staff requested the formation of a MWCB Task Force (''Task Force'') to evaluate the operation and design of the MWCB mechanism. The Task Force included representatives from the SROs, the Commission, CME, the Commodity Futures Trading Commission (''CFTC''), and the securities industry and conducted several organizational meetings in December 2019 and January 2020.

Beginning in February 2020, the following events occurred, culminating in four MWCB Level 1 halts on March 9, 12, 16, and 18, 2020:

- *February 21, 2020 (Friday):* Related to COVID–19 concerns, market volatility began to increase, with SPX falling 1.1%.[13]
- *February 22–23, 2020 (Saturday–Sunday):* Concerns related to COVID–19 increased during the weekend.
- *February 24, 2020 (Monday):* SPX opened 2.4% below the previous Close and ended the day down 3.4%. Unrelatedly, Amendment 18 of the LULD Plan) (which eliminated double-wide bands for some symbols at the open and close) was implemented on this date.
- *February 27, 2020 (Thursday):* Elevated volatility persisted during the week, peaking with a 4.4% drop in SPX on this date.
- *February 28, 2020 (Friday):* Amid continuing volatility stemming from COVID–19 concerns and a rebalance of MSCI indices at the close, the U.S. equity market traded 19.375 billion shares—at the time, the second most active volume day in history.[14]
- *February 29–March 1, 2020 (Saturday–Sunday):* Over this weekend, various global actors including the Federal Reserve, the European Central Bank, and the Bank of Japan, issued statements indicating that they would intervene to support markets.
- *March 2, 2020 (Monday):* In response to expectations of central bank stimulus, the market rallied with a 4.6% increase in SPX.
- *March 3, 2020 (Tuesday):* Markets remained volatile, with SPX falling 2.8%. The market trading range on that date was 5.2%. By comparison, the average daily move over the first three weeks of February had been 0.7%.
- *March 2–6, 2020 (Monday–Friday):* On average, the close-to-close market decreased 3.3% per day between March 2 and March 6.
- *March 7–8, 2020 (Saturday–Sunday):* Negative news regarding COVID–19 multiplied over the weekend, with increasing deaths in Italy [15] and multiple members of

[4] *See* Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–BATS–2011–038; SR–BYX–2011–025; SR–BX–2011–068; SR–CBOE–2011–087; SR–C2–2011–024; SR–CHX–2011–30; SR–EDGA–2011–31; SR–EDGX–2011–30; SR–FINRA–2011–054; SR–ISE–2011–61; SR–NASDAQ–2011–131; SR–NSX–2011–11; SR–NYSE–2011–48; SR–NYSEAmex–2011–73; SR–NYSEArca–2011–68; SR–Phlx–2011–129) (''Pilot Rules Approval Order'').

[5] The rules of the equity options exchanges similarly provide for a halt in trading if the cash equity exchanges invoke a MWCB Halt. *See, e.g.,* NYSE Arca Rule 6.65–O(d)(4).

[6] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012). The LULD Plan provides a mechanism to address extraordinary market volatility in individual securities.

[7] *See* Securities Exchange Act Release Nos. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–NYSE–2011–48) (Approval Order); and 68784 (January 31, 2013), 78 FR 8662 (February 6, 2013) (SR–NYSE–2013–10).

[8] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019).

[9] *See* Securities Exchange Act Release No. 85560 (April 9, 2019), 84 FR 15247 (April 15, 2019) (SR–NYSE–2019–19). At that time, Rule 7.12 existed but was not operative with respect to Exchange-listed securities and was not amended to extend its effectiveness through October 18, 2019. Subsequently, all Exchange-listed securities transitioned to the Pillar trading platform. *See* Securities Exchange Act Release No. 85962 (May 29, 2019), 84 FR 26188 (June 5, 2019) (SR–NYSE–2019–05).

[10] Rule 80B is no longer operative. *See* Securities Exchange Act Release No. 88402 (March 17, 2020), 85 FR 16436 (March 23, 2020) (SR–NYSE–2020–20).

[11] *See* Securities Exchange Act Release No. 87016 (September 19, 2019), 84 FR 50502 (September 25, 2019) (SR–NYSE–2019–51).

[12] *See* Securities Exchange Act Release No. 90134 (October 8, 2020), 85 FR 65107 (October 14, 2020) (SR–NYSE–2020–84).

[13] All market index statistics sourced from *http://finance.yahoo.com.*

[14] Source: NYSE Daily Trade and Quote.

[15] *https://www.wsj.com/articles/italy-with-elderly-population-has-worlds-highest-death-rate-from-virus-11583785086.*

Congress forced to self-quarantine.[16] As Asian markets opened for Monday trading (during Sunday evening Eastern Time), oil prices ''collapsed'' after Saudi Arabia announced plans to boost output, with Brent crude dropping as much as 30%. These developments led the E-mini S&P 500 futures contract to reach its limit-down state (a 5% decline) on the Chicago Mercantile Exchange (''CME'') overnight Sunday into Monday.[17]

• *March 9, 2020 (Monday) (First MWCB Halt):* As cash equity markets in the U.S. opened at 9:30 a.m., SPX began updating its value as each component stock commenced trading. At 9:34:13 a.m., SPX crossed the 7% threshold to trigger a Level 1 MWCB halt, halting trading for 15 minutes. Reopening auctions began on primary exchanges at 9:49:13 a.m. Shortly after trading resumed, SPX gained value, reaching as high as 5.5% down from Friday's close, before closing down 7.6% from Friday's close.

• *March 10, 2020 (Tuesday):* The market recovered somewhat on this date.

• *March 12, 2020 (Thursday) (Second MWCB Halt):* COVID–19 fears took hold again after ''global health authorities declared the virus a pandemic,'' [18] with the E-mini S&P 500 futures contract reaching its limit-down state overnight. At 9:35:44 a.m., SPX crossed the 7% threshold to trigger a Level 1 MWCB halt. Reopening auctions began on primary exchanges at 9:50:44 a.m. After trading resumed, the market recovered value somewhat before falling again and ending the day down 9.5%.

• *March 13, 2020 (Friday):* The market vacillated throughout the day before rallying into the close, with SPX closing up 9.3% on the day but down 8.8% for the week.

• *March 14–15, 2020 (Saturday-Sunday):* Negative COVID–19 news continued over the weekend, with more parts of the U.S. economy shutting down. On Sunday, the Federal Reserve cut interest rates to nearly 0%.

• *March 16, 2020 (Monday) (Third MWCB Halt):* E-mini S&P 500 futures again hit a limit-down state in overnight trading. Selling pressure was so intense that the Level 1 MWCB threshold of 7% down was crossed at 9:30:01 a.m. Given the rapid and severe price drops, the vast majority of SPX stocks did not complete a primary listing exchange opening auction prior to the Level 1 halt being triggered. Reopening auctions began on primary listing exchanges at 9:45:01 a.m. Trading resumed at lower price levels before the market recovered over the course of the day, but SPX started falling in the final 35 minutes of the trading day after President Trump said the virus ''may not be under control until July or August.'' [19] The day ended down 12% from Friday's close.

• *March 17, 2020 (Tuesday):* The Federal Reserve announced a lending facility to support short-term debt markets, and the Trump Administration indicated support for a stimulus plan including direct payments to individuals.[20] The market rallied, with SPX gaining 6%.

• *March 18, 2020 (Wednesday) (Fourth MWCB Halt):* Negative sentiment returned, with price drops across multiple asset classes. After initially rising after the open, the market started dropping around 10:45 a.m. and crossed the Level 1 MWCB threshold at 12:56:17 p.m. Reopening auctions began on primary exchanges at 1:11:17 p.m. SPX fell further after the market reopened but then rallied into the close to finish the day down 5.2%. After the close, the New York Stock Exchange (''NYSE'') announced that its Trading Floor would close effective Monday, March 23, 2020, due to COVID–19.

• *March 20, 2020 (Friday):* SPX dropped an additional 4.3%.

In each instance, pursuant to the Pilot Rules, the markets halted as intended upon a 7% drop in SPX and did not start the process to resume trading until the prescribed 15-minute halt period ended.

In response to these events, in the Spring and Summer of 2020, the Task Force held ten meetings that were attended by Commission staff, with the goal of performing an expedited review of the March 2020 halts and identifying any areas where the MWCB mechanism had not worked properly. Given the risk of unintended consequences, the Task Force did not recommend changes that were not rooted in a noted deficiency. The Task Force recommended creating a process for a backup reference price in the event that SPX were to become unavailable, and enhancing functional MWCB testing. The Task Force also asked CME to consider modifying its rules to enter into a limit-down state in the futures pre-market after a 7% decline instead of 5%. CME made the requested change, which became effective on October 12, 2020.[21]

The MWCB Working Group's Study

On September 17, 2020, the Director of the Commission's Division of Trading and Markets asked the SROs to conduct a more complete study of the design and operation of the Pilot Rules and the LULD Plan during the period of volatility in the Spring of 2020.

In response to the request, the SROs created a MWCB ''Working Group'' composed of SRO representatives and industry advisers that included members of the advisory committees to both the LULD Plan and the NMS Plans governing the collection, consolidation, and dissemination of last-sale transaction reports and quotations in NMS Stocks. The Working Group met regularly from September 2020 through March 2021 to consider the Commission's request, review data, and compile its study. The Working Group's efforts in this respect incorporated and built on the work of an MWCB Task Force.

The Working Group submitted its study to the Commission on March 31, 2021 (the ''Study'').[22] In addition to a timeline of the MWCB events in March 2020, the Study includes a summary of the analysis and recommendations of the MWCB Task Force; an evaluation of the operation of the Pilot Rules during the March 2020 events; an evaluation of the design of the current MWCB system; and the Working Group's conclusions and recommendations.

Analysis

After evaluation and analysis, the Working Group reached five key conclusions. The Exchange adopts and agrees with these conclusions and accordingly believes that the MWCB rules should be made permanent. The conclusions and factual support for each conclusion are below.

1. The MWCB Mechanism Set Out in the Pilot Rules Worked as Intended During the March 2020 Events

The Working Group concluded that the MWCB mechanism set out in the Pilot Rules worked as intended during the March 2020 events. The Exchange

[16] *https://www.wsj.com/articles/number-of-congressional-lawmakers-in-self-quarantine-grows-to-five-11583785594.*

[17] *https://www.bloomberg.com/news/articles/2020-03-08/rout-in-u-s-stock-futures-would-trigger-trading-curbs-at-5.*

[18] *https://www.wsj.com/articles/global-stocks-follow-u-s-markets-lower-11583975524.*

[19] *https://www.wsj.com/articles/stocks-dow-slide-after-fed-slashes-rates-11584310328.*

[20] *https://www.wsj.com/articles/u-s-futures-rise-as-asia-markets-gyrate-11584413763.*

[21] See *https://www.cmegroup.com/content/dam/cmegroup/market-regulation/rule-filings/2020/9/20-392_1.pdf; https://www.cmegroup.com/content/dam/cmegroup/market-regulation/rule-filings/2020/9/20–392_2.pdf.*

[22] *See Report of the Market-Wide Circuit Breaker (''MWCB'') Working Group Regarding the March 2020 MWCB Events,* submitted March 31, 2021 (the ''Study''), attached hereto as Exhibit 3; also available at *https://www.nyse.com/publicdocs/nyse/markets/nyse/Report_of_the_Market-Wide_Circuit_Breaker_Working_Group.pdf.*

adopts and agrees with this conclusion, for the reasons set out below and in the Study.

On March 9, 12, 16, and 18, 2020, as market conditions indicated that a Level 1 MWCB Halt was likely, the Exchange activated an ''Intermarket Bridge'' call and sent an email alert to a pre-existing distribution list comprising multiple staff from securities and futures exchanges, FINRA, the SEC, the CFTC, the Depository Trust & Clearing Corporation, and the Options Clearing Corporation. On each day, the call opened before the 7% trigger was hit and remained open during the entire period of the halt, until trading in all symbols was reopened.

When SPX declined 7% from the previous day's closing value, the MWCB Level 1 Breach messages and resulting Regulatory Halt messages operated as designed. All 9,000+ equity symbols were halted in a timely manner.

In addition, the Exchange and the Cboe markets sent blast halt alerts to industry subscribers. For example, on March 18, 2020, Cboe sent the following notice:

> Effective 12:56:17 ET Cboe Equities exchanges have halted trading due to a Level 1 Market Wide Circuit Breaker breach.
>
> During the entirety of the Halt period, new orders and cancels will be accepted on the BYX, EDGA, and EDGX exchanges for all symbols and on the BZX Exchange for non BZX-listed symbols. Orders will be entered in a queued state and wait for the re-opening requirements. BZX will reject new orders in BZX-listed symbols until 5 minutes before the halt is scheduled to lift. Orders placed prior to the halt may be cancelled depending on cancel on halt port settings. The exchanges will be scheduled to re-open at approximately 13:11:17 ET.

Similarly, the Exchange sent the following notice on the same date:

> Due to a 7 percent decline in the S&P 500 index, in accordance with the NYSE, NYSE Arca, NYSE American, NYSE National and NYSE Chicago Rule 7.12, equity trading at the NYSE Exchanges has been halted. Information about order entry during the halt and the reopening process is available here.
>
> The market will re-open today at the following time: 13:11:17 ET.

When the Regulatory Halt messages reached the options markets, consistent with their respective rules that require the options markets to halt if there is a MWCB Halt in the cash equities market, they halted trading in approximately 900,000 options series. A total of approximately 5,000 options trades that were sent to OPRA after the time of the four MWCB Halts were nullified. Specifically, the Nasdaq options markets (BX, PHLX, NOM, ISE, GEMX, MRX) nullified approximately 4,800 trades and the two NYSE options markets (NYSE American and NYSE Arca) nullified approximately 180 trades pursuant to those markets' ''obvious error'' rules.

CME is not a subscriber to the equity SIP data feeds. In the event of a MWCB Halt, CME halts trading in affected symbols manually upon notification of the breach during the Intermarket Bridge call. At the outset of each event in March 2020, CME staff responded to the Exchange staff's announcement of the halt during the Intermarket Bridge call. CME halted affected symbols approximately one minute after each breach was triggered. Approximately 4,400 contracts (futures and options on futures on all U.S. equity indices) traded on the CME between the time the breach was declared and the time CME halted trading. No trades on CME were nullified.

The Exchange concludes from the foregoing that the MWCB mechanism operated as intended in March 2020. The markets were in communication before, during, and after the MWCB Halts occurred, and all 9,000+ equity symbols were successfully halted in a timely manner.

2. The MWCB Halts Triggered in March 2020 Appear To Have Had the Intended Effect of Calming Volatility in the Market, Without Causing Harm

The Working Group concluded that the MWCB halts triggered in March 2020 appear to have had the intended effect of calming volatility in the market, without causing harm. The Exchange adopts and agrees with this conclusion, for the reasons set out below and in the Study.

The Working Group examined the following measurements of liquidity and volatility preceding each of the March 2020 MWCB Halts and compared them to liquidity and volatility measurements for other trading periods. In particular, the Working Group examined:

1. Activity before the opening of regular trading hours;
2. Occurrence of opening on a trade versus opening on a quote; [23]
3. Size and liquidity in the opening auctions and post-MWCB halt reopening auctions as measured by shares available based on imbalance messages;
4. Quote volatility as measured by average mid-point to mid-point price change every second in basis points; and
5. Liquidity at the national best bid and offer (''NBBO''); and
6. LULD Trading Pauses following MWCB Reopening Auctions.

In the graphs and discussion below, the following abbreviations apply:

- Group 1 (G1) = S&P 500 Tier 1 [24] securities
- Group 2 (G2) = Other non-ETP Tier 1 securities
- Group 3 (G3) = Tier 1 ETPs
- Group 4 (G4) = Non-ETP Tier 2 securities and symbols not included in the in LULD Plan (*i.e.,* rights/warrants)
- Group 5 (G5) = Tier 2 ETPs

In general, the graphs and discussion below break out data for each of the four MWCB Halt days individually, and compare it to two time periods: (i) January 2020, and (ii) the period from February 24 through May 1, 2020, excluding the four days with MWCB Halts (also referred to as the ''High-Volatility Period'').

a. Activity Before the Opening of Regular Trading Hours

SEC staff asked the Working Group to review volatility and liquidity preceding the four MWCB Halts. To do so, the Working Group examined activity in SPY before the opening of regular trading hours on the four MWCB Halt days. With the exception of the occasional ''news,'' stock impacted by earnings surprises, or other significant corporate or socio-political events, early morning trading activity is typically limited. This baseline is shown in *Chart 1* of the Study [25] by the data from January 2020. Specifically, in January 2020, prior to the opening of regular trading hours at 9:30 a.m., SPY averaged barely over one million shares traded per day, and its average trading range was 66 basis points.

The impact of COVID–19 and the rapid adjustment in attitudes towards economic activity changed that. During the High-Volatility Period that began on February 24, pre-opening activity in SPY rose to six million shares traded per day, with an average trading range of 390 basis points. The pre-regular trading hours activity on the four MWCB days in March 2020 was even higher, resulting in volumes roughly five to nine times those January levels, with pre-market ranges reaching as high as 10%.

[23] An opening auction can conclude two ways: (1) Orders are paired off and a trade is executed (''opening on a trade''), or (2) orders are not paired off and the auction ends with the publication of a quote (''opening on a quote'').

[24] Tier 1 and Tier 2 refer to groups of securities prescribed in the LULD Plan. Tier 1 comprises S&P 500/Russell 1000 securities as well as the active ETPs. Tier 2 comprises the balance of NMS securities, except rights and warrants.

[25] *See* Study, *supra* note 22, at 14.

b. Securities Opening on a Trade vs. Opening on a Quote on Days With MWCB Halts

SEC staff also asked the Working Group to review whether there were any differences between the number of securities that opened on a trade vs. opened on a quote on the four days with MWCB Halts. By including this information here, the Exchange does not express any opinion about whether opening on a trade is preferable or superior to opening on a quote. In the Exchange's view, so long as the opening quote represents a fair price for the security, opening on a quote is not an indication of an ineffective opening or reopening process.

As shown in *Chart 2* of the Study,[26] there was no meaningful difference in the percentage of securities opening on a trade versus on a quote (i) on each of the four MWCB Halt days, (ii) during January 2020, and (iii) during the High-Volatility Period. The one exception was in G5 securities (*i.e.,* Tier 2 ETPs), a higher percentage of which opened on a trade on the four MWCB Halt days than in January or during the High-Volatility Period.

Note that in *Chart 2,* ''reopens'' are reopening auctions for stocks that had already opened prior the MWCB halts. The Exchange accordingly expects there to be less interest represented in those reopening auctions.

c. Size and Liquidity of Opening and Reopening Auctions

In order to assess the liquidity available in the reopening auctions following the four MWCB Halts, the Working Group compared the volumes in these reopening auctions to the average volumes in opening auctions in January 2020. *Chart 3* of the Study[27] compares (i) the median opening auction volumes in shares traded for the January 2020 period, (ii) the median opening auction volumes in shares traded for the High-Volatility Period, and (iii) the median volumes in shares traded in the reopening auctions following the MWCB Halts for symbols that had already executed opening auctions.

Given that many securities had already opened before the MWCB Halt on the four MWCB Halt days, the size of the reopening auctions for those securities was somewhat smaller. The Exchange believes that this is unsurprising, and would not expect a reopening auction to be as large as an opening auction.

The Working Group also compared the size of the *opening auctions plus reopening auctions* following the MWCB Halts on the MWCB Halt days to the size of opening auctions in the January 2020 period, in order to try to assess whether the MWCB Halts resulted in a loss of liquidity overall during the auctions.

Charts 4a and 4b of the Study are two scatter plot charts that compare average daily volume in opening auctions during the January 2020 period with the average of the volume in opening auctions *plus* post-MWCB Halt reopening auctions on March 9, 12, and 16.[28] *Chart 4a*[29] shows those three MWCB Halt days combined, while *Chart 4b*[30] focuses on the March 16 MWCB Halt, which occurred less than two seconds after the opening of regular trading hours.

These scatter plot charts show that, on average, the size of the opening auctions plus reopening auctions on the MWCB Halt days was not very different than the size of opening auctions in the January 2020 period. The charts include regression lines, which show that the opening auction plus MWCB reopening auction volumes on the MWCB Halt days hewed closely to the January 2020 auction volumes.

In *Chart 4b,* regarding the March 16 MWCB Halt, the green dots show that many securities had not started trading or quoting before the halt at 9:30:01 a.m. However, even under those conditions, the green trendline shows that the size of the reopening auctions after the March 16 MWCB Halt were still similar to opening auction volumes in the January 2020 period.

SEC staff also asked the Working Group to review the participation by market makers in the reopening auctions after the MWCB Halts. The Working Group did so by examining principal versus agency activity as a proxy for gauging the level of proprietary market maker trading activity, since liquidity providers generally act as principal on such transactions and agency trades are more typically associated with customer flow from institutional or retail investors. The Working Group also reviewed the Top 5 firms in each category, using January 2020 activity as a point of comparison.

As *Chart 5* of the Study[31] shows, compared to the January 2020 period, the share of the opening auctions represented by principal transactions was higher on the MWCB days, as well as during the High-Volatility Period. Although principal activity was lower in the reopening auctions than the opening auctions, each of the MWCB Halt days (except for March 18) showed generally increasing principal participation over the previous MWCB Halt days.

Similarly, *Chart 6* of the Study[32] shows the share of trades executed in the opening auctions and executed in the MWCB reopening auctions represented by transactions involving the top five participants from the January 2020 period. In almost all breakouts, the top five firms represent a larger share of MWCB reopening auctions than of the opening auctions, further highlighting the critical importance of liquidity from the most active market participants in providing liquidity in the MWCB reopening auctions.[33]

SEC staff also asked the Working Group to examine how quickly stocks opened following each of the four MWCB Halts. *Chart 7* of the Study[34] shows that, on all four dates, even given the uncertainty caused by the MWCB Halts, all SPX stocks reopened within 15 minutes of the end of the MWCB Halt. The quickest reopens were on March 18, which may be due to the fact that (i) all securities had been trading, allowing for better price discovery and faster accretion of liquidity, (ii) the improved learning curve from the prior three MWCB Halts in just over a week,[35] and (iii) the MWCB Halt was triggered by a gradual price drop and there was no sudden price dislocation at that time.

d. Quote Volatility

The Working Group also examined quote volatility on the MWCB Halt days. Liquidity typically decreases with higher volatility, so examining quote volatility is another way to study the effects of the MWCB Halts on liquidity. If quote volatility stabilized following the reopening auctions after the MWCB Halts, that would indicate that the MWCB Halts had the intended effect of calming volatility.

[26] *See id.* at 14.

[27] *See id.* at 15.

[28] March 18 was excluded from this analysis since the MWCB Halt that day occurred midday, not in the early morning period.

[29] *See* Study, *supra* note 22, at 17.

[30] *See id.* at 17.

[31] *See id.* at 18.

[32] *See id.* at 20.

[33] The result for G5 was impacted by a 30 million share reopen in one leveraged ETP, which accounted for a very large share of the total G5 reopen.

[34] *See* Study, *supra* note 22, at 23.

[35] Industry participants in the Working Group noted some initial uncertainty created by differences in market practices (*e.g.,* order submission/cancellation, auction collars), but also recognized that real world experience gained after the first halt mitigated the issue.

As *Chart 8* of the Study [36] shows, although the median second-to-second quote volatility was generally higher on the four MWCB Halt days as compared to January 2020 and the High-Volatility Period, volatility quickly subsided following the reopening auctions after the MWCB Halts and stabilized at a level similar to volatility in the High-Volatile Period. ETP volatility (G3 and G5) largely subsided after the reopening auctions following the MWCB Halts and stabilized near January 2020 levels, apart from brief spikes midday on March 12 and 18. This stabilization may be an indication that the MWCB Halts on these days helped to calm the market, since volatility did not continue to escalate throughout the day.

Chart 9 of the Study [37] shows that almost all of the days with the most quote volatility were the four days with MWCB Halts.[38]

The Working Group also calculated quote volatility for the five-minute time periods preceding the MWCBs, for (i) the four MWCB dates, (ii) January 2021, and (iii) the High-Volatility Period. As shown in *Chart 10* of the Study,[39] the opening volatility was noticeably higher on the MWCB days, including March 18, when the market did not halt until midday. Note that measurements for March 16 represent only one second of trading and are based on limited observations.

e. Liquidity at the NBBO

The Working Group also examined liquidity at the NBBO on the days when MWCB Halts were triggered, in order to understand the impact of the MWCB Halts on liquidity. To do so, the Working Group compared the median size at the NBBO for (i) each of the four MWCB Halt days, (ii) January 2020, and (iii) the High-Volatility Period. As shown in *Chart 11* of the Study,[40] early morning liquidity was lower on the MWCB Halt days, but many stocks did not open at 9:30 a.m., and on the three days with early morning MWCB Halts, many stocks did not open on the primary listing exchange until after trading resumed.

The results prior to the March 18 midday MWCB Halt tell a different story. That MWCB Halt was not a sudden adjustment to overnight activity. In most of the groups of securities, size at the inside on March 18 was similar to January 2020 levels for the 12:50–12:55 p.m. period and was slightly larger for non-ETPs when compared to the remainder of the High-Volatility Period.

Chart 12 of the Study [41] shows that most of the large decreases in size at the inside were on the four days with MWCB Halts.

f. LULD Trading Pauses Following MWCB Reopening Auctions

The Working Group also reviewed how often securities entered into an LULD Trading Pause following the reopening auctions after the MWCB Halts. A large number of LULD Trading Pauses could be interpreted to suggest that more robust reopening procedures were required, or that the reopenings occurred too quickly after the MWCB reopens and the market did not have the opportunity to truly reprice. The Working Group therefore also compared how many LULD Trading Pauses were caused by a limit-up state versus a limit-down state.

Not surprisingly, there were more limit-up LULD Trading Pauses following MWCB reopening auctions from MWCB Halts, as the markets (at least initially) bounced back following the large drops at the opening auction. March 18 was the exception, where there was little difference between the number of limit-up and limit-down pauses. March 16, the day on which a MWCB halt was triggered one second after the opening of regular trading hours, saw the greatest number of LULD Trading Pauses, especially within 30 minutes of the market reopening; this is unsurprising since there was little trading prior to the MWCB Halt and far fewer stocks had opened prior to the halt.

Charts 13 and 14 [42] show the number of LULD Trading Pauses within 5 and 30 minutes of MWCB reopening auctions, broken out by whether the stock had opened prior to the MWCB Halt and whether the reopening auction concluded with a trade or a quote.

There were few consistent results across dates or Groups, although in almost all cases there were more limit-up pauses than limit-down pauses. The main observation for G1 securities is that stocks that did not have their primary listing market opening auction until after the MWCB Halt had more LULD Trading Pauses than stocks that opened before the MWCB Halt was triggered. There were consistently more limit-up Trading Pauses than limit-down Trading Pauses, and the increase in Trading Pauses over the 30-minute period after the opening auction compared to the first five minutes after the opening auction was larger for stocks that did not open until after the MWCB Halt.

G2 stocks did not show as clear a trend. On March 9, for stocks that already opened before the MWCB Halt, there were more limit-down Trading Pauses than limit-up Trading Pauses. On March 12, the incidence of Trading Pauses was similar for stocks that had opened prior to the MWCB and those that did not, while March 16th showed a pattern similar to G1 stocks.

For both G1 and G2 stocks, there were relatively few reopens on a quote.

G3 (Tier 1 ETPs) all opened prior to the MWCB Halt on March 9, 12 and 18. Most reopened on a trade, and those that reopened on a quote only had LULD Trading Pauses on March 18 in the five minutes after the reopening auction. Limit-up Trading Pauses were far more likely on March 12 and March 16, but the differences were smaller on March 9 and 18. Note also that some ETPs, such as inverted equity and some fixed income based, may naturally move opposite the overall market.

Regarding G4 (Tier 2 non-ETPs), LULD pauses were less frequent in the first five minutes following the MWCB Halts. Limit-up Trading Pauses were more common than limit-down. ETPs that did not open prior to the MWCB Halts had a slightly higher likelihood of pausing in the next five and 30 minutes, but not across all dates and time frames.

G5 (Tier 2 ETPs) hit very few Trading Pauses within five minutes of reopening, although more occurred in the following 25 minutes.

The Working Group also reviewed the likelihood of an LULD Trading Pause being triggered following the MWCB reopening auctions in ETPs that were subject to extension logic for trading collars, as compared to those that were not subject to extension logic. At the time of the MWCBs, NYSE Arca and CBOE BZX maintained collars for their reopening auctions with extension logic, but Nasdaq did not. (Nasdaq has since implemented collars with extension logic for MWCB reopening auctions.)

[36] *See* Study, *supra* note 22, at 24.

[37] *See* Study, *supra* note 22, at 25.

[38] These charts show, for each time period, the high and low quote volatility measures. The point where the dark grey and light grey meet are the median volatility. The boxes are represented by 1.5 times the interquartile range with the quartiles at the 75th percentile and the 25th percentile. For example, if the 25th percentile is 10 basis points and the 75th quartile is 14 basis points, we had (14–10)*1.5 or 6 basis points to the 75th quartile and subtract that from the 25th quartile. Thus, the box would represent all values between 4 and 20 basis points and outliers would be results above or below those figures.

[39] *See* Study, *supra* note 22, at 26.

[40] *See id.* at 27.

[41] *See id.* at 27.

[42] *See id.* at 29–30.

Chart 15 of the Study [43] shows that, across the four days with MWCB Halts, the likelihood of an LULD Trading Pause within five minutes or 30 minutes of reopening after the MWCB Halt was higher for ETPs that were not subject to a collar with extension logic than for those that did have a collar with extension logic.

* * * * *

The Exchange concludes that the analysis above shows that the MWCB Halts triggered in March 2020 appear to have had the intended effect of calming volatility in the market, without causing harm. Specifically:

- There was no significant difference in the percentage of securities that opened on a trade versus on a quote on the four days with MWCB Halts versus the other periods studied.
- While the post-MWCB Halt reopening auctions were smaller than typical opening auctions, the size of those post-MWCB Halt reopening auctions *plus* the earlier initial opening auctions in those symbols is on average equal to opening auctions in January 2020. This indicates that the MWCB Halts on the four days in question did not cause liquidity to evaporate.
- All securities in SPX reopened within 15 minutes following the end of the MWCB Halts.
- Quote volatility was generally higher on the four MWCB Halt days as compared to the other periods studied, but quote volatility stabilized following the MWCB Halts at levels similar to the January 2020 levels.
- LULD Trading Pauses following the MWCB Halts worked as designed to address intra-day volatility.

3. The Design of the MWCB Mechanism With Respect to Reference Value (SPX), Trigger Levels (7%/13%/20%), and Halt Times (15 Minutes) Is Appropriate

The Working Group concluded that the design of the MWCB mechanism with respect to reference value (SPX), trigger levels (7%/13%/20%), and the Level 1 and 2 halt times (15 minutes) is appropriate. The Exchange adopts and agrees with these conclusions, for the reasons set out below and in the Study.

Currently, the MWCB mechanism uses SPX as the reference for determining when the market has fallen 7%/13%/20% triggering a Level 1/Level 2/Level 3 halt, respectively. To determine whether these elements are appropriately set, the Working Group reviewed the history of MWCB Halts, reference value, and trigger levels since their inception in 1988. While surgical precision in setting these levels is not possible, the Working Group concluded, and the Exchange agrees, based on the real-world testing of the trigger levels and reference index during more than 30 years of trading and a review of alternative indices, that the current trigger levels and reference index are appropriately set.

History of the Development of the MWCB Mechanism Since 1988

On October 19, 1987, the DJIA declined 22.6%. In response, U.S. exchanges established the first ''circuit breakers,'' [44] designed to temporarily restrict trading in stocks, stock options, and stock index futures when markets experience a severe, rapid decline.[45] This original circuit breakers mechanism, approved by the SEC in 1988, provided that halts would be trigged by declines of a set number of points in the DJIA. Specifically, if the DJIA declined by 250 points from its previous day's close, the markets would halt trading for one hour. If, on that same day, the DJIA declined by a total of 400 points from the previous day's close, the markets would halt for two hours.[46]

Amendments approved by the SEC in July 1996 reduced the duration of the 250 and 400 points halts to 30 minutes and 60 minutes from one hour and two hours, respectively.[47] This reduction in halt duration corresponded to the ''significant technological progress made by the securities markets and the broker-dealer community since 1988 in efficiently accommodating large order imbalances that may occur under volatile market conditions.'' Further amendments approved in January 1997 increased the two trigger values to 350 and 550 points.[48] In their filings, the exchanges noted that the proposed new levels of 350 and 550 points would represent approximately a 5.4% and 8.5% decline in the DJIA, respectively, reflecting significant market declines that they believed served as appropriate levels for triggering a brief trading halt.

These circuit breakers were triggered for the first time since their adoption on October 27, 1997, when the DJIA experienced two declines, totaling 554 points, or 7.2%. The first circuit breaker of 30 minutes was triggered at 2:36 p.m. when the DJIA declined 350 points (4.54%) from the previous day's close. After the market reopened at 3:06 p.m., the DJIA continued to drop another 200 points, triggering the second circuit breaker at 3:30 p.m. Because the second circuit breaker was triggered at 3:30 p.m., within the last hour of trading, the market was closed for the remainder of the day.

The consensus view of the October 27, 1997 halts was that the circuit breaker thresholds of 350 and 550 points needed to be raised significantly as the percentage declines associated with those hard values did not justify halts in trading.[49] It was believed that the circuit breakers' low point value level, close proximity to each other, and the fact that the second circuit breaker would close the market for the remainder of the day, may have contributed to selling pressure after the first halt was lifted. Additionally, the 7% decline in the DJIA around 3:30 p.m. should not have caused trading to be halted for the remainder of the day.[50]

In a report by SEC staff analyzing the event, the staff stated:

> First, the circuit breaker thresholds needed to be raised significantly from those in place on October 27. When the 350-point trigger was reached on October 27, the DJIA was down only 4.54%, a level that had been reached on 11 previous days since 1945. Moreover, there was little evidence of the types of market liquidity constraints that would have justified cross-market halts. Circuit breaker halts should be reserved for an abrupt market decline of a magnitude that raises concerns that the exhaustion of market liquidity might result in uncoordinated, *ad hoc* market closures.[51]

[43] *See id.* at 31.

[44] The Report of the Presidential Task Force on Market Mechanisms (the ''Brady Report'') noted that the market disorders of October 1987 ''became, in effect, ad hoc circuit breakers, reflecting the natural limits to market liquidity.'' Accordingly, the Brady Report maintained that the October 1987 Market Break ''demonstrates that it is far better to design and implement coherent, coordinated circuit breaker mechanisms in advance, than to be left at the mercy of the unavoidable circuit breakers of chaos and system failure.'' *See* Nicholas Brady, Report of the Presidential Task Force on Market Mechanisms (January 1988) at 66.

[45] *See* Securities Exchange Act Release No. 26198 (October 19, 1988), 53 FR 41637 (October 24, 2988) (SR–CBOE–88–14; SR–NASD–88–46; SR–NYSE–88–22; SR–NYSE–88–23; SR–NYSE–88–24; SR–AMEX–88–24).

[46] The 250-point and 400-point triggers represented 12% and 19% of the DJIA when implemented.

[47] *See* Securities Exchange Act Release Nos. 37457 (July 19, 1996), 61 FR 39176 (July 26, 1996) (SR–NYSE–96–09); 37458 (July 19, 1996), 61 FR 39167 (July 26, 1996) (SR–Amex–96–13); and 37459 (July 19, 1996), 61 FR 39172 (July 26, 1996) (SR–BSE–96–4; SR–CBOE–96–27; SR–CHX–96–20; SR–Phlx–96–12).

[48] *See* Securities Exchange Act Release No. 38221 (January 31, 1997), 62 FR 5871 (February 7, 1997) (SR–NYSE–96–38; SR–Amex–96–49; SR–CBOE–96–78; SR–CHX–96–33; SR–BSE–96–12; SR–Phlx–97–03). The Commission approved each of the Exchanges' revised circuit breaker rules on a one-year pilot basis that expired on January 31, 1998.

[49] *See Trading Analysis of October 27 and 28, 1997,* A Report by the Division of Market Regulation U.S. Securities and Exchange Commission, dated September 1998, available at *https://www.sec.gov/news/studies/tradrep.htm#cbs.*

[50] *See id.* at Part III, Section IV.

[51] *See id.*

In January 1998, the exchanges adopted interim changes to the circuit breaker rules. These changes provided that if, at or before 3:00 p.m., the DJIA were to fall 350 or more points below its previous trading day's closing value, trading in all stocks and equity-based options on the exchanges would halt for 30 minutes, while trading would not be halted for such a decline after 3:00 p.m. In addition, if, on the same day, the DJIA dropped 550 or more points from its previous trading day's close, trading in all stocks and equity-based options on the exchanges would halt for 60 minutes, except that if the 550-point decline occurred after 2:00 p.m. but before 3:00 p.m., the halt would be for 30 minutes instead of 60 minutes, and if the 550-point drop occurred at or after 3:00 p.m., trading would close for the remainder of the day. These interim changes were adopted only until the markets could agree on modifications to raise the circuit breaker trigger levels significantly.

In April 1998, the exchanges implemented new circuit breaker trigger levels based upon percentage declines in the DJIA, rather than specified point declines.[52] These percentage declines were set at 10%, 20%, and 30%, as follows:

- Level 1—10% decline in DJIA:
  - Before 2:00 p.m., the market will close for one hour
  - Between 2:00 p.m. and 2:30 p.m., the market will close for 30 minutes
  - No Level 1 after 2:30 p.m.
- Level 2—20% decline in DJIA:
  - Before 1:00 p.m., the market will close for two hours
  - Between 1:00 p.m. and 2:00 p.m., the market for one hour
  - After 2:00 p.m., the market will close for the day
- Level 3—30% decline in DJIA:
  - The market will close for the remainder of the day, regardless of what time the decline occurs

These values were calculated at the beginning of each calendar quarter, using the average closing value of the DJIA for the previous month to establish specific point values for the quarter.

These values were approached but not breached on May 6, 2010, when the U.S. securities and futures markets experienced a severe disruption, often referred to as the ''Flash Crash.'' Between 2:32 p.m. and 2:45 p.m., the DJIA dropped about 9% and then rebounded within minutes.[53] The decline never reached the 10% trigger, so securities trading continued unhalted.[54]

In response to the events of May 6, 2010, the SEC adopted several new rules and approved NMS Plans and changes to SRO rules,[55] including: (i) A ban on stub quotes; (ii) single stock circuit breakers, which were later replaced by the LULD Plan; (iii) revisions to the MWCB rules; (iv) the Consolidated Audit Trail; and (ii) Regulation Systems Compliance and Integrity (Regulation SCI). Specifically, the changes made to the MWCB rules were:

- The DJIA was replaced by the SPX, which provides a broader base of securities against which to measure volatility.[56]
- Circuit breaker thresholds are calculated on a daily rather than quarterly basis.
- Level 1 and 2 halts are allowed only once per day.
- Level 1 and 2 halts were shortened from 30 minutes to 15 minutes. Non-primary markets are allowed to reopen after 15 minutes even if the primary market has not reopened.[57]
- Level 1 and 2 halts are permitted up to 3:25 p.m., instead of only until 2:30 p.m. (the Flash Crash occurred after 2:30 p.m.).
- The triggers for each Level were reduced, as follows:
  - Level 1—7% decline in SPX:
    - Before 3:25 p.m., the market will close for 15 minutes
    - No Level 1 halts at or after 3:25 p.m.
  - Level 2—13% decline in SPX:
    - Before 3:25 p.m., the market will close for 15 minutes
    - No Level 2 halts at or after 3:25 p.m.
  - Level 3—20% decline in SPX:
    - The market will close for remainder of trading day, regardless of what time the trigger is reached

The MWCB mechanism described above has remained substantively unchanged since it was implemented in 2012 with the Pilot Rules.

b. Evaluation of Halt Triggers and Length of Halts

The Exchange observes that since the inception of MWCB trading halts in 1988, the pendulum has swung from wider triggers to narrower ones, then back to wider ones, and then to narrower ones again. In 1988, the two triggers were, based on DJIA point values of 250 and 400, 12% and 19% market declines, which were deemed to be too high. In 1997, the DJIA point value declines triggering halts were increased to 350 and 500, which represented declines of the DJIA of 5.4% and 8.5%. When the first ever MWCB halt was triggered in October 1997, the industry concluded that the halt trigger of a 4.5% decline from the then reference (DJIA) and ''close for the day'' trigger of a 7% decline to be too low. The triggers were then increased to 10%, 20% and 30%. But in May 2010, when the Level 1 trigger was not breached after a 9% drop, the industry determined, in effect, to split the difference and lower the trigger levels to the current 7%, 13%, and 20% levels.

In 2016, the Equity Market Structure Advisory Committee's (''EMSAC'') Subcommittee on Market Quality questioned whether the 7% decline for triggering for a Level 1 halt should be changed back to the previous trigger of 10%:

> [The Subcommittee] . . . considered evidence in international markets that having a circuit breaker often acts as a magnet rather than a cushion. There is some evidence from China that when markets began to approach the 7% band, selling pressure intensified as market participants tried to get their trades in before the market was closed. As such the Subcommittee feels that a wider band around the 10% range is warranted.[58]

The Exchange concurs with the Working Group's conclusion that experience suggests that such a change is unnecessary. Since 1962, intraday losses as large as 7% have been rare in SPX, occurring just 16 times from the prior day close to next day's low. The only four times it did occur since the implementation of the LULD Plan was on the four dates in March 2020 that triggered the MWCB Halts.

Since the LULD Plan was implemented, there have been only five

[52] *See* Securities Exchange Act Release No. 39846 (April 9, 1998), 63 FR 18477 (April 15, 1998) (SR–NYSE–98–06; SR-Amex-98–09; BSE–98–06; SR–CHX–98–08; SR–NASD–98–27; SR–Phlx–98–15).

[53] Approximately 86% of securities reached lows for the day that were less than 10% away from the 2:40 p.m. price. The other 14% of securities suffered greater declines than the broader market, with some trading all the way down to one penny. *https://www.sec.gov/sec-cftc-prelimreport.pdf.*

[54] At approximately 2:45 p.m., CME's Globex stop logic function initiated a five-second trading pause in the E-mini S&P 500 futures contract because of a rapid 5% decline in the contract's value.

[55] *See* Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–BATS–2011–038; SR–BYX–2011–025; SR–BX–2011–068; SR–CBOE–2011–087; SR–C2–2011–024; SR–CHX–2011–30; SR–EDGA–2011–31; SR–EDGX–2011–30; SR–FINRA–2011–054; SR–ISE–2011–61; SR–NASDAQ–2011–131; SR–NSX–2011–11; SR–NYSE–2011–48; SR–NYSEAmex-2011–73; SR–NYSEArca-2011–68; SR–Phlx–2011–129).

[56] From the joint CFTC/SEC report: ''Use of the S&P 500 Index would lead to easier coordination with halts in the E-Mini and the SPY.'' In addition, using an index that correlates closely with derivative products, such as the E-mini S&P 500 futures contract or SPY, will allow for a better cross-market measure of market volatility.

[57] Many, if not all, equity markets have adopted rules requiring the receipt of LULD bands in non-listed symbols before reopening after MWCB Halts.

[58] *https://www.sec.gov/spotlight/emsac/emsac-market-quality-subcommittee-recomendation-072516.pdf.*

days where the SPX fell as much as 6%, and all took place during the March 9—March 18 period. On March 11, the index fell as much as 6.07%, but did not continue lower to trigger a Level 1 MWCB halt at 7%. On March 16, SPX declines triggered a Level 1 halt, and continued to fall after reopening to a low of −12.18%, but did not continue to fall to the 13% trigger for a Level 2 halt. Furthermore, on March 9, 12, and 18, SPX experienced further losses after the Level 1 halt, with intraday lows of −8.01%, −9.58%, and −9.83%. The fact that SPX continued to decline after the halt at 7% suggests that the market found an equilibrium level that was not particularly tied to the 7% Level 1 trigger or the 13% Level 2 trigger.

Accordingly, the Working Group concluded, and the Exchange agrees, that the available evidence does not support the conclusion that the current 7% and 13% triggers create a ''magnet effect.'' The sole member of the Working Group who was also a member of the EMSAC Subcommittee agreed that, with the benefit of actual data and a review of the March 2020 activity, there is no evidence of possible selling pressure or a need to raise the trigger for a Level 1 MWCB halt to 10% from the current 7%. The Working Group did not draw any conclusions about whether a ''magnet effect'' exists when market declines approach 20% (the Level 3 MWCB trigger that would end trading for the remainder of the day), given the lack of data.

As noted above, CME implemented the Task Force recommendation to reopen the E-mini S&P 500 futures five minutes before the end of a 15-minute Level 1 or Level 2 MWCB halt, in order to enhance the equity market price discovery process. Given that change, the Working Group opted not to simultaneously recommend a change to the length of the Level 1 and 2 MWCB Halts. The Exchange shares the Working Group's view.

c. Evaluation of the Reference Value

During the Spring and Summer of 2020, the MWCB Task Force conducted a preliminary evaluation of whether SPX is the appropriate reference for the MWCB mechanism. The Task Force met with representatives of S&P DJI, who provided a presentation explaining their redundancy and resiliency protections for the SPX calculation, as well as supporting documentation. The Task Force concluded at that time that there was no immediate need to replace SPX as the reference value.

In late 2020 and early 2021, the Working Group revisited the issue and performed additional analysis regarding whether to retain SPX as the reference for triggering MWCB halts. The Working Group examined criteria for considering an instrument or methodology to replace SPX and compared a number of potential alternatives to SPX. Specifically, the Working Group considered the following alternatives through various ''lenses'' noted below:

Potential alternatives to SPX considered:

- DJIA
- S&P 100 (''OEX'')
- Nasdaq 100 (''NDX'')
- Russell 1000 (''R1000'')
- Russell 3000 (''R3000'')
- Wilshire 5000 (''W5000'')
- E-Mini S&P 500 Futures
- Exchange Traded Products related to SPX/E-Mini (*i.e.,* SPY, IVV, VOO) [59]

''*Lenses*'' *for considering potential alternatives:*

- Breadth of securities in an index or in the index underlying a specific product
- Breadth of sectors represented by product/index
- Breadth of listing exchanges represented by product/index
- Correlation with related products, including derivatives and ETPs
- Does the reference value demonstrate dislocations from the underlying value?
- Industry awareness of the index/product level
- Activity level in/liquidity generally present in the product (or correlated products if reference value is an index)
- If reference value is a traded product, susceptibility of that product to short term liquidity imbalances that might erroneously trigger a MWCB
- Potential concerns regarding cross-market coordination
- Whose regulatory purview does the reference value fall under
- Reference calculation method
- Index methodology

After evaluating a number of different potential references assessed by the Working Group,[60] the Exchange concludes that SPX remains an appropriate product to use as the reference for the MWCB mechanism, and does not recommend making a change, for the following reasons:

- The industry practitioners in the Working Group strongly believe that the reference should be based on an index rather than an individual tradeable product (whether a derivative or an ETP) because individual products are vulnerable to temporary order imbalances or price shocks, which may result in transient premiums or discounts.[61] In addition, individual products may themselves be subject to single stock price bands or circuit breakers. An index has far less potential to be influenced by these factors than an individual product.

- Of the indices the Working Group examined, the Exchange notes that SPX contains a large number of securities with a high degree of breadth, an extremely high correlation with the liquidity of its underlying securities, and a well-understood calculation methodology. S&P DJI disseminates documentation regarding the calculation of SPX, especially at and around market open and reopen that addresses technical questions regarding the index calculation and value dissemination.[62] The Exchange recognizes the lack of regulatory oversight of non-traded products, but nevertheless believe that SPX is an appropriate reference given the numerous safeguards provided by S&P DJI.[63]

- The Exchange notes that S&P DJI periodically improves its calculation methods for SPX. For example, following the events of August 24, 2015, S&P DJI changed its methodology for calculating SPX to use consolidates prices.[64] This change likely helped to ensure that SPX accurately reflected

[59] Note that while the analysis below focuses on SPY—the related ETP with the largest AUM—the Exchange believes that the assessment would be comparable for IVV or VOO.

[60] *See* Study, *supra* note 22, at 41.

[61] For example, on December 21, 2020, at 1:25 p.m., a sudden influx of Intermarket Sweep Orders caused a flash surge in SPY, resulting in a price jump from around $365.00 to $378.46, and back down to $367.50 in less than one second. *https://www.bloomberg.com/news/articles/2020-12-23/flash-surge-in-world-s-biggest-etf-linked-to-outlandish-trades.*

[62] S&P DJI's Equity Indices Policies & Practices Methodology, *https://us.spindices.com/governance/methodology-information/.* The rules governing the S&P 500 are available in the S&P U.S. Indices Methodology and published at *https://us.spindices.com/indices/equity/sp-500.*

[63] *See id.* regarding disclosure from S&P DJI. On May 17, 2021, following the completion of the Working Group's Study, the Commission charged S&P DJI with securities law violations stemming from S&P DJI's use of an undisclosed feature with respect to its S&P 500 VIX Short Term Futures Index ER. *See https://www.sec.gov/news/press-release/2021-84.* The Exchange has reviewed that enforcement action and has determined that it does not change its conclusion that SPX remains an appropriate reference value for the MWCB mechanism. As noted, no other index has a calculation method as well-understood as SPX, or has SPX's number and breadth of securities. In addition, as noted, S&P DJI has been extremely transparent and responsive to the Exchange and the other Working Group members about the calculation of SPX.

[64] *https://www.prnewswire.com/news-releases/sp-dow-jones-indices-announces-changes-to-us-indices-intraday-calculations-300228793.html.*

market conditions preceding the MWCB Halts in March 2020.

In addition, the Exchange notes that S&P DJI was forthcoming and transparent in responding to the Working Group's questions about the resiliency and redundancy of the SPX calculation. In meetings with the Working Group, S&P DJI confirmed that it supports three data centers—in New Jersey, Chicago, and London—with two output nodes per center. Each of the three data centers independently calculates SPX, and S&P DJI monitors for consistency of values. Alerts are generated if these values are not consistent the three data centers. Should there be an issue with the feed from any one node, S&P DJI can switch over to a different node within the site or to a new site. S&P DJI conducts ongoing tests between their three data centers, and performs independent internal SPX modeling to detect any aberrations.

The Exchange did consider the fact that, while S&P DJI's index computations are conducted and made available from all three geographic locations with delivery through separate communications lines, there is no completely independent backup maintained for SPX, which remains a single point of failure. S&P DJI has responded that it intends to establish an independent index calculation to be conducted and maintained by a separate, independent entity thus further reinforcing redundancy and resiliency of the calculation.

For the foregoing reasons, the Working Group concluded, and the Exchange agrees, that SPX remains an appropriate product to use as the MWCB reference. Neither the Working Group nor the Exchange recommend changing to another index or product as a reference value.

4. The Change Implemented in Amendment 10 to the Plan To Address Extraordinary Market Volatility (the ''Limit Up/Limit Down Plan'' or ''LULD Plan'') Did Not Likely Have any Negative Impact on MWCB Functionality

The Working Group concluded that the change implemented in Amendment 10 to the Plan to Address Extraordinary Market Volatility (the ''Limit Up/Limit Down Plan'' or ''LULD Plan'') did not likely have any negative impact on MWCB functionality. The Exchange adopts and agrees with this conclusion, for the reasons set out below and in the Study.

The Working Group considered the number of LULD Trading Pauses experienced on days with MWCB Halts, noting that the elimination of double-wide bands for all securities during the first 15 minutes of trading went into effect on February 24, 2020. On March 9 and March 12—the first two days with early morning MWCB Halts—there were a combined 101 LULD pauses, only three of which were symbols included in the S&P 500. Of the stocks that had a LULD Trading Pause, 47 were in symbols that opened on a trade, while 54 opened on a quote.

The Working Group also considered whether fewer LULD Trading Pauses would have occurred if exchanges had used the midpoint of opening quotes as the reference price for LULD Trading Pauses instead of using the previous night's closing price (*i.e.,* reversing the change that was implemented in Amendment 10 to the LULD Plan). Of the 101 LULD Trading Pauses on March 9 and March 12, 31 symbols paused within the first 30 seconds, which might have indicated that the prior day's closing price was stale. Of those 31 symbols, however, 15 in fact opened on a trade, indicating that the LULD Trading Pauses were based on Price Bands calculated from same-day trades.

The fact that S&P 500 symbols virtually always open with a trade makes the use of SPX for triggering a MWCB Halt preferable as compared with using a wider index, which may have more component securities paused in LULD Trading Pauses. This led the Working Group to conclude that it was unlikely that the Amendment 10 change had any negative impact on MWCB functionality.[65] The Exchange agrees with this analysis and conclusion.

5. No Changes Should Be Made to the Mechanism To Prevent the Market From Halting Shortly After the Opening of Regular Trading Hours at 9:30 a.m.

The Working Group concluded that no changes should be made to the mechanism to prevent the market from halting shortly after the opening of regular trading hours at 9:30 a.m. The Exchange adopts and agrees with this conclusion, for the reasons set out below and in the Study.

Since three of the MWCB halts were triggered within the five minutes of the 9:30 a.m. start of regular trading hours and before all stocks had opened for regular trading, the Task Force that reviewed these issues in the Summer of 2020 focused on issues relating to the appropriateness of halting the market so soon after its opening. The Task Force considered various theoretical ways to modify the MWCBs such that a halt could be bypassed close to the cash opening. These included:

- Beginning the covered period at a later time, such as 9:45 a.m.;
- Relying on the futures market as being indicative of a 7% level having been breached in advance of the cash open and halting only if the market declines 13%; and
- Using a higher trigger for an initial period, *e.g.,* the first 15 minutes after the open.

At that time, the Task Force did not recommend any modifications of the MWCB process around the open. While several Task Force members initially questioned after the March 9 MWCB event whether halts so early in the day made sense, their views evolved as additional halts occurred over the next two weeks. With the experience of several halt events behind them, market participants became familiar with the mechanism and understood the transparency, certainty, and simplicity that it provides. The Task Force's inquiry subsequently involved identifying whether there were compelling reasons to deviate from the current system that offers familiarity, certainty, and simplicity, such that changing to an unfamiliar, untested, and more complex system could be justified.

Based on its review of the operation of the three MWCB events near the opening of regular trading hours, the Task Force concluded that the current process was not causing any harm that would have justified moving away from it. Specifically, the Task Force concluded:

- Leaving the markets unprotected (or less protected) for the first 15 minutes was not the right outcome for investors, particularly as the first 15 minutes of the day are often the most volatile, and/or when technology issues arise.
- Market participants are already accustomed to the behavior of MWCBs starting at 9:30 a.m. Implementation of any changes would lead to additional market structure complexity and introduce new operational risk to the markets.
- While market volatility in March 2020 may have been discernable before the opening of regular trading hours, which allowed market participants time to prepare for the event, future scenarios may unfold in a manner that is not so easily anticipated—such as when the market moves in response to news breaking right at the open.

The Task Force also noted that the 5% limit-down trigger on the E-mini S&P 500 futures contract limited price transparency at a critical time by preventing the market from more definitively knowing whether the

[65] *See https://www.sec.gov/dera/staff-papers/white-papers/dera_wp_effect_of_amendment_10_of_luld_pilot_plan.*

futures market was trading at a level that indicated an expected 7% halt in the equities market upon their opening. The Task Force, which included representation from CME, believed that it would be beneficial for the limit-down trigger for the E-mini S&P 500 futures contract to be moved to a 7% decline (from 5%) before the equities market open, for the following reasons:

- The E-mini S&P 500 futures contract is the most liquid instrument; a higher limit-down trigger would enhance price discovery and give more certainty to the equity market open; and
- Better alignment of the various traded instruments (*e.g.,* SPY) would enhance price discovery and lead to a more stable opening process.

As such, the Task Force recommended that CME consider moving the limit-down trigger for the E-mini S&P 500 futures contract to a 7% decline, as an initial step. As noted above, CME in fact implemented this recommendation on October 12, 2020. This CME change further reinforced the view that making additional changes to either the 7% MWCB level for equities or changing the time at which the equities markets would begin measuring for MWCB Halts was not warranted.

The Working Group, in revisiting this question, spent considerable time looking at the effectiveness of the auctions that occurred close to the opening and observed the following:

- The auction pricing mechanisms operated effectively.
- The amount of marketable interest in the MWCB reopening auctions was sufficient.
- Effective price discovery occurred, as evidenced by lower post-auction volatility.
- Future scenarios may involve extraordinary volatility event/news at 9:29 a.m., making it preferable for the MWCB triggers to apply from 9:30 a.m. onward.

As a result, the Working Group did not recommend that changes be made to the MWCB halt process around the opening of regular trading hours. The Exchange adopts and agrees with this position.

The Exchange notes that in the 2012 approval order for the Pilot Rules,[66] the Commission queried whether a MWCB should be triggered if a sufficient number of single-stock circuit breakers or LULD price limits were triggered. The Working Group considered this query but concluded, and the Exchange agrees, that ''[t]he LULD Trading Pause data prior to the four MWCB halts in March 2020 does not shed light on the issue. The four March 2020 MWCB halts were preceded by very few LULD Trading Pauses.''[67] The Working Group noted, and the Exchange agrees, that those events ''do not foreclose the possibility . . . that future MWCB Halts may be preceded by numerous LULD Trading Pauses, or that a future episode of numerous LULD Trading Pauses may prompt inquiry into whether a MWCB Halt should have occurred.''[68]

Recommendations of the Working Group

In light of the foregoing conclusions and analysis, the Working Group made four recommendations,[69] set out below, with which the Exchange agrees:

- The Pilot Rules should be made permanent without any changes.
- S&P DJI should establish an independent SPX calculation to be conducted and maintained by a separate, independent entity, to further reinforce redundancy and resiliency of the SPX calculation.
- All markets should take appropriate action to minimize the reporting of trades to the SIP after the imposition of a MWCB halt.
- U.S. exchanges should adopt a rule requiring all designated Regulation SCI firms to participate in at least one Level 1/Level 2 MWCB test each year and to verify their participation via attestation.

Proposal To Make the Pilot Rules Permanent

Consistent with the Working Group's recommendations and the Exchange's analysis above, the Exchange now proposes that the Pilot Rules (*i.e.,* paragraphs (a)–(d) of Rule 7.12) be made permanent. To accomplish this, the Exchange proposes to remove the preamble to Rule 7.12, which currently provides that the rule is in effect during a pilot period that expires at the close of business on October 18, 2021. The Exchange does not propose any changes to paragraphs (a)–(d) of the Rule.

Regarding the Working Group's additional recommendation that SROs adopt a rule requiring all designated Regulation SCI firms to participate in at least one MWCB test each year, the Exchange already requires such participation, as specified in Rule 48(c). In light of the Working Group's recommendation, with which the Exchange agrees, that such MWCB testing rules contain additional specificity about a member organization's attestation regarding such testing, the Exchange proposes to both move this testing obligation from Rule 48(c) to new paragraph (e) of Rule 7.12 and incorporate the recommendations of the Working Group, as follows:

(e) Market-Wide Circuit Breaker (''MWCB'') Testing.

1. Member organizations designated pursuant to paragraphs (b)(1) and (3) of Rule 48 to participate in Exchange Backup Systems and Mandatory Testing are required to participate in at least one MWCB test each year and to verify their participation in that test by attesting that they are able to or have attempted to:

(A) Receive and process MWCB halt messages from the securities information processors (''SIPs'');

(B) receive and process resume messages from the SIPs following a MWCB halt;

(C) receive and process market data from the SIPs relevant to MWCB halts; and

(D) send orders following a Level 1 or Level 2 MWCB halt in a manner consistent with their usual trading behavior. 2.

2. Member organizations not designated pursuant to standards established in paragraphs (b)(1) and (3) of Rule 48 are permitted to participate in any MWCB test.

Implementation Date

The Exchange proposes that these changes would go into effect on October 19, 2021, the day after the expiration of the pilot status of the Pilot Rules.

2. Statutory Basis

The Exchange believes that the proposal to make the Pilot Rules permanent is consistent with Section 6(b) of the Act,[70] in general, and furthers the objectives of Section 6(b)(5) of the Act,[71] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Pilot Rules set out in Rule 7.12 (a)–(d) are an important, automatic mechanism that is invoked to promote stability and investor confidence during periods of significant market stress when securities markets experience broad-based declines. The four MWCB halts that occurred in March 2020 provided the Exchange, the other SROs, and market participants with real-world experience as to how the Pilot Rules actually function in practice. Based on the Working Group's Study and the Exchange's own analysis of those events, the Exchange believes that making the Pilot Rules permanent would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and

[66] *See* Pilot Rules Approval Order, *supra* note 4.

[67] Study, *supra* note 22, at 46.

[68] *Id.*

[69] *See id.* at 46.

[70] 15 U.S.C. 78f(b).

[71] 15 U.S.C. 78f(b)(5).

open market and a national market system, and protect investors and the public interest.

Specifically, the Exchange believes that making the Pilot Rules permanent would benefit market participants, 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 protect investors and the public interest, because the Pilot Rules worked as intended during the March 2020 events. As detailed above, the markets were in communication before, during, and after each of the MWCB Halts that occurred in March 2020. All 9,000+ equity symbols were successfully halted in a timely manner when SPX declined 7% from the previous day's closing value, as designed. The Exchange believes that market participants would benefit from having the Pilot Rules made permanent because such market participants are familiar with the design and operation of the MWCB mechanism set out in the Pilot Rules, and know from experience that it has functioned as intended on multiple occasions under real-life stress conditions. Accordingly, the Exchange believes that making the Pilot Rules permanent would enhance investor confidence in the ability of the markets to successfully halt as intended when under extreme stress.

The Exchange further believes that making the Pilot Rules permanent would benefit market participants, 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 protect investors and the public interest, because the halts that were triggered pursuant to the Pilot Rules in March 2020 appear to have had the intended effect of calming volatility in the market without causing harm. As detailed above, after studying a variety of metrics concerning opening and reopening auctions, quote volatility, and other factors, the Exchange concluded that there was no significant difference in the percentage of securities that opened on a trade versus on a quote for the four days in March 2020 with MWCB Halts, versus the other periods studied. In addition, while the post-MWCB Halt reopening auctions were smaller than typical opening auctions, the size of those post-MWCB Halt reopening auctions plus the earlier initial opening auctions in those symbols was on average equal to opening auctions in January 2020. The Exchange believes this indicates that the MWCB Halts on the four March 2020 days did not cause liquidity to evaporate. Finally, the Exchange observes that while quote volatility was generally higher on the four days in March 2020 with MWCB Halts as compared to the other periods studied, quote volatility stabilized following the MWCB Halts at levels similar to the January 2020 levels, and LULD Trading Pauses worked as designed to address any additional volatility later in the day. From this evidence, the Exchange concludes that the Pilot Rules actually calmed volatility on the four MWCB Halt days in March 2020, without causing liquidity to evaporate or otherwise harming the market. As such, the Exchange believes that making the Pilot Rules permanent would remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

The Exchange believes that that making the Pilot Rules permanent without any changes would benefit market participants, 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 protect investors and the public interest, because the current design of the MWCB mechanism as set out in the Pilot Rules remains appropriate. As detailed above, the Exchange considered whether SPX should be replaced as the reference value, whether the current trigger levels (7%/13%/20%) and halt times (15 minutes for Level 1 and 2 halts) should be modified, and whether changes should be made to prevent the market from halting shortly after the opening of regular trading hours at 9:30 a.m., and concluded that the MWCB mechanism set out in the Pilot Rules remains appropriate, for the reasons cited above. The Exchange believes that public confidence in the MWCB mechanism would be enhanced by the Pilot Rules being made permanent without any changes, given investors' familiarity with the Pilot Rules and their successful functioning in March 2020.

The Exchange believes that proposed paragraph (e) regarding MWCB testing is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Working Group recommended that all cash equities exchanges adopt a rule requiring all designated Regulation SCI firms to participate in MWCB testing, which the Exchange already requires. In approving Rule 48(c) (which was then numbered Ruel [sic] 49(c)), the Commission noted:

> The Commission believes that amending NYSE Rule 49 to require certain member organizations to participate in scheduled MWCB testing would enable the Exchange, participating member organizations, and others to assess the readiness of participating member organizations to respond in the event of unanticipated market volatility. Member organizations required to participate in MWCB testing pursuant to the proposal would be designated as such using the same standards used by the Exchange in determining which member organizations are subject to mandatory Regulation SCI testing. Because these member organizations have been designated by the Exchange as essential to the maintenance of a fair and orderly market, their demonstrated ability to halt and subsequently re-open trading in a manner consistent with the MWCB rules should contribute to the fairness and orderliness of the market for the benefit of all market participants. The Commission therefore believes that the proposal . . . is designed to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and to protect investors and the public interest.[72]

The Exchange believes that moving this testing obligation from Rule 48(c) to proposed Rule 7.12(e) and updating it to reflect the recommendations of the Working Group would remove impediments to and perfect the mechanism of a free and open market and a national market system by highlighting the MWCB testing obligation as a part of the MWCB rules at Rule 7.12. In addition, the Exchange believes that adding specificity, as recommended by the Working Group, that such Regulation SCI firms must attest to their participation in the MWCB testing would promote the stability of the markets and enhance investor confidence in the MWCB mechanism and the protections that it provides to the markets and to investors.

For the foregoing reasons, the Exchange believes that the proposed change is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not intended to address competition, but rather, makes permanent the current MWCB Pilot Rules for the protection of the markets. The Exchange believes that making the current MWCB Pilot Rules permanent would have no discernable burden on competition at all, since the Pilot Rules have already been in effect since 2012

[72] *See* Securities Exchange Act Release No. 83836 (August 13, 2018), 83 FR 41117 (August 17, 2018) (SR–NYSE–2018–31).

and would be made permanent without any changes. Moreover, because the MWCB mechanism contained in the Pilot Rules requires all exchanges and all market participants to cease trading at the same time, making the Pilot Rules permanent would not provide a competitive advantage to any exchange or any class of market participants.

Further, the Exchange understands that upon approval of this proposal, the other SROs will submit substantively identical proposals to the Commission. Thus, the proposed rule change will help to ensure consistency across SROs without implicating any competitive issues.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or *up to 90 days* (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the 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. In addition, the Commission specifically requests comment on the proposed requirements for MWCB testing. The Exchange proposes to require Designated Market Makers and Supplemental Liquidity Providers that have been determined by the Exchange to contribute a meaningful percentage of the Exchange's overall volume, measured on a quarterly or monthly basis, will be required to participate in MWCB testing, though the Exchange may consider other factors in determining the member organizations that will be required to participate in testing. These market participants would be required to participate in at least one MWCB test each year and attest that they can send and receive MWCB halt and resume messages, as well as receive and process market data from the SIPs relevant to MWCBs and send orders following a MWCB Level 1 or Level 2 event. The Commission notes that the proposed testing requirement is designed to assess whether the MWCB infrastructure works as designed. The proposed testing requirement, however, does not contemplate an ongoing assessment of whether the MWCB design (*e.g.,* trigger thresholds, measurement criteria, time of day application) remains appropriate over time, as the market structure evolves, and under various threat scenarios. Do commenters believe that an ongoing assessment of the MWCB design should be conducted? If so, how could such an assessment meaningfully be conducted (*e.g.,* tabletop exercises), understanding that it is difficult to replicate or forecast how market participant would behave during an actual MWCB event? Are commenters aware of ongoing assessment methods in other contexts (*e.g.,* cybersecurity) that could inform how an ongoing assessment of the MWCB could be structured? How frequently should such an assessment be done?

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–NYSE–2021–40 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–NYSE–2021–40. 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–NYSE–2021–40 and should be submitted on or before August 12, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[73]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–15548 Filed 7–21–21; 8:45 am]

BILLING CODE 8011–01–P

[73] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 11470]

Advisory Committee on Historical Diplomatic Documentation—Notice of Virtual Open Meeting

The Advisory Committee on Historical Diplomatic Documentation will meet on August 30, 2021 in a virtual open session to discuss the status of the production of the *Foreign Relations* series and any other matters of concern to the Committee.

The Committee will meet in open session from 10:00 a.m. until noon through a virtual platform TBD. Members of the public planning to attend the virtual meeting should RSVP to Julie Fort at *FortJL@state.gov.* RSVP and requests for reasonable accommodation should be sent not later than August 13, 2021. The platform type and instructions on how to join the virtual meeting will be provided upon receipt of RSVP. Note that requests for reasonable accommodation received after August 13 will be considered but might not be possible to fulfill.

Questions concerning the meeting should be directed to Adam M. Howard, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State,

Office of the Historian, Washington, DC 20372, *history@state.gov.*

Adam M. Howard,

Executive Secretary, Advisory Committee on Historical, Diplomatic Documentation.

[FR Doc. 2021–15558 Filed 7–21–21; 8:45 am]

BILLING CODE 4710–34–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2021–0069]

Petition for Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on May 28, 2021, Dallas Area Rapid Transit (DART) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR parts 229 (Railroad Locomotive Safety Standards), 231 (Railroad Safety Appliance Standards), and 238 (Passenger Equipment Safety Standards), and an exemption from certain requirements of chapter 203, title 49 of the United States Code (U.S.C.). FRA assigned the petition Docket Number FRA–2021–0069.

Specifically, DART requests special approval for certain design elements of its Stadler FLIRT 3 diesel multiple unit (DMU) railcars that do not comply with FRA regulations. DART seeks relief from 49 CFR 229.47(b), *Emergency brake valve;* 231.14(a)(2), (b)–(d), (f), and (g), *Passenger-train cars without end platforms;* and 238.305(c)(5), *Interior calendar day mechanical inspection of passenger cars.* DART also requests that FRA exercise its authority under 49 U.S.C. 20306 to exempt the DMUs from the requirements of 49 U.S.C. 20302, which, in part, mandates that railroad vehicles be equipped with (1) couplers that couple automatically by impact, and are capable of being uncoupled, without individuals having to go between the ends of equipment; and (2) secure sill steps and grab irons or handholds on the vehicle's ends and sides for greater security to individuals coupling and uncoupling the vehicle. *See* 49 U.S.C. 20302(a)(1)(A), (B), and (a)(2).

Section 20306 authorizes FRA to exempt rail equipment from the requirements of 49 U.S.C. chapter 203, including Section 20302, when those requirements ''preclude the development or implementation of more efficient railroad transportation equipment or other transportation innovations under existing law.'' Section 20306 requires FRA to base any such exemption on either (1) findings developed at a hearing, or (2) an agreement between labor and the developer of the equipment.

FRA has previously held Section 20306 hearings for equipment substantially similar to the FLIRT 3 DMUs.[1] The equipment was also proposed to be operated in substantially similar operating environments to that which DART proposes in this docket.[2] As a result, FRA finds that holding a public hearing under Section 20306 in response to DART's current exemption request is not necessary and FRA intends to rely on the findings from these previous hearings when considering DART's current exemption request.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- Website: *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation (DOT), 1200 New Jersey Ave. SE, W12–140, Washington, DC 20590.

Communications received by September 7, 2021 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable. Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. 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 *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2021–15603 Filed 7–21–21; 8:45 am]

BILLING CODE 4910–06–P

[1] *See* FRA Docket Nos. FRA–2019–0066 (Amtrak) and FRA–2019–0068 (Texas Central Railroad); *see also* 85 FR 69700 (Nov. 3, 2020). Both FRA dockets are available for review on *www.regulations.gov.*

[2] *Id.*

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Federal Transit Administration

Notice of Limitation on Claims Against Proposed Public Transportation Project

AGENCY: Federal Railroad Administration (FRA), Federal Transit Administration (FTA), U.S. Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice announces final environmental actions taken by FRA and FTA regarding the Hudson Tunnel Project (Project). The purpose of this notice is to announce publicly the environmental decisions on the subject project and to activate the limitation on any claims that may challenge these final environmental actions.

DATES: A claim seeking judicial review of actions announced herein for the listed public transportation project will be barred unless the claim is filed on or before December 20, 2021.

FOR FURTHER INFORMATION CONTACT:

For FRA: Kathryn Johnson, Attorney-Advisor, Office of Chief Counsel, telephone: (202) 493–0407, email: *kathryn.johnson@dot.gov;* or Amishi Castelli, Northeast Corridor Program Manager, Office of Railroad Policy and Development, telephone: (617) 431–0416, email: *amishi.castelli@dot.gov.*

For FTA: John A. Sautter, Region 2 Counsel, Office of Chief Counsel, telephone: (202) 748–0700, email: *john.sautter@dot.gov;* or Donald Burns, Region 2 Supervisory Transportation Program Specialist, telephone: (212) 668–2203, email: *donald.burns@dot.gov;* or Saadat Khan, Environmental Protection Specialist, Office of Environmental Programs, telephone:

(202) 366–9647, email: *saadat.khan@dot.gov.* FTA Region 2 is located at 1 Bowling Green, Room 428, New York, NY 10004. FTA and FRA Headquarters are located at 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours for both Regional and Headquarters Offices are from 9:00 a.m. to 5:00 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FRA and FTA have taken final agency action by issuing certain approvals for the public transportation project listed below. In accordance with 40 CFR 1506.3 and 23 U.S.C. 139, FRA and FTA issued a final environmental impact statement (FEIS) and record of decision (ROD) on May 28, 2021. All actions on the project, as well as the laws under which such actions were taken, are described in the documentation issued in connection with the project to comply with the National Environmental Policy Act (NEPA) as well as in documents in the FTA environmental project file. Interested parties may find more information on the Project website (*http://www.hudsontunnelproject.com/*) or FRA's website for the Project (*https://railroads.dot.gov/environmental-reviews/hudson-tunnel-project/environmental-impact-statement*).

A summary of the Project that is the subject of this notice follows:

Project name and location: Hudson Tunnel Project, Hudson River passenger rail crossing, Hudson County, New Jersey and New York County, New York.

Project Sponsor: Port Authority of New York and New Jersey, New York, New York.

Project description: The Project involves construction of a two-track tunnel under the Hudson River (the Hudson River Tunnel) and railroad infrastructure in New Jersey and New York connecting the new rail tunnel to the existing Northeast Corridor (NEC), and rehabilitation of the existing North River Tunnel. The new Hudson River Tunnel will have two new tracks extending from the NEC in Secaucus, New Jersey, beneath the Palisades (North Bergen and Union City, New Jersey) and the Hoboken/Weehawken, New Jersey waterfront area, and beneath the Hudson River to connect to the existing tracks in Penn Station New York (PSNY). The new Hudson River Tunnel will be parallel to, and south of, the existing NEC between Secaucus, New Jersey and PSNY. This alignment will extend for a distance of approximately 4.5 miles. New ventilation shafts and associated fan plants will be located above the tunnel in New Jersey and New York for regular and emergency ventilation and emergency access and egress. The western terminus of the new tunnel and related tracks and infrastructure will be at Allied Interlocking, east of County Road in Secaucus, New Jersey and the eastern terminus will be at approximately Ninth Avenue in Manhattan, New York.

This notice applies to all decisions on the Project as of the issuance date of this notice and all laws under which such actions were taken, including, but not limited to, NEPA [42 U.S.C. 4321–4375], Section 4(f) requirements [23 U.S.C. 138, 49 U.S.C. 303], Section 106 of the National Historic Preservation Act [54 U.S.C. 306108], Endangered Species Act [16 U.S.C. 1531], Clean Water Act [33 U.S.C. 1251], Clean Air Act [42 U.S.C. 7401–7671q], the Rivers and Harbors Act of 1899 (33 U.S.C. 403), and the Coastal Zone Management Act of 1972 (16 U.S.C. 1451).

Authority: 23 U.S.C. 139(l)(1).

Jamie P. Rennert,

Director, Office of Infrastructure Investment, Federal Railroad Administration.

Mark A. Ferroni,

Deputy Associate Administrator for Planning and Environment, Federal Transit Administration.

[FR Doc. 2021–15575 Filed 7–21–21; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2021–0074]

Petition for Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on June 30, 2021, the Michigan State Trust for Railway Preservation, Inc. petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 215, Railroad Freight Car Safety Standards. FRA assigned the petition Docket Number FRA–2021–0074.

Specifically, Petitioner requests FRA approval pursuant to 49 CFR 215.203, *Restricted cars,* to continue in service 12 freight cars [1] that are more than 50 years from the date of construction. The cars are primarily used in tourist, historic, and/or excursion operations. Petitioner additionally requests relief from 49 CFR 215.303, *Stenciling of restricted cars,* to preserve the cars' historic appearance. Of the 12 total cars, only three would be used in service this calendar year. Trains containing the cars are currently operated only on the Great Lakes Central Railroad, but in the future, excursions may expand to the Lake State Railway by way of the Huron and Eastern Railroad.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation (DOT), 1200 New Jersey Ave. SE, W12–140, Washington, DC 20590.

Communications received by September 7, 2021 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable. Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. 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 *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.*

[1] Seven of the 12 cars were formerly given special approval in Docket Number FRA–2009–0084. The relief expired on May 15, 2020.

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety Chief Safety Officer.

[FR Doc. 2021–15604 Filed 7–21–21; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

FTA Fiscal Year 2021 Apportionments, Allocations and Program Information

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice provides priorities for programs in Fiscal Year (FY) 2021, announces Coronavirus Response and Relief Supplemental Appropriations Act, American Rescue Plan Act, and full-year apportionments and allocations for grant programs, provides contract authority, and describes plans for several competitive programs.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact John Bodnar, Director of Transit Programs, Office of Program Management, at (202) 366–2053. Please contact the appropriate FTA Regional Office for any specific requests for information or technical assistance. FTA Regional Office contact information is available on FTA's website: *www.transit.dot.gov.* An FTA headquarters contact for each major program area is included in the discussion of that program in the text of this notice. FTA recommends stakeholders subscribe on FTA's website: *www.transit.dot.gov* to receive email notifications when new information is available.

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I. Overview

This document provides notice to stakeholders that FTA is apportioning the full Fiscal Year (FY) 2021 authorized contract authority through September 30, 2021, for FTA formula and competitive programs pursuant to Division L of the Consolidated Appropriations Act, 2021 (Pub. L. 116–260). In addition, Section IV.R of this document includes information about supplemental funding provided in Division M of the Consolidated Appropriations Act, 2021, also known as the Coronavirus Response and Recovery Supplemental Appropriations Act (CRRSAA). Section IV.S of this document includes information about the American Rescue Plan Act of 2021 (ARP). Important information about FTA programs, statutory requirements, and policy priorities is also included in this document.

Division B of the Continuing Appropriations Act, 2021 and Other Extensions Act (Pub. L. 116–159), extended the Federal Transit program authorization at FY 2020 funding levels. For each FTA program, this notice provides information on the FY 2021 authorized funding levels, funding availability, and the period of availability of funds. A separate section provides information on pre-award authority as well as other requirements applicable to FTA programs and grant administration. Finally, the notice includes a reference to tables on FTA's website that show new contract authority apportioned and made available through September 30, 2021.

Information in this document includes references to existing FTA program guidance and circulars. Some information in FTA's guidance documents and circulars may have been superseded by provisions in the Fixing America's Surface Transportation (FAST) Act (Pub. L. 114–94), but these guidance documents and circulars remain a resource for program management in most areas.

II. FY 2021 Funding for FTA Programs

A. Funding Available Under the Consolidated Appropriations Act, 2021

Division L of the Consolidated Appropriations Act, 2021 (Pub. L. 116–260) makes $12.8 billion in funding available for FTA programs in FY 2021. The Consolidated Appropriations Act, 2021, provides $10.15 billion in funding for FY2021 from the Mass Transit Account of the Highway Trust Fund at the amounts authorized under 49 U.S.C. 5338(a), as extended for FY 2021 by division B of Continuing Appropriations Act, 2021 and Other Extensions Act. The Consolidated Appropriations Act, 2021 also provides $2.537 billion in general fund appropriations, including $7.5 million for technical assistance and workforce development grants, $2.014 billion for Capital Investment Grants, $150 million for grants to the Washington Metropolitan Area Transit Authority (WMATA), and $516.22 million for transit infrastructure grants, which includes: $118 million for the Grants for Buses and Bus Facilities Formula Program, $125 million for Buses and Bus Facilities competitive grants, $125 million for Low or No Emissions Grants, $40 million for

Formula Grants for Rural Areas, $40 million for the Section 5340 High Density States Apportionments, $40 million for State of Good Repair Grants, $16.22 million for competitive grants in areas of persistent poverty, $8 million for Passenger Ferry Grants, of which $4 million is for low or no emission ferries, $1 million for the Section 5312 demonstration and deployment of innovative mobility solutions program, $1 million for the Section 5312 accelerating innovative mobility initiative, and $2 million for vehicle testing facilities. Current funding availability for each program is identified in Section IV of this notice and in Table 1 located on FTA's FY 2021 Apportionment web page: *www.transit.dot.gov/funding/apportionments.*

B. Oversight Takedown

Section 5338(f) of title 49, United States Code (all subsequent statutory references are to title 49, United States Code unless otherwise noted) provides for the following oversight takedowns of FTA programs: 0.5 percent of Metropolitan and Statewide Planning funds, 0.75 percent of Urbanized Area Formula Grant funds, 1 percent of Fixed Guideway Capital Investment Grants funds, 0.5 percent of Formula Grants for the Enhanced Mobility of Seniors and Individuals with Disabilities funds, 0.5 percent of Formula Grants for Rural Areas funds, 1 percent of State of Good Repair Formula Grants funds, 0.75 percent of Grants for Buses and Bus Facilities funds, and 1 percent of funds for Capital and Preventive Maintenance Projects grants to the Washington Metropolitan Area Transit Authority. FTA uses the funds to provide necessary oversight activities, such as oversight of the construction of any major capital project receiving Federal public transportation assistance; conducting reviews and audits of State Safety Oversight, drug and alcohol programs, civil rights compliance, procurement systems, management, planning certification, and financial management reviews and audits; evaluating and analyzing of recipient-specific problems and issues; and providing technical assistance to correct deficiencies identified in compliance reviews and audits.

C. FY 2021 Formula Apportionments: Data and Methodology

1. Apportionment Tables

FTA publishes apportionment tables on its website for each program that reflect the funding level in the full-year appropriations act less oversight take-downs, as applicable. FTA has posted tables displaying the funds available to eligible states, tribes, and urbanized areas to *www.transit.dot.gov/funding/apportionments.* This website contains a page listing the apportionment and allocation tables for FY 2021, links to prior year formula apportionment notices and tables, and the National Transit Database (NTD) and Census data used to calculate the FY 2021 apportionments.

2. National Transit Database (NTD) and Census Data Used in the FY 2021 Apportionments

Consistent with past practices, the apportionment calculations for Sections 5307, 5311 (including 5311(c)(1)), 5329, 5337, and 5339 rely on the most-recent transit service data reported to the NTD, which for FY 2021 is the 2019 report year. Where an apportionment is based on the age of the system, the age is calculated as of September 30, 2020, the last day before FY 2021 began. Recipients of Section 5307 or 5311 funds are required to report to the NTD. Additionally, recipients or subrecipients of any other FTA program that own, operate, or manage assets used in public transportation are required to report asset data to the NTD. Further, several transit operators report to the FTA's NTD on a voluntary basis. For the 2019 report year, the NTD includes data from 935 reporters in urbanized areas, 920 of which reported operating transit service. The NTD also includes data from 1,474 providers of rural transit service, which includes 125 Indian Tribes providing transit service.

Data based on the 2010 Census are used to determine population and population density for Section 5303, 5305, 5307 and 5339 programs, as well as population and land area for the 5311 program. The formulas for Sections 5307, 5311, and 5311(c)(1) include tiers where funding is allocated based on the number of persons living in poverty, and the Section 5310 formula program allocates funding based on the population of older adults and people with disabilities. The Census Bureau no longer publishes decennial census data on persons living in poverty and persons with disabilities. As a result, since FY 2013, FTA has used data for these populations based on the most-recent five-year estimates from the Census Bureau's American Community Survey (ACS). The NTD and Census data that FTA used to calculate the apportionments associated with this notice can be found on FTA's website: *www.transit.dot.gov/funding/apportionments.*

The FY 2021 apportionments use data on low-income persons, persons with disabilities, and older adults from the 2014–2018 ACS five-year data set, which was published in December 2019. These data represent the most recent five-year ACS estimates that are available as of October 1 for the year being apportioned. As was the case in prior years, data on low-income persons comes from ACS Tables B17024 and C17002, ''Age by Ratio of Income to Poverty in the Last Twelve Months'' and ''Ratio of Income to Poverty Level in The Past 12 Months'' respectively, and data on people with disabilities under 65 years old comes from ACS Table S1810, ''Disability Characteristics.'' Data on older adults (over 65 years old) comes from ACS Table B01001, ''Sex by Age.''

The Bureau of the Census carried out a decennial census in 2020. Data collected during the decennial census impacts the type and amount of funding that FTA recipients are eligible to receive. The Bureau of the Census is expected to issue a list of Urbanized Areas and population statistics based on 2020 Census data in 2022. Changes to an area's designation as an urban or rural area will change the grant programs for which recipients in that area are eligible. Changes to the size and population of an area may mean that the area will receive more or less formula funding than it received based on 2010 Census data, or may change whether a recipient receives funding directly from FTA or indirectly from a pass-through entity. FTA expects to use 2020 Census data for the apportionment of FY 2023 funds. The apportionment of funds for FY 2022 will continue to be conducted based on Census data and eligibilities from the 2010 Census. Funding for FY 2022 and prior years will continue to be available to grant recipients based on their geographic classification under the 2010 Census for as long as those funds remain available, in accordance with the terms and conditions of those programs.

The coronavirus disease 2019 (COVID–19) pandemic has substantially impacted transit data reported to the NTD for 2020. Many systems expect 2020 ridership to be significantly less than 2019 ridership. For the FY 2022 formula apportionment, FTA will automatically use either all of an agency's 2019 data or all of their 2020 data, whichever is higher, based on the Vehicle Revenue Miles reported. For the FY 2023 formula apportionment, FTA will automatically use either all of an agency's 2019 data or else all of their 2021 data, whichever is higher, based on the Vehicle Revenue Miles reported. An agency does not need to submit a

disaster waiver request to FTA to receive this benefit as it will be automatically applied to every NTD Report. As FTA will use all of a particular year's data for the formula apportionment, some individual data elements might be higher in the alternative year. In some cases, an agency may prefer to use the entire data set from the alternative year, in which case you should contact your NTD analyst when filing your report. FTA also does not guarantee a positive change in apportionment to an Urbanized Area (UZA), State, or Tribal Area from the prior year since that depends not only an agency's own data, but also on the data reported by all other transit systems, as well as on the total amount of appropriations enacted. Recipients should consult FTA's COVID–19 FAQs on the FTA website or contact the NTD Help Desk for the most-recent information on that policy.

III. FY 2021 Program Highlights

A. Emergency Relief Docket

Pursuant to 49 CFR 601.42, in January 2021, FTA established an Emergency Relief Docket for calendar year 2021. After an emergency or major disaster, if FTA requirements impede a recipient's or subrecipient's ability to respond to the emergency or major disaster, a recipient or subrecipient may submit a request for temporary relief from FTA administrative and statutory requirements. A recipient or subrecipient seeking relief must submit a petition for waiver of FTA requirements at *www.regulations.gov* for posting in the docket (FTA–2021–0001). Recipients should discuss a potential request for relief with their FTA Regional Office prior to submitting a docket request to determine if the request is necessary to receive the desired outcome. For additional information on the Emergency Relief Docket, please contact the appropriate FTA Regional Office.

B. Policy Priorities

As FTA implements its programs, it is particularly focused on the following policy priority areas in FY 2021:

1. Supporting the Transit Industry COVID–19 Pandemic Response and Recovery

FTA is dedicated to supporting the transit industry's COVID–19 pandemic response and recovery. FTA will continue to provide guidance, identify areas in which administrative and regulatory waivers will provide relief to the transit industry, and implement programs consistent with the Coronavirus Aid, Relief, and Economic Security (CARES) Act, the Coronavirus Response and Relief Supplemental Appropriations Act (CRRSAA), 2021, the American Rescue Plan Act of 2021 (ARP), and any additional supplemental funding that may become available. For details, please visit *http://www.transit.dot.gov/coronavirus,* section IV.R of this notice, Coronavirus Response and Recovery Supplemental Appropriations Act Transit Infrastructure Grants, and Section IV.S of this notice, American Rescue Plan Act of 2021 Federal Transit Administration Grants, below.

2. Public Transportation Agency Safety Plans

The Public Transportation Agency Safety Plan (PTASP) regulation at 49 CFR part 673 requires certain operators of public transportation systems that receive Federal financial assistance under 49 U.S.C. Chapter 53 to draft and certify a Public Transportation Agency Safety Plan (ASP) by July 20, 2020. On December 11, 2020, FTA issued a Notice of Enforcement Discretion to alert transit agencies that FTA will refrain from taking enforcement action until July 21, 2021 against any FTA recipient or subrecipient subject to the PTASP regulation that is unable to certify that it has established an Agency Safety Plan that complies with the regulation before that date. This Notice superseded the Notice of Enforcement Discretion issued April 22, 2020. During this time, the PTASP Technical Assistance Center will remain available to meet recipients' PTASP technical assistance needs.

a. Applicability

The PTASP regulation applies to all operators of public transportation systems that are recipients and subrecipients of Federal financial assistance under the Urbanized Area Formula Program (49 U.S.C. 5307) and rail transit agencies that are subject to FTA's State Safety Oversight Program. FTA has deferred applicability of part 673 for operators that receive funds only through FTA's Formula Grants for the Enhanced Mobility of Seniors and Individuals with Disabilities Program under 49 U.S.C. 5310 and/or Formula Grants for Rural Areas Program under 49 U.S.C. 5311. In addition, part 673 does not apply to modes of transit service that are subject to the safety jurisdiction of another Federal agency, including passenger ferry operations that are regulated by the United States Coast Guard and commuter rail operations that are regulated by the Federal Railroad Administration.

States must draft and certify ASPs on behalf of small public transportation providers within a State, unless a small provider opts to draft and certify its own ASP and notifies the State that it will do so. A small public transportation provider is a transit operator that meets all of the following requirements:

- Is a recipient or subrecipient of FTA's Urbanized Area Formula Program,
- Operates 100 or fewer vehicles in peak revenue service across all fixed route modes,
- Operates 100 or fewer vehicles in peak revenue service in each non-fixed route mode, and
- Does not operate rail fixed-guideway public transportation.

Regardless of who drafts and certifies an ASP, each transit operator is required to carry out and implement its own ASP.

State Safety Oversight Agencies must review and approve the ASP of each rail transit agency that they oversee.

b. Certifications and Assurances

Applicants for Urbanized Area Formula Program funds, rail transit agencies that are subject to FTA's State Safety Oversight Program, and States that are required to draft and certify an ASP on behalf of a small public transportation provider must certify that they have met the requirements of the PTASP regulation no later than July 20, 2021. The certification requirement does not apply to any applicant that receives financial assistance from FTA exclusively under the Formula Grants for the Enhanced Mobility of Seniors Program (49 U.S.C. 5310), the Formula Grants for Rural Areas Program (49 U.S.C. 5311), or the combination of these two programs.

On December 11, 2020, FTA issued a second Notice of Enforcement Discretion that FTA will refrain from taking enforcement action until July 21, 2021, if any FTA recipient or subrecipient is unable to certify that it has established a compliant Agency Safety Plan. Applicants that receive awards prior to fulfilling their requirements under the PTASP regulation will execute all other relevant certifications and then execute the PTASP certification after the requirements are met, but no later than July 20, 2021. After July 20, 2021, FTA will not process a grant application without the PTASP certification.

For more information on the requirements, please visit the PTASP Technical Assistance Center at *https://www.transit.dot.gov/PTASP-TAC.*

3. Public Transportation Safety Certification Training Program

The Public Transportation Safety Certification Training Program (PTSCTP) regulation at 49 CFR part 672 provides minimum training requirements for designated personnel. Designated personnel have until August 20, 2021, or a later date dependent on designation, to complete initial PTSCTP training requirements and must complete refresher training every two years thereafter. On December 11, 2020, FTA issued a Notice of Enforcement Discretion to alert recipients and designated personnel that FTA will refrain from taking enforcement action until August 21, 2022, against any FTA recipient subject to the PTSCTP regulation that is unable to meet the initial or refresher training requirements before that date.

a. Applicability

The PTSCTP applies to recipients that operate rail transit systems that are subject to the FTA State Safety Oversight (SSO) Program (49 CFR part 674) and their designated personnel, and State Safety Oversight Agencies (SSOA) and their designated personnel. Designated personnel include SSO employees and contractors who conduct safety audits and examinations of rail transit systems and rail transit agency employees and contractors who are directly responsible for safety oversight of rail transit systems.

b. Certifications and Assurances

FTA recipients that operate rail transit systems are subject to the FTA SSO Program and SSOAs are required to annually certify compliance with the PTSCTP regulation.

4. Changes to Title 2, Code of Federal Regulations (2 CFR)

On August 13, 2020, the Office of Management and Budget (OMB) issued updates to multiple Parts of 2 CFR including part 25: Universal Identifier and System for Award Management; part 170: Reporting Sub-award and Executive Compensation Information; a new section, part 183: Never Contract with the Enemy; and part 200: the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. Many of the changes were made to provide clarity and align with other regulations and OMB Circulars; coordinate processes, procedures, and reporting requirements; and better identify requirements from best practices.

Two of the provisions, specifically 2 CFR 200.216 and 200.340, took effect immediately. Section 200.216 prohibits federal award recipients from using government funds to enter into contracts (or extend or renew contracts) for certain telecommunications equipment or services, including, but not limited to, those produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). Section 200.340 describes specific reasons federal awarding agencies, pass-through entities, and non-federal entity recipients may terminate awards or parts of an award.

The remainder of the provisions became effective for new awards and additional funding applied to existing awards on November 12, 2020. The requirements of 2 CFR part 200 are incorporated into FTA awards through the Master Agreement and annual Certifications and Assurances. For the most part, the changes under 2 CFR part 200 do not substantially change administrative requirements, cost principles and audit requirements as experienced by FTA recipients.

Where FTA Circular 5010.1E references the former administrative requirements or FTA Program Circulars reference specific requirements of 49 CFR parts 18 or 19 (the old Common Rule, since repealed), non-Federal entities should follow the current rule in 2 CFR parts 200 and 1201.

A revision to 2 CFR 200.414 eases conditions for the election of the *de minimis* indirect cost rate. Now, a non-federal entity may elect to use the *de minimis* rate even if the entity previously had a negotiated rate. Applicants and recipients should contact their FTA Regional Transit Office for assistance.

Applicants and recipients are reminded of the need to maintain current registration in the System for Award Management (SAM) and provide requisite or updated information in a timely manner.

Grant closeout is impacted by changes in 2 CFR 200.344. The revision increases from 90 to 120 the number of days that are allowed after the end of the period of performance to complete closeout requirements, submit required reports, and resolve outstanding obligations. The revised 2 CFR 200.344 also specifies that, if a recipient does not submit all required reports within a year of the end of an award's period of performance, FTA must report the recipient's material failure to comply with the terms of the agreement in FAPIIS (the governmentwide integrity and performance system).

5. Other Policy Priorities

FTA will provide additional information on other policy priorities in upcoming Notices of Funding Opportunity relating to specific competitive grant programs. These priorities will be consistent with the objectives of President Biden's Executive Orders, including, but not limited to: Executive Order 13985: Advancing Racial Equity and Support for Underserved Communities Through the Federal Government; Executive Order 13990: Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis; Executive Order 14005: Ensuring the Future Is Made in All of America by All of America's Workers; and Executive Order 14008: Tackling the Climate Crisis at Home and Abroad.

C. Implementation and Oversight of CARES, CRRSAA and ARP Funding

Beginning in FY 2020, and continuing in FY 2021, FTA has made nearly $70 billion in supplemental funding available to assist transit agencies respond to the COVID–19 pandemic. In addition to providing additional financial assistance to transit agencies, the funding made available through the Coronavirus Aid, Relief, and Economic Security (CARES) Act; the Coronavirus Response and Relief Supplemental Appropriations Act (CRRSAA); and American Rescue Plan (ARP) allowed for changes in how recipients use FTA funds. This includes allowing all recipients, regardless of size or urbanized area population, to charge operating expenses to FTA grants at one hundred percent Federal share.

The total amount of funding provided, the elimination of local match requirements, and the expansion of types of expenses (including operating expenses) has created a need for additional technical assistance and oversight. FTA has developed a new approach to oversight of the COVID–19 relief funding that focuses on both technical assistance and supplemental oversight. As technical assistance to the transit industry, FTA will conduct a series of webinars that will focus on helping recipients understand how to calculate and document operating expenses in order to charge them to FTA grants.

In implementing enhanced oversight of COVID–19 relief funds, FTA will incorporate specific focus areas under FTA's existing oversight program as well as supplemental oversight reviews for recipients not scheduled for a Triennial or State Management Review in FY 2021. Supplemental oversight will

entail spot reviews of select recipients to examine expenses charged to FTA grants and documentation of those expenses and may include a review of the recipient's financial systems. This additional oversight will help FTA identify and resolve any issues related to the use of COVID–19 relief funding at an early stage and ensure the proper management and control of the additional funding appropriated to assist transit agencies in recovering from the impacts of COVID–19.

D. FY 2021 Competitive Program Funding

FTA's competitive grant programs and the FY 2021 appropriated funding levels are identified in the chart below. FTA selects projects for funding after issuance of a Notice of Funding Opportunity (NOFO).

FY 2021 competitive programs	Statute 49 U.S.C.	FY 2021 amount ($M)	NOFO published	Applications due
Low or No Emission Grants Competitive Program	5339(c)	$180.00	2/11/2021	4/12/2021
Grants for Buses and Bus Facilities Competitive Program	5339(b)	409.59	TBD	TBD
Passenger Ferry Grant Program	5307(h)	38.00	TBD	TBD
Tribal Transit	5311(c)(1)(A)	5.00	5/27/2021	8/25/2021
Integrated Mobility Innovation	5312	1.00	TBD	TBD
Accelerating Innovative Mobility Challenge Grants	5312	1.00	TBD	TBD
Transit Workforce Technical Assistance Center	5314	2.50	4/9/2021	5/10/2021
Bus Exportable Power Systems	5314	1.00	TBD	TBD
Discretionary Technical Assistance Programs	5314	4.00	TBD	TBD
Areas of Persistent Poverty Grants	Consolidated Appropriations Act, 2021.	16.22	6/30/2021	8/30/2021
Pilot Program for Innovative Coordinated Access and Mobility.	FAST Section 3006(b)	3.50	TBD	TBD
Transit Oriented Development Planning Grants	MAP–21 20005(b)	10.00	4/21/2021	6/21/2021

E. National Defense Authorization Act for FY 2020

Section 7613 of the National Defense Authorization Act for FY 2020 (NDAA) amended 49 U.S.C. 5323 to add subsections (u) Limitation on Certain Rail Rolling Stock Procurements and (v) Cybersecurity Certification for Rail Rolling Stock and Operations. FTA issued guidance to help transit agencies and transit vehicle manufacturers understand and comply with the prohibitions on FTA-funded rolling stock procurements. FTA's NDAA Frequently Asked Questions are based on inquiries from recipients and transit vehicle manufacturers and can be found at *https://www.transit.dot.gov/funding/procurement/frequently-asked-questions-regarding-section-7613-national-defense.*

F. Prompt Notification of Knowledge of Potential Fraud, Waste, or Abuse Occurring on FTA-Funded Project

Section 39(a)(3) of FTA's Master Agreement includes a requirement that a recipient must ''promptly notify'' the U.S. DOT Office of Inspector General (OIG), in addition to the FTA Chief Counsel or applicable Regional Counsel, when it has knowledge of potential fraud, waste, or abuse occurring on an FTA-funded project. ''Knowledge'' includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of any divisions of the recipient, including divisions tasked with law enforcement or investigatory functions. For example, such knowledge includes when a recipient's inspector general, legal counsel, or other responsible office begins an investigation involving a project that has received financial assistance from FTA, or knowledge by a recipient's inspector general, legal counsel, senior management, or executives that such an investigation has been initiated by an outside Federal, state, or local entity.

The Master Agreement defines prompt notification as ''to refer information without delay and without change.'' Unless a recipient can demonstrate extenuating circumstances outside of its control, it should notify the U.S. DOT OIG and FTA Chief Counsel or Regional Counsel within ten (10) business days of the recipient's receipt of such knowledge of potential fraud, waste, or abuse, and this notification should include the project(s) at issue that have received FTA financial assistance.

IV. FY 2021 Program-Specific Information

A. Metropolitan Planning Program (49 U.S.C. 5303 and 5305(d))

Section 5305(d) authorizes Federal funding to support a cooperative, continuous, and comprehensive planning program for transportation investment decision-making at the metropolitan area level. The specific requirements of metropolitan transportation planning are set forth in 49 U.S.C. 5303 and further explained in 23 CFR part 450, as incorporated by reference in 49 CFR part 613, Planning Assistance and Standards. The State DOTs are the designated recipients of Metropolitan Planning Programs (MPP) and State Planning and Research Program (SPRP) funds allocated by FTA, which are then sub-allocated to Metropolitan Planning Organizations (MPOs) for planning activities that support the economic vitality of the metropolitan area. The Secretary has the discretion to award MPP and SPRP assistance to States, authorities of States, MPOs, and local governmental authorities.

Each MPO must establish specific performance targets against system performance measures issued by FTA and the Federal Highway Administration (FHWA) and use these targets in tracking progress towards attaining critical outcomes. The MPO must coordinate with States and transit providers in setting these targets. MPOs must provide a system performance report that evaluates progress in meeting the performance targets in comparison with the system performance identified in prior reports. MPP funding must support work resulting in balanced and comprehensive intermodal transportation planning for the movement of people and goods in the metropolitan area. Comprehensive transportation planning is not limited to transit planning or surface

transportation planning, but also encompasses the relationships among land use and all transportation modes, without regard to the programmatic source of Federal assistance. MPP funds may be used for studies relating to management, mobility management, planning, operations, capital requirements, economic feasibility, performance-based planning, safety, and transit asset management. Funds may be used to develop or update the metropolitan planning agreements, and to evaluate previously funded projects or to conduct peer reviews and exchanges of technical data, information, or assistance, among MPOs and other transportation planners. Funds may be used for planning for multimodal transportation access to transit facilities; system planning; scenario planning; corridor-level alternative analysis; development of federally required documents, including the Transit Asset Management Plan and Public Transportation Agency Safety Plan; safety, security and emergency transportation planning; coordinated public transit human services transportation planning; transportation and air quality planning and conformity analysis; and public participation in the transportation planning, including the development of the Public Participation Plan. An exhaustive list of eligible work activities is provided in FTA Circular 8100.1D, Program Guidance for Metropolitan Planning and State Planning and Research Program Grants, dated September 10, 2018.

For more information about the Metropolitan Planning program, please contact Victor Austin at (202) 366–2996 or victor.austin@dot.gov.

1. Authorized Amounts

Federal public transportation law authorizes $142,036,417 to carry out Section 5305. Of the amounts authorized for Section 5305, 82.72 percent, or $117,492,524, is made available to the Metropolitan Planning Program in FY 2021 to provide financial assistance for metropolitan planning needs under Section 5303.

2. FY 2021 Funding Availability

Under the Consolidated Appropriations Act, 2021, $117,492,524 is available to the Metropolitan Planning Program (Section 5305(d)) to support metropolitan transportation planning activities set forth in Section 5303. The total amount apportioned for the Metropolitan Planning Program to States for use by MPOs in urbanized areas (UZAs) is $116,952,863 as shown in the table below, after the deduction for oversight (authorized by Section 5338) and the addition of reapportioned funds.

METROPOLITAN PLANNING PROGRAM

Total FY 2021 Appropriation Available	$117,492,524
Oversight Deduction	(587,463)
Reapportioned Funds	47,802
Total Apportioned	116,952,863

3. Period of Availability

The Metropolitan Planning program funds apportioned in this notice are available for obligation during FY 2021 plus three additional fiscal years. Funds apportioned in FY 2021 must be obligated in grants by September 30, 2024. Any FY 2021 apportioned funds that remain unobligated at the close of business on September 30, 2024, will revert to FTA for reapportionment under the Metropolitan Planning Program.

B. State Planning and Research Program (49 U.S.C. 5304 and 5305(e))

This program provides financial assistance to States for statewide transportation planning and other technical assistance activities, including supplementing the technical assistance program provided through the Metropolitan Planning Program and planning support for non-urbanized areas. The specific requirements of Statewide transportation planning are set forth in 49 U.S.C. 5304 and further explained in 23 CFR part 450 as referenced in 49 CFR part 613, Planning Assistance and Standards. State DOTs are required to reference performance measures and performance targets within the Statewide Planning process. This funding must support work resulting in balanced and comprehensive intermodal transportation planning for the movement of people and goods and has the same eligibilities as MPP funds.

For more information about the State Planning and Research program, please contact Victor Austin at (202) 366–2996 or victor.austin@dot.gov.

1. Authorized Amounts

Federal public transportation law authorizes $24,543,893 in FY 2021 to provide financial assistance for statewide planning and other technical assistance activities under Section 5305. As specified in law, this represents the 17.28 percent of the amounts available for Section 5305 that are allocated to the Statewide Planning and Research program.

2. FY 2021 Funding Availability

Under the Consolidated Appropriations Act, 2021, $24,543,893 is available for the State Planning and Research Program (Section 5305(e)). The total amount apportioned for the State Planning and Research Program (SPRP) is $26,189,795 as shown in the table below, after the deduction for oversight (authorized by Section 5338) and the addition of reapportioned funds.

STATEWIDE TRANSPORTATION PLANNING PROGRAM

Total FY 2021 Appropriation Available	$24,543,893
Oversight Deduction	(122,719)
Reapportioned Funds	1,768,621
Total Apportioned	26,189,795

States' apportionments for this program are displayed in Table 2.

3. Period of Availability

The State Planning and Research program funds apportioned in this notice are available for obligation during FY 2021 plus three additional fiscal years. Accordingly, funds apportioned in FY 2021 must be obligated in grants by September 30, 2024. Any FY 2021 apportioned funds that remain unobligated at the close of business on September 30, 2024 will revert to FTA for reapportionment under the State Planning and Research Program.

C. Urbanized Area Formula Program (49 U.S.C. 5307)

The Urbanized Area Formula Program provides financial assistance to designated recipients in urbanized areas (UZAs) for capital investments in public transportation systems, planning, job access and reverse commute projects, and, in some cases, operating assistance. FTA apportions funds for this program through a statutory formula. Of the amount authorized for Section 5307 each year, $30 million is set aside for the competitive Passenger Ferry Grant Program (Ferry program), as authorized under 49 U.S.C. 5307(h). The Ferry program offers financial assistance to public ferry systems in urbanized areas for capital projects. Projects are selected annually through a funding competition. Additionally, 0.5 percent will be apportioned to eligible States for State Safety Oversight (SSO) program grants, and 0.75 percent will be set aside for program oversight. Further information on the 0.5 percent apportionment to States for the State Safety Oversight Program is provided in section IV.M. of this notice.

For more information about the Urbanized Area Formula Program,

contact Alexandria Burns at (202) 366–7464 or alexandria.burns@dot.gov.

For more information about the Ferry program, contact Vanessa Williams at (202) 366–4818 or vanessa.williams@dot.gov.

1. Authorized Amounts

Federal public transportation law authorizes $4,929,452,499 in FY 2021 to provide financial assistance for urbanized areas under Section 5307.

2. FY 2021 Funding Availability

Under the Consolidated Appropriations Act, 2021, $4,929,452,499 is available for the Urbanized Area Formula Program. The total amount apportioned is $5,375,259,282, which includes the addition of reapportioned funds and amounts apportioned to UZAs pursuant to the Section 5340 Growing States and High-Density States Formula factors. This amount to UZAs excludes the set-aside of $30 million for the Ferry program, apportionments under the State Safety Oversight Program, and oversight (authorized by Section 5338), as shown in the table below. A total of $38 million is available for the Ferry program, consisting of the $30 million set-aside noted here, plus an additional $8 million appropriated in the Consolidated Appropriations Act, 2021.

URBANIZED AREA FORMULA PROGRAM

Total FY 2021 Appropriation Available	[a] $4,929,452,499
Oversight Deduction	(36,970,894)
State Safety Oversight Program	(24,647,262)
Ferry Discretionary Program	(30,000,000)
5340 High Density States	309,364,074
5340 Growing States	214,889,744
Reapportioned Funds	13,171,121
Total Apportioned	5,375,259,282

[a] Includes 1.5 percent set-aside for Small Transit Intensive Cities Formula

Table 3 displays the amounts apportioned under the Urbanized Area Formula Program.

3. Period of Availability

Funds made available under the Urbanized Area Formula Program are available for obligation during the year of apportionment plus five additional years. Accordingly, funds apportioned in FY 2021 must be obligated by September 30, 2026. Any FY 2021 apportioned funds that remain unobligated at the close of business on September 30, 2026 will revert to FTA for reapportionment under the Urbanized Area Formula Program.

Funds allocated under the Ferry program have the same period of availability as Section 5307. Accordingly, funds allocated in FY 2021 must be obligated by September 30, 2026. Any of the funds allocated in FY 2021 that remain unobligated at the close of business on September 30, 2026 will revert to FTA for reallocation under the Ferry program. Competitive Ferry program funds are available for obligation during the FY in which funds are allocated/awarded to projects plus five additional years.

D. Fixed Guideway Capital Investment Grants Program (49 U.S.C. 5309)

The Capital Investment Grants (CIG) Program includes four types of eligible projects: New Starts projects, Small Starts projects, Core Capacity Improvement projects, and Programs of Inter-related Projects. Funding is provided for construction of: (1) New fixed guideway systems or extensions to existing fixed guideway systems such as rapid rail (heavy rail), commuter rail, light rail, streetcar, hybrid rail, trolleybus (using overhead catenary), cable car, passenger ferries, and bus rapid transit operating on an exclusive transit lane for the majority of the corridor length during peak periods that also includes features that emulate the services provided by rail fixed guideway, including defined stations, traffic signal priority for public transit vehicles, and short headway bi-directional service for a substantial part of weekdays and weekends; (2) corridor-based bus rapid transit service that does not operate on an exclusive transit lane but includes features that emulate the services provided by rail fixed guideway, including defined stations, traffic signal priority for public transit vehicles, and short headway bi-directional services for a substantial part of weekdays; (3) projects that expand the capacity by at least 10 percent in an existing fixed guideway corridor that is at capacity today or will be in five years; and (4) programs of two or more interrelated projects as described above that have logical connectivity with one another and will all begin construction in a reasonable timeframe. A separate funding program authorized by the FAST Act Section 3005(b) allows for an Expedited Project Delivery Pilot Program.

For more information about the Capital Investment Grants Program contact Elizabeth Day, Office of Capital Project Development, at (202) 366–5159 or elizabeth.day@dot.gov. For more information about the Expedited Project Delivery Pilot Program, contact Mark Ferroni, Office of Planning and Environment, at (202) 366–3233 or mark.ferroni@dot.gov. For information about published allocations for both the CIG and EPD programs contact Eric Hu, Office of Transit Programs, at (202) 366–0870 or eric.hu@dot.gov.

1. Authorized Amounts

Federal public transportation law authorizes $2,301,785,760 in FY 2021 to provide financial assistance for Capital Investment Grants under Section 5309 and Section 3005(b) of the FAST Act.

2. FY 2021 Funding Availability

Under the Consolidated Appropriations Act, 2021, $2,014,000,000 is available for the Capital Investment Grants Program and the FAST Act Section 3005(b) Expedited Project Delivery Pilot Program. The funds are available to be allocated in the following amounts: $1,169,000,000 for New Starts projects; $525,000,000 for Core Capacity projects; $200,000,000 for Small Starts projects; $100,000,000 for FAST Act Section 3005(b) Expedited Project Delivery Pilot Program projects and $20,000,000 for Oversight. The total amount available for projects is $1,994,000,000 as shown in the table below, after the deduction for oversight (authorized by Section 5338).

CAPITAL INVESTMENT GRANTS PROGRAM

Total FY 2021 Appropriation Available	$2,014,000,000
Oversight Deduction	(20,000,000)
Total Apportioned	1,994,000,000

3. Period of Availability

Capital Investment Grants and Expedited Delivery Pilot program funds apportioned in this notice must be obligated in grants by September 30, 2024, as stipulated by the Consolidated Appropriations Act, 2021.

E. Formula Grants for the Enhanced Mobility of Seniors and Individuals With Disabilities Program (49 U.S.C. 5310)

The Section 5310 Enhanced Mobility of Seniors and Individuals with Disabilities Program provides formula funding to States and urbanized areas for meeting the transportation needs of older adults and people with disabilities when the public transportation service provided is unavailable, insufficient, or inappropriate to meet these needs. The program aims to improve mobility for seniors and individuals with disabilities by removing barriers to transportation service and expanding transportation mobility options. The Pilot Program for Innovative Coordinated Access and Mobility Program (Pilot Program) was

established by Section 3006(b) of the FAST Act. The purpose of the program is to assist in financing innovative projects for the transportation disadvantaged that improve the coordination of transportation services and non-emergency medical transportation (NEMT) services, including, for example, the deployment of coordination technology, and projects that create or increase access to community One-Call/One-Click Centers.

For more information about the Enhanced Mobility of Seniors and Individuals with Disabilities Program, please contact Destiny Buchanan at (202) 493–8018 or destiny.buchanan@dot.gov.

1. Authorized Amounts

Federal public transportation law authorizes $285,574,688 in FY 2021 to provide formula funding to designated recipients and States for meeting the transportation needs of older adults and people with disabilities. The law also authorizes $3.5 million for the competitive Innovative Coordinated Access and Mobility Pilot Program.

2. FY 2021 Funding Availability

Under the Consolidated Appropriations Act, 2021, $285,574,688 is available for the Section 5310 formula program. The total amount apportioned is $292,921,581 after the oversight deduction and the addition of reapportioned funds as shown in the table below. A total of $3,500,000 is available for the competitive Pilot Program.

FORMULA GRANTS FOR THE ENHANCED MOBILITY OF SENIORS AND INDIVIDUALS WITH DISABILITIES PROGRAM

Total FY 2021 Appropriation Available	$285,574,688
Oversight Deduction	(1,427,873)
Reapportioned Funds	8,744,766
Total Apportioned	292,921,581

3. Period of Availability

The Enhanced Mobility of Seniors and Individuals with Disabilities program funds apportioned in this notice are available for obligation during FY 2021 plus two additional fiscal years. Accordingly, funds apportioned in FY 2021 must be obligated in grants by September 30, 2023. Any FY 2021 apportioned funds that remain unobligated at the close of business on September 30, 2023, will revert to FTA for reapportionment among the States and urbanized areas.

F. Formula Grants for Rural Areas Program (49 U.S.C. 5311)

The Formula Grants for Rural Areas Program provides formula funding to States and Indian tribes to support public transportation in areas with a population of less than 50,000. Funding may be used for capital, operating, planning, job access and reverse commute projects, and State administration expenses. Eligible subrecipients include State and local governmental authorities, Indian Tribes, private non-profit organizations, and private intercity bus companies. Indian Tribes are also eligible direct recipients under the Formula Grants for Rural Areas Program, both for funds apportioned to the States and for projects apportioned or competitively selected to be funded with funds set aside from the Tribal Transit Program.

For more information about the Formula Grants for Rural Areas Program, please contact Elan Flippin at (202) 366–3800 or elan.flippin@dot.gov.

1. Authorized Amounts

Federal public transportation law authorizes $673,299,658 for FY 2021 to provide financial assistance for rural areas under the Formula Grants for Rural Areas Program. This amount includes $35 million for the Tribal Transit Program; $20 million for the Appalachian Program; $13,465,993 for the Rural Transit Assistance Program; and $604,833,665 for the Rural Formula Program.

2. FY 2021 Funding Availability

Under the Consolidated Appropriations Act, 2021, $644,033,664 is available for the Rural Area Formula Program, including an additional $40 million from the transit infrastructure grants appropriation. The total amount apportioned to the program is $728,734,295 as shown in the table below, after the addition of reapportioned funds, the addition of Section 5340(c) Growing States funds, and the oversight deduction authorized by Section 5338.

GRANTS FOR RURAL AREAS FORMULA PROGRAM

Total FY 2021 Appropriation Available	$644,033,664
Oversight Deduction	(3,566,498)
5340 Growing States	85,779,099
Reapportioned Funds	2,488,030
Total Apportioned	728,734,295

3. Period of Availability

The Formula Grants for Rural Areas program funds apportioned in this notice are available for obligation during FY 2021 plus two additional fiscal years. Accordingly, funds apportioned in FY 2021 must be obligated in grants by September 30, 2023. Any FY 2021 apportioned funds that remain unobligated at the close of business on September 30, 2023, will revert to FTA for reapportionment under the Formula Grants for Rural Areas Program.

G. Rural Transportation Assistance Program (49 U.S.C. 5311(b)(3))

This program provides funding to assist in the design and implementation of training and technical assistance projects, research, and other support services tailored to meet the needs of transit operators in rural areas.

For more information about Rural Transportation Assistance Program (RTAP), please contact Elan Flippin at (202) 366–3800 or elan.flippin@dot.gov.

1. Authorized Amounts

Federal public transportation law authorized $13,465,993, or two percent of the funds made available for the Formula Grants for Rural Areas Program, to be made available for the Rural Transportation Assistance Program (RTAP). Of the two percent takedown, 15 percent is reserved for the National Rural Transit Assistance Program (NRTAP). The remainder is available for allocation to the States.

2. FY 2021 Funding Availability

Under the Consolidated Appropriations Act, 2021, $14,265,993 is available for the RTAP. The total amount apportioned for RTAP is $12,126,094 as shown in the table below, after the deduction for NRTAP.

RURAL TRANSPORTATION ASSISTANCE PROGRAM (RTAP)

Total FY 2021 Appropriation Available	$14,265,993
National RTAP	(2,139,899)
Total Apportioned	12,126,094

3. Period of Availability

The RTAP funds apportioned in this notice are available for obligation during FY 2021 plus two additional fiscal years. Accordingly, funds apportioned in FY 2021 must be obligated in grants by September 30, 2023.

H. Appalachian Development Public Transportation Assistance Program (49 U.S.C. 5311(c)(2))

This program is a take-down under the Formula Grants for Rural Areas Program to provide additional funding to support public transportation in the

Appalachian region. There are thirteen eligible States that receive an allocation under this provision. The State allocations are shown in the Formula Grants for Rural Areas Program table posted on FTA's website on the FY 2021 Apportionments page.

For more information about the Appalachian Development Public Transportation Assistance Program, please contact Elan Flippin at (202) 366–3800 or elan.flippin@dot.gov.

1. Authorized Amounts

Federal public transportation law authorizes $20 million in FY 2021 as a take-down under the Formula Grants for Rural Areas program to support public transportation in the Appalachian region.

2. FY 2021 Funding Availability

Under the Consolidated Appropriations Act, 2021, $20 million is available.

APPALACHIAN DEVELOPMENT PUBLIC TRANSPORTATION ASSISTANCE PROGRAM

Total FY 2021 Appropriation Available	$20,000,000
Total Apportioned	20,000,000

3. Period of Availability

The Appalachian program funds apportioned in this notice are available for obligation during FY 2021 plus two additional fiscal years, consistent with that established for the Formula Grants for Rural Areas Program. Accordingly, funds apportioned in FY 2021 must be obligated in grants by September 30, 2023.

I. Public Transportation on Indian Reservations Program (49 U.S.C. 5311(c)(1))

The Public Transportation on Indian Reservations Program, or Tribal Transit Program (TTP), totals $35 million, of which $30 million is for a formula program and $5 million is for a competitive grant program. It is funded as a takedown from funds made available for the Formula Grants for Rural Areas program. Formula factors include vehicle revenue miles and the number of low-income individuals residing on tribal lands (defined as American Indian Areas and Alaska Native Areas). Eligible direct recipients are federally recognized Indian tribes and Alaskan Native Villages providing public transportation in rural areas. The TTP funds are allocated for grants to eligible recipients for any purpose eligible under Formula Grants for Rural Areas Program, which includes capital, operating, planning, and job access and reverse commute projects.

For more information about the Tribal Transit Program, contact Destiny Buchanan at (202) 493–8018 or destiny.buchanan@dot.gov.

1. Authorized Amounts

Federal public transportation law authorizes $35 million in FY 2021 to provide assistance to tribes through the Public Transportation on Indian Reservations formula and competitive programs.

2. FY 2021 Funding Availability

Under the Consolidated Appropriations Act, 2021, $30 million is available for the formula program and $5 million for the competitive program. The total apportioned for the formula program is $30,766,775 after the addition of reapportioned funds.

PUBLIC TRANSPORTATION ON INDIAN RESERVATIONS PROGRAM FORMULA GRANTS

Total FY 2021 Appropriation Available	$30,000,000
Reapportioned Funds	766,775
Total Apportioned	30,766,775

PUBLIC TRANSPORTATION ON INDIAN RESERVATIONS PROGRAM COMPETITIVE GRANTS

Total FY 2021 Appropriation Available	$5,000,000
Total Apportioned	5,000,000

3. Period of Availability

The TTP formula program funds apportioned in this notice are available for obligation during FY 2021 plus two additional fiscal years. Accordingly, funds apportioned in FY 2021 must be obligated in grants by September 30, 2023. Any FY 2021 apportioned funds that remain unobligated at the close of business on September 30, 2023, will revert to FTA for reapportionment under the TTP formula program. Competitive TTP funds are available for obligation during the FY in which funds are awarded to projects plus two additional years.

J. Public Transportation Innovation (49 U.S.C. 5312)

Public Transportation Innovation is FTA's research program with the overarching statutory goal to improve public transportation. The law specifies research focus areas, including providing more effective and efficient public transportation service; mobility management; system capacity; advanced vehicle design; asset maintenance; construction and project management; environment and energy efficiency; and safety improvements. FTA may make grants, enter into contracts, cooperative agreements, and other agreements to carry out research, innovative development, demonstration, and deployment projects, and evaluation and research projects of national significance to public transportation.

Within this section are three distinct programs: (a) A Research, Development, Demonstration, Deployment, and Evaluation program (49 U.S.C. 5312(b)–(e)); (b) a Low or No Emission Vehicle Component Assessment Program (LoNo-CAP) (49 U.S.C. 5312(h)); and (c) a Transit Cooperative Research Program (49 U.S.C. 5312(i)). Eligible recipients can be departments, agencies, and governmental agencies, including Federal laboratories; State and local entities; providers of public transportation; private or non-profit organizations; institutions of higher education; and technical community colleges. Each program area has specific requirements relating to the type of organization that may receive a grant or enter an agreement.

The types of research eligible for funding are broad and include: Opportunities to enhance public transportation operational effectiveness and efficiency; improve services; leverage new types of vehicle technologies; utilize transformative technologies to improve public transportation; field new mobility models; and support increased safety.

In FY 2021, there are two additional provisions to further innovative mobility. The first is for the demonstration and deployment of innovative mobility solutions for the development of software to facilitate the provision of demand-response public transportation service that dispatches public transportation fleet vehicles through riders' mobile devices or other advanced means. Any software developed as part of this project will be shared for use by public transportation agencies. The second provision provides funding for a competitive accelerating innovative mobility initiative that will improve mobility and enhance the rider experience with a focus on innovative service delivery models, creative financing, novel partnerships, and integrated payment solutions.

For more information about the Public Transportation Innovation Program (Sections 5312(b)–(e) and 5312(i)), please contact Adrianne Malasky, Office

of Research, Demonstration and Innovation at (202) 366–5496 or adrianne.malasky@dot.gov.

For more information about the LoNo-CAP program (Section 5312(h)), please contact Terrell Williams at (202) 366–0232 or terrell.williams@dot.gov.

1. Authorized Amounts

Federal public transportation law authorizes $30 million in FY 2021 funding for the Public Transportation Innovation Program.

2. FY 2021 Funding Availability

Under the Consolidated Appropriations Act, 2021, $30 million is available for the Public Transportation Innovation Program. The total amounts apportioned to each subcomponent of the program is shown below in the table.

PUBLIC TRANSPORTATION INNOVATION PROGRAM

Research, Development, Demonstration, Deployment, & Evaluation Innovative Mobility Solution	$20,000,000
Discretionary Projects Innovative Mobility Solutions	1,000,000
Accelerating Innovative Mobility Initiative	1,000,000
Low or No Emission Vehicle Component Testing	3,000,000
Transit Cooperative Research Program (TCRP)	5,000,000
Total Apportioned	30,000,000

3. Period of Availability

FTA establishes the period in which the funds must be obligated to each project. If the funds are not obligated within that time, they revert to FTA for reallocation under the program.

K. Technical Assistance and Workforce Development (49 U.S.C. 5314)

1. Authorized Amounts

FTA's Technical Assistance and Workforce Development Program has the overarching goals to provide public transportation service more effectively and efficiently; and improve public transportation. Within this section, there are four different types of programs: Technical assistance; standards; training; and human resources. The National Transit Institute (NTI) is funded under this section (49 U.S.C. 5314(c)) to develop and conduct training and educational programs for Federal, State, and local transportation employees, United States citizens, and foreign nationals engaged or to be engaged in Government-aid public transportation work.

For FY 2021, Congress has directed $2.5 million for a Transit Workforce Development Technical Assistance Center, and $1.5 million for a technical assistance center to assist small urban, rural, and tribal public transit recipients and planning organizations with applied innovation and capacity building.

2. FY 2021 Funding Availability

In FY 2021 under the Consolidated Appropriations Act, 2021, $16.5 million is available for the Technical Assistance and Workforce Development program, as shown in the table below. Of the available amounts, $5 million is available for NTI.

TECHNICAL ASSISTANCE AND WORKFORCE DEVELOPMENT

Total FY 2021 Appropriation Available	$16,500,000
Total Apportioned	16,500,000

3. Period of Availability

FTA establishes the period in which the funds must be obligated to each project. If the funds are not obligated within that time, they revert to FTA for reallocation under the program.

For more information about the Technical Assistance and Workforce Program, contact Adrianne Malasky, Office of Research, Demonstration and Innovation at (202) 366–5496 or adrianne.malasky@dot.gov.

L. Public Transportation Emergency Relief Program (49 U.S.C. 5324)

The Public Transportation Emergency Relief Program (49 U.S.C. 5324) assists transit providers with the costs of responding to, recovering from, and preparing for natural disasters. This program does not receive an annual appropriation, and funds that are periodically appropriated by Congress are typically made available through a discretionary grant process.

For more information about the Emergency Relief Program, please contact Thomas Wilson at (202) 366–5279 or thomas.wilson@dot.gov.

M. State Safety Oversight Formula Program (49 U.S.C. 5329)

The State Safety Oversight Formula Program provides funding to support States with rail fixed guideway public transportation systems (rail transit systems) to develop and carry out State Safety Oversight (SSO) Programs consistent with the requirements of 49 U.S.C. 5329.

For more information about the State Safety Oversight Program, please contact Patrick Nemons at (202) 366–4986 or patrick.nemons@dot.gov.

1. Authorized Amounts

Federal public transportation law authorizes $24,647,262 in FY 2021 to provide funding to support States in developing and carrying out the SSO Program.

2. FY 2021 Funding Availability

Under the Consolidated Appropriations Act, 2021, $28,928,494 is available for the State Safety Oversight (SSO) Formula program, including reapportioned funds, as shown in the table below.

STATE SAFETY OVERSIGHT FORMULA PROGRAM

Total FY 2021 Appropriation Available	$24,647,262
Reapportioned Funds	4,281,232
Total Apportioned	28,928,494

3. Period of Availability

SSO Formula Grant program funds are available for the year of apportionment plus, two additional years. Any FY 2021 funds that remain unobligated at the close of business on September 30, 2023, will revert to FTA for reapportionment under the SSO Formula Grant Program.

N. State of Good Repair Grants Program (49 U.S.C. 5337)

The State of Good Repair Program provides financial assistance to designated recipients in Urbanized Areas (UZAs) with fixed guideway and high-intensity motorbus systems for capital investments that maintain, rehabilitate, and replace aging transit assets and bring fixed guideway and

high intensity motorbus systems into a state of good repair. FTA apportions funds for this program through a statutory formula using data reported to the National Transit Database (NTD).

For more information about the State of Good Repair Program, please contact Eric Hu at (202) 366–0870 or eric.hu@dot.gov.

1. Authorized Amounts

Federal public transportation law authorizes $2,683,798,369 in FY 2021 for the State of Good Repair Program.

2. FY 2021 Funding Availability

Under the Consolidated Appropriations Act, 2021, $2,723,798,369 is available for the State of Good Repair Program, including an additional $40 million from the Transit Infrastructure Grants appropriation. The total amount apportioned is $2,709,868,483 after the deduction for oversight and the addition of reapportioned funds as shown in the table below. Of the total amount apportioned, $2,632,637,232 is apportioned to the High Intensity Fixed Guideway Formula and $77,231,252 is apportioned to the High Intensity Motorbus Formula.

STATE OF GOOD REPAIR GRANTS PROGRAM

Total FY 2021 Appropriation Available	$2,723,798,369
Oversight Deduction	(27,237,984)
Reapportioned Funds	13,308,098
Total Apportioned	2,709,868,483

STATE OF GOOD REPAIR GRANTS PROGRAM

High Intensity Fixed Guideway Formula	$2,632,637,232
High Intensity Motorbus Formula	77,231,252
Total Apportioned	2,709,868,483

3. Period of Availability

The State of Good Repair program funds apportioned in this notice are available for obligation during FY 2021 plus three additional years. Accordingly, funds apportioned in FY 2021 must be obligated in grants by September 30, 2024. Any FY 2021 apportioned funds that remain unobligated at the close of business on September 30, 2024, will revert to FTA for reappointment under the State of Good Repair Program.

O. Grants for Buses and Bus Facilities Program (49 U.S.C. 5339)

The Grants for Buses and Bus Facilities Program provides financial assistance to States, local governmental entities that operate fixed route bus service, and designated recipients for capital investments in public transportation systems to replace, rehabilitate, lease, and purchase buses and related equipment and to construct bus-related facilities, including technological changes or innovations to modify low or no emission vehicles or facilities. Funding is provided through Section 5339(a) formula allocations, Section 5339(b) competitive grants, and Section 5339(c) competitive low or no emission grants.

For more information about the Grants for Buses and Bus Facilities Formula Program, please contact Alexandria Burns at (202) 366–7464 or alexandria.burns@dot.gov. For more information about the competitive Low or No Emissions Grant Program, please contact Amy Volz at (202) 366–7484 or amy.volz@dot.gov. For more information about the Grants for Buses and Bus Facilities Competitive Program please contact Thomas Wilson at (202) 366–5279 or thomas.wilson@dot.gov.

1. Authorized Amounts

Federal public transportation law authorizes $808,653,915 in FY 2021 to provide financial assistance for Grants for Buses and Bus Facilities. Of this amount, $464,609,736 is authorized for the Grants for Buses and Bus Facilities Formula program and $344,044,179 for the Grants for Buses and Bus Facilities Competitive program, of which $55 million is available for the Low or No Emissions program.

2. Funding Availability

Under the Consolidated Appropriations Act, 2021, $1,176,653,915 is available for Grants for Buses and Bus Facilities. Of this amount: $592,868,755 is available for the Grants for Buses and Bus Facilities Formula Program after the deduction for oversight and the addition of reapportioned funds; $409,588,848 is available for the Grants for Buses and Bus Facilities Competitive Program after the takedown for oversight; and $180 million is available for the Low or No Emission Grants Program. These amounts are detailed in the table below.

FORMULA GRANTS FOR BUSES AND BUS FACILITIES

Total FY 2021 Appropriation Available	$582,609,736
Oversight Deduction	(4,369,573)
Reapportioned Funds	14,628,592
Total Apportioned	592,868,755
Competitive Grants for Buses and Bus Facilities	
Total FY 2021 Appropriation Available	594,044,179
Oversight Deduction	(4,455,331)
Less Section 5339(c) Low or No Emission Grants (Competitive)	(180,000,000)
Total Apportioned	409,588,848
Section 5339(c) Low or No Emission Grants (Competitive)	
Total FY 2021 Appropriation Available	180,000,000
Total Apportioned	180,000,000

3. Period of Availability

The Buses and Bus Facilities program formula funds apportioned in this notice are available for obligation during FY 2021 plus three additional years. Accordingly, funds apportioned in FY 2021 must be obligated in grants by September 30, 2024. Any FY 2021 apportioned funds that remain

unobligated at the close of business on September 30, 2024, will revert to FTA for reapportionment under the Buses and Bus Facilities Formula Program. Competitive Section 5339(b) and 5339(c) funds are available for obligation during the FY in which funds are allocated to projects plus three additional years.

P. Growing States and High-Density States Formula Factors (49 U.S.C. 5340)

Federal public transportation law authorizes the use of formula factors to distribute additional funds to the Section 5307 Urbanized Area Formula program and Section 5311 Formula Grants for Rural Areas program for growing States and high-density States. FTA will continue to publish single urbanized and rural apportionments that show the total amount for Section 5307 and 5311 programs that includes Section 5340 apportionments for these programs.

For more information about this program, please contact Alexandria Burns at (202) 366–7464 or alexandria.burns@dot.gov.

1. Authorized Amounts

Federal public transportation law authorizes $570,032,917 for apportionment in FY 2021 for the Growing States and High-Density States Formula factors.

2. FY 2021 Funding Availability

Under the Consolidated Appropriations Act, 2021, $610,032,917, including an additional $40 million from the transit infrastructure grants appropriation, is available for the Growing States and High-Density States formula.

GROWING STATES AND HIGH-DENSITY STATES FORMULA FACTORS

Growing States	$300,668,843
High-Density States	309,364,074
Total Apportioned	610,032,917

3. Basis for Formula Apportionment

Under the Growing States portion of the Section 5340 formula, FTA projects each State's 2025 population by comparing each State's apportionment year population (as determined by the Census Bureau) to the State's 2010 Census population and extrapolating to 2025 based on each State's rate of population growth between 2010 and the apportionment year. Each State receives a share of Growing States funds based on its projected 2025 population relative to the nationwide projected 2025 population.

Once each State's share is calculated, funds attributable to that State are divided into an urbanized area allocation and a non-urbanized area allocation based on the percentage of each State's 2010 Census population that resides in urbanized and non-urbanized areas. Urbanized Areas receive portions of their State's urbanized area allocation based on the 2010 Census population in that urbanized area relative to the total 2010 Census population in all urbanized areas in the State. These amounts are added to the Urbanized Area's Section 5307 apportionment. The States' rural area allocation is added to the allocation that each State receives under the Formula Grants for Rural Areas Program.

The High-Density States portion of the Section 5340 formula are allocated to urbanized areas in States with a population density equal to or greater than 370 persons per square mile. Based on this threshold and 2010 Census data, the States that qualify are Maryland, Delaware, Massachusetts, Connecticut, Rhode Island, New York, and New Jersey. The amount of funds provided to each of these seven States is allocated based on the population density of the individual State relative to the population density of all seven States. Once funds are allocated to each State, funds are then allocated to urbanized areas within the States based on an individual urbanized area's population relative to the population of all urbanized areas in that State.

Q. Washington Metropolitan Area Transit Authority Grants

The Consolidated Appropriations Act, 2021 provides funding for Washington Metropolitan Area Transit Authority (WMATA) in the amount of $150 million for the agency's Capital Improvement Program and preventive maintenance projects. This funding is administered as if it were provided under section 601 of the Passenger Rail Investment and Improvement Act of 2008.

For more information about the Washington Metropolitan Area Transit Authority Grants Program, please contact Eric Hu, Office of Transit Programs, at (202) 366–0870 or eric.hu@dot.gov, Daniel Koenig, Region III Office, at (202) 366–8224 or daniel.koening@dot.gov, or Kelly Tyler, Region III Office, at (202) 366–3267 or kelly.tyler@dot.gov.

1. FY 2021 Funding Availability

Under the Consolidated Appropriations Act, 2021, $150 million is available. The total amount available is $148.5 million after the deduction for oversight as shown in the table below.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY GRANTS

Total FY 2021 Appropriation Available	$150,000,000
Oversight Deduction	(1,500,000)
Total Apportioned	148,500,000

2. Period of Availability

Funds appropriated for WMATA under the Consolidated Appropriations Act, 2021 shall remain available until expended.

R. Coronavirus Response and Recovery Supplemental Appropriations Act Transit Infrastructure Grants

1. Funding Availability

Division M of the Consolidated Appropriations Act, 2021 (Pub. L. 116–260)—also known as the Coronavirus Response and Recovery Supplemental Appropriations Act (CRRSAA)—makes $14 billion available to support public transportation in preventing, preparing for, and responding to coronavirus, on top of full-year appropriations. These Transit Infrastructure Grants include $13.26 billion apportioned according to the Urbanized Area Formula Program (49 U.S.C. 5307) and State of Good Repair Program (49 U.S.C. 5337) formulas and administered under the Urbanized Area Formula Program, $678 million apportioned according to the Formula Grants for Rural Areas (49 U.S.C. 5311) formula and administered under the Formula Grants for Rural Areas and Public Transportation on Indian Reservations formula programs, and $50 million apportioned according to the Enhanced Mobility of Seniors and Individuals with Disabilities (49 U.S.C. 5310) formula.

For more information about Urbanized Area Formula CRRSAA Transit Infrastructure grants, please contact Alexandria Burns at (202) 366–7464 or alexandria.burns@dot.gov.

For more information about Rural Area Formula CRRSAA Transit Infrastructure grants, please contact Sarah Clements at (202) 366–3062 or sarah.clements@dot.gov.

For more information about Enhanced Mobility of Seniors and Individuals with Disabilities CRRSAA Transit Infrastructure grants, please contact Marianne Stock at (202) 366–2677 or marianne.stock@dot.gov.

CRRSAA TRANSIT INFRASTRUCTURE GRANTS

Recipients of Urbanized Area Formula Program	$13,271,310,572
Recipients of Formula Grants for Rural Areas	678,654,455
Recipients of Enhanced Mobility of Seniors and Individuals with Disabilities	50,034,973
Program Management and Oversight	(10,000,000)
Total Apportioned	13,990,000,000

2. Apportionment Criteria

CRRSAA provides the following criteria for apportioning Transit Infrastructure grants:

a. Under CRRSAA, $13,261,831,064 is available, after excluding $9,479,508 for oversight, to be administered under the Urbanized Area Formula Program (49 U.S.C. 5307), but apportioned through the formulas of the Urbanized Area Formula and the State of Good Repair (SGR) Programs in the same ratio as funds provided under the Further Consolidated Appropriations Act, 2020 (Pub. L. 116–94; 133 Stat. 2534). When this funding is combined with funding already received under the CARES Act (Pub. L. 116–136; 134 Stat. 599), Congress has limited the total amount an Urbanized Area may receive to 75 percent of its 2018 operating expenses as reported in the National Transit Database; amounts in excess of that will be apportioned among urbanized areas that have not reached 75 percent of their 2018 operating costs between CARES Act funding and that which would otherwise be provided by these Transit Infrastructure grants.

b. Under CRRSAA, $648,169,702 is available, after excluding $30 million for Public Transportation on Indian Reservations and $484,753 for oversight, to be apportioned to recipients eligible under the Formula Grants for Rural Areas Program (49 U.S.C. 5311) in the same ratio as funds provided under the Further Consolidated Appropriations Act, 2020 (Pub. L. 116–94; 133 Stat. 2534). When this funding is combined with funding already received under the CARES Act (Pub. L. 116–136; 134 Stat. 599) for rural operating costs, Congress has limited the total amount a State may receive for rural operating costs to 125 percent of the State's combined 2018 rural operating costs of the recipients and subrecipients in the State; amounts in excess of that will be apportioned among States that have not reached 125 percent of their State's combined rural operating costs for 2018 between CARES Act funding and that which would otherwise be provided by these Transit Infrastructure Grants. The $30 million for the Public Transportation on Indian Reservations formula program is apportioned in the same ratio as funds provided under the Further Consolidated Appropriations Act, 2020 but without a limitation on apportionments based on 2018 operating expenses.

c. Under CRRSAA, $49,999,234 is available, after excluding $35,739 for oversight, to be apportioned to recipients eligible under the Enhanced Mobility of Seniors and Individuals with Disabilities Program (49 U.S. 5310) in the same ratio as funds provided under the Further Consolidated Appropriations Act, 2020 (Pub. L. 116–94; 133 Stat. 2534).

3. Period of Availability

Funds are available to recipients until expended.

4. Further Conditions

The following conditions apply to the funding provided under CRRSAA and unobligated funding previously made available under the CARES Act:

a. Funds are available up to a 100-percent Federal share, at the option of the recipient, as are any unobligated funds previously provided under the Enhanced Mobility of Seniors and Individuals with Disabilities Program (49 U.S.C. 5310) from FY 2021 or earlier.

b. Funds are available for the operating expenses of transit agencies related to the response to the COVID–19 public health emergency, including, beginning on January 20, 2020, reimbursement for operating costs to maintain service and lost revenue due to the COVID–19 public health emergency, including the purchase of personal protective equipment, and paying the administrative leave of operations or contractor personnel due to reductions in service.

c. Funds must be directed, to the maximum extent possible, to payroll and operations of public transit (including payroll and expenses of private providers of public transportation), unless the recipient certifies to the Secretary that the recipient has not furloughed any employees.

d. Operating expenses are not required to be included in a transportation improvement program, long range transportation plan, statewide transportation plan, or a statewide transportation improvement program.

e. Private providers of public transportation are considered eligible subrecipients.

S. American Rescue Plan Act of 2021 Federal Transit Administration Grants

1. Funding Availability

Title III Section 3401 of the American Rescue Plan Act of 2021 (Pub. L. 117–2) (ARP) makes $30.5 billion in supplemental appropriations available to support the transit industry during the COVID–19 pandemic. This funding includes $26 billion for eligible recipients of Urbanized Area Formula Program grants (49 U.S.C. 5307); $275.9 million for eligible recipients of Formula Grants for Rural Areas (49 U.S.C. 5311); $6.3 million for States for the Rural Transit Assistance Program (49 U.S.C. 5311(b)(3)); $30 million for the Public Transit on Indian Reservations Formula Program (49 U.S.C. 5311(c)(1); $5 million for the Public Transit on Indian Reservations Competitive Program (49 U.S.C. 5311(c)(1); $50 million for eligible recipients of the Enhanced Mobility of Seniors and Individuals with Disabilities formula Program (49 U.S.C. 5310); $100 million for Interstate Bus Program (49 U.S.C. 5311(f)) services using the Formula Grants for Rural Areas (49 U.S.C. 5311) formula; $1.675 billion for eligible Capital Investment Grants (49 U.S.C. 5309); $25 million for eligible recipients of the Urbanized Area Formula Program (49 U.S.C. 5307) for planning the restoration of services impacted by the coronavirus public health emergency, to be made available through a NOFO; and $2.2 billion for recipients and subrecipients of the Urbanized Area Formula Program and Formula Grants for Rural Areas that need additional assistance, to be made available through a NOFO. A total of $1.5 million is available to FTA for oversight.

For more information About Urbanized Area Formula ARP Federal Transit Administration grants, please contact Alexandria Burns at (202) 366–7464 or alexandria.burns@dot.gov.

For more information about Rural Area Formula ARP Federal Transit Administration grants, please contact Sarah Clements at (202) 366–3062 or sarah.clements@dot.gov.

For more information about Enhanced Mobility of Seniors and Individuals with Disabilities ARP Federal Transit Administration grants, please contact Destiny Buchanan at (202) 493–8018 or destiny.buchanan@dot.gov.

AMERICAN RESCUE PLAN ACT

Recipients of Urbanized Area Formula Program	$26,086,580,227
Recipients of Formula Grants for Rural Areas	275,869,733
Rural Transit Assistance Program	6,344,280
Tribal Transit Program (formula and discretionary)	35,000,000
Recipients of Enhanced Mobility of Seniors and Individuals with Disabilities	50,000,000
Interstate Bus Program	100,000,000
Recipients of Capital Investment Grant Program	1,675,000,000
Urbanized Area Planning	25,000,000
Additional Assistance (*Discretionary*)	2,207,561,294
Program Management and Oversight	(1,467,770)
Total Apportioned	30,459,887,764

2. Apportionment Criteria

ARP provides the following criteria for apportioning Federal Transit Administration Grants:

a. $26,085,112,457 is available, after excluding $1,467,770 for oversight, to be administered under the Urbanized Area Formula Program (49 U.S.C. 5307) and apportioned using National Transit Database information, such that each urbanized area is apportioned an amount that—when combined with any funding it may have received through the Coronavirus Aid, Relief, and Economic Security (CARES) Act and Coronavirus Response and Relief Supplemental Appropriations Act (CRRSAA) to prevent, prepare for, and respond to coronavirus—is equal to 132 percent of the urbanized area's 2018 operating costs. Any remaining funds are then apportioned to those urbanized areas that had already received 132 percent or more of their 2018 operating expenses through combined CARES Act and CRRSAA funding, such that each receives an apportionment equal to 25 percent of its 2018 operating costs.

b. $275,869,733 is available to be apportioned to recipients eligible under the Formula Grants for Rural Areas Program (49 U.S.C. 5311) and is apportioned as follows. Considering the total amount previously received by a State through the CARES Act and CRRSAA to prevent, prepare for, and respond to coronavirus, States that have already received 150 percent or more of the combined 2018 rural operating costs of the recipients and subrecipients in the State are apportioned 5 percent of 2018 operating costs; States that have already received between 140 and 150 percent of 2018 operating costs are apportioned 10 percent of 2018 operating costs; and States that have received less than 140 percent of 2018 operating costs are apportioned 20 percent of 2018 operating costs.

c. $30,000,000 is available for Public Transportation on Indian Reservations formula grants (49 U.S.C. 5311(c)(1)(B)), and $5,000,000 for Public Transportation on Indian Reservations discretionary grants (49 U.S.C. 5311(c)(1)(A)). The formula funding is distributed according to the same formula and data as the FY 2021 apportionment for the Tribal formula program. The discretionary funds will be made available through a NOFO.

d. $6,344,280 is available to States for purposes eligible under the Rural Transit Assistance Program (49 U.S.C. 5311(b)(3)).

e. $50,000,000 is available to be apportioned to recipients eligible under the Enhanced Mobility of Seniors and Individuals with Disabilities Program (49 U.S.C. 5310) in the same ratio as funds provided under the Further Consolidated Appropriations Act, 2020 (Pub. L. 116–94; 133 Stat. 2534).

f. $1,675,000,000 is available for recipients and subrecipients of the Capital Investment Grant (CIG) (49 U.S.C. 5309) program. Of the total amount appropriated for CIG recipients, $1,250,000,000 is designated for those with New Starts (Section 5309(d)) and Core Capacity (Section 5309(e)) projects that have existing full funding grant agreements and that received allocations for FY 2019 or FY 2020, except those with projects that are open for revenue service. These funds are apportioned based on the non-CIG share of the amounts allocated. Of the total amount appropriated for CIG recipients, $175,000,000 is designated for those with New Starts and Core Capacity projects that have an existing full funding grant agreement and that received an allocation only prior to FY 2019, except those with projects that are open for revenue service. These funds are apportioned based on the non-Capital Investment Grants program share of the amounts allocated, except that no project may receive more than 40 percent of the total $175,000,000 provided. Any funds that remain due to this limitation are apportioned to those projects that do not exceed 40 percent of the total funding. Of the total amount appropriated for CIG projects, $250,000,000 is designated for those with Small Starts (Section 5309(h)) projects.

g. $100,000,000 is available to States to support bus operators that partner with recipients or subrecipients to provide Interstate Bus service under 49 U.S.C. 5311(f). These funds are allocated using the same ratio as the Formula Grants for Rural Areas (49 U.S.C. 5311) FY 2020 appropriations. States that do not have eligible bus operators may use the apportioned funds for any expense eligible under 49 U.S.C. 5311, but these funds are not subject to the exception in 49 U.S.C. 5311(f)(2) that allows the Governor of a recipient states to certify that the state's interstate bus service needs are already being met.

h. $25,000,000 is available to recipients eligible under the Urbanized Area Formula Program (49 U.S.C. 5307) for the planning of public transportation associated with the restoration of services as the coronavirus public health emergency concludes. These funds will be made available through a NOFO.

g. $2,207,561,294 is available to recipients and subrecipients eligible under the Urbanized Area Formula Program (49 U.S.C. 5307) and Formula Grants for Rural Areas Program (49 U.S.C. 5311) that, as a result of the COVID–19 health emergency, require additional assistance for costs related to operations, personnel, cleaning, and sanitization combating the spread of

pathogens on transit systems, and debt service payments incurred to maintain operations and avoid layoffs and furloughs. These funds will be made available through a NOFO no later than 180 days after ARP was enacted.

3. Period of Availability

Funds are available until September 30, 2024, and may not be re-apportioned. Funds must be expended by September 30, 2029. Any funds not disbursed by September 30, 2029, will be deobligated from a grant and returned to the Treasury.

4. Further Conditions

The following conditions apply to the funding provided under ARP:

a. Funds are available up to a 100-percent Federal share, at the option of the recipient.

b. All funds except those for Capital Investment Grants, Rural Transit Assistance Program grants, and Planning Grants are available for the operating expenses of transit agencies to prevent, prepare for, and respond to the coronavirus public health emergency, including, beginning on January 20, 2020: Reimbursement for payroll of public transportation (including payroll and expenses of private providers of public transportation); operating costs to maintain service due to lost revenue as a result of the coronavirus public health emergency, including the purchase of personal protective equipment; and paying the administrative leave of operations or contractor personnel due to reductions in service.

c. Except for Capital Investment grants, Rural Transit Assistance Program grants, and Planning grants, funds must be directed to payroll and operations of public transit (including payroll and expenses of private providers of public transportation), unless the recipient certifies to the Administrator of the Federal Transit Administration that the recipient has not furloughed any employees.

d. Operating expenses are not required to be included in a transportation improvement program, long range transportation plan, statewide transportation plan, or a statewide transportation improvement program.

V. FY 2021 Grants

A. Automatic Pre-Award Authority To Incur Project Costs

1. Caution to New Recipients

While FTA provides pre-award authority to incur expenses before grant award for formula programs, it recommends that first-time grant recipients NOT utilize this automatic pre-award authority without verifying with the appropriate FTA Regional Office that all prerequisite requirements have been met. Commonly, a new recipient may misunderstand pre-award authority conditions and be unaware of all the applicable FTA requirements that must be met in order to be reimbursed for project expenditures incurred in advance of grant award. FTA programs have specific statutory requirements that are often different from those for other Federal grant programs with which new recipients may be familiar. If funds are expended for an ineligible project or activity, or for an eligible activity but at an inappropriate time (*e.g.,* prior to NEPA completion), FTA will be unable to reimburse the project sponsor and, in certain cases, the entire project may be rendered ineligible for FTA assistance.

2. Policy

FTA provides pre-award authority to incur expenses before grant award for certain program areas described below. This pre-award authority allows recipients to incur certain project costs before grant approval and retain the eligibility of those costs for subsequent reimbursement after grant approval. The recipient assumes all risk and is responsible for ensuring that all conditions are met to retain eligibility. This pre-award spending authority permits an eligible recipient to incur costs on an eligible transit capital, operating, planning, or administrative project without prejudice to possible future Federal participation in the cost of the project.

In this notice, FTA provides pre-award authority through the authorization period of the FAST Act, including the extension authorized in the Continuing Appropriations Act, 2021 and Other Extensions Act, plus an additional year (October 1, 2015, through September 30, 2022) for capital assistance under all formula programs, so long as the conditions described below are met.

FTA provides pre-award authority for planning and operating assistance under the formula programs without regard to the period of the authorization. All pre-award authority is subject to conditions and triggers stated below: The actual items of cost associated with the use of pre-award authority are documented in the initial Federal Financial Report (FFR) that is required to be completed prior to the recipient executing the award.

For projects funded by competitive programs, pre-award authority may be granted at the time of project selection.

a. Operating, Planning, or Administrative Assistance

FTA does not impose additional conditions on pre-award authority for operating, planning, or administrative assistance under the formula grant programs. Recipients may be reimbursed for expenses incurred before grant award so long as funds have been expended in accordance with all Federal requirements, would have been allowable if incurred after the date of award, and the recipient is otherwise eligible to receive the funding. In addition to cross-cutting Federal grant requirements, program specific requirements must be met. Designated recipients for Section 5310 funds have pre-award authority for the ten percent of the apportionment they may use for program administration.

b. Transit Capital Projects Other Than Capital Investment Grants

For transit capital projects, the date that costs may be incurred varies depending on the type of activity and its potential to have a significant impact on the human and natural environment as described under conditions in section 3 below.

c. Public Transportation Innovation, Technical Assistance and Workforce Development

Unless provided for in an announcement of project selections, pre-award authority does not apply to Section 5312 Public Transportation Innovation projects or Section 5314 Technical Assistance and Workforce Development projects. Before an applicant may incur costs for activities under these programs, it must first obtain a written Letter of No Prejudice (LONP) from FTA. Information about LONP procedures may be obtained from Lisa Colbert in FTA's Office of Research, Demonstration, and Innovation (TRI): *Lisa.Colbert@dot.gov,* or call 202–366–9261.

3. Conditions

The conditions under which pre-award authority may be utilized are specified below:

a. Pre-award authority is not a legal or implied commitment that the subject project will be approved for FTA assistance or that FTA will obligate Federal funds. Furthermore, it is not a legal or implied commitment that all items undertaken by the applicant will be eligible for inclusion in the project.

b. All FTA statutory, procedural, and contractual requirements must be met.

c. No action will be taken by the recipient that prejudices the legal and

administrative findings that FTA must make in order to approve a project.

d. Local funds expended by the recipient after the date of the pre-award authority will be eligible for credit toward local match or reimbursement if FTA later makes a grant or grant amendment for the project. Local funds expended by the recipient before the date of the pre-award authority will not be eligible for credit toward local match or reimbursement. Furthermore, the expenditure of local funds or the undertaking of certain activities that would compromise FTA's ability to comply with Federal environmental laws (*e.g.,* project implementation activities such as land acquisition, demolition, or construction before the date of pre-award authority) may render the project ineligible for FTA funding.

e. The Federal amount of any future FTA assistance awarded to the recipient for the project will be determined based on the overall scope of activities and the prevailing statutory provisions with respect to the Federal/local match ratio at the time the funds are obligated.

f. For funds to which the pre-award authority applies, the authority expires with the lapsing of the fiscal year funds.

g. When a grant for the project is subsequently awarded, the grant must indicate the use of pre-award authority and an initial Federal Financial Report must be submitted in TrAMS.

h. Environmental Requirements

All Federal environmental requirements must be met at the appropriate time for a project to remain eligible for Federal funding. Designated recipients may incur costs for design and environmental review activities for all formula funded projects from the date of the authorization of the formula funds or for discretionary funded projects other than those funded by the Capital Investment Grants (CIG) program from the date of the announcement of the competitive allocation of funds for the project.

For projects that qualify for a categorical exclusion (CE) pursuant to 23 CFR 771.118(c), designated recipients may start activities and incur costs under pre-award authority for property acquisition, demolition, construction, and acquisition of vehicles, equipment, or construction materials from the date of the authorization of formula funds or the date of the announcement of competitive allocations for the project.

FTA recommends that a grant applicant considering a CE pursuant to 23 CFR 771.118(c) contact the appropriate FTA Regional Office for assistance in determining the proper environmental review process, including other applicable environmental laws, and level of documentation necessary before incurring the above-mentioned costs. This applies especially when the grant applicant believes a c-list CE with construction activities, such as 23 CFR 771.118(c)(8), (9), (10), (12), or (13), applies to its project. If FTA subsequently finds that a project does not qualify for a CE under 23 CFR 771.118(c) and the sponsor has already undertaken activities under pre-award authority, the project will be ineligible for FTA assistance.

For all other non-CIG projects that do not qualify for a CE under 23 CFR 771.118(c), grant applicants may take action and incur costs for property acquisition, demolition, construction, and acquisition of vehicles, equipment, or construction materials from the date that FTA completes the environmental review process required by NEPA and its implementing regulations, 23 U.S.C. 139, and other environmental laws, by its issuance of a 23 CFR 771.118(d) CE determination, a finding of no significant impact (FONSI), a combined final environmental impact statement (FEIS)/record of decision (ROD), or a ROD.

i. Planning and Other Requirements

Formula funds must be authorized or appropriated and competitive project allocations published or announced before pre-award authority can be considered. The requirements that a capital project be included in a locally adopted Metropolitan Transportation Plan, the metropolitan transportation improvement program, and the federally approved statewide transportation improvement program (23 CFR part 450) must be satisfied before the recipient may advance the project beyond planning and preliminary design with non-federal funds under pre-award authority. If the project is located within an EPA-designated non-attainment or maintenance area for air quality, the conformity requirements of the Clean Air Act, 40 CFR part 93, must also be met before the project may be advanced into implementation-related activities under pre-award authority triggered by the completion of the NEPA process. For a planning project to have pre-award authority, the planning project must be included in an MPO-approved UPWP that has been coordinated with the State.

j. Federal procurement procedures, as well as the whole range of applicable Federal requirements (*e.g.,* Buy America, Davis-Bacon Act, and Disadvantaged Business Enterprise) must be followed for projects in which Federal funding will be sought in the future. Failure to follow any such requirements could make the project ineligible for Federal funding. In short, the administrative flexibility allowed by pre-award authority requires a recipient to make certain that no Federal requirements are circumvented.

k. All program specific requirements must be met. For example, projects under Section 5310 must comply with specific program requirements, including coordinated planning. Before incurring costs, recipients are strongly encouraged to consult with the appropriate FTA Regional Office regarding the eligibility of the project for future FTA funds and for questions on environmental requirements, or any other Federal requirements that must be met.

4. Pre-Award Authority for the Fixed Guideway Capital Investment Grants Program

Projects proposed for Section 5309 CIG program funds are required to follow a multi-step, multi-year process defined in law. For New Starts and Core Capacity projects, this process includes three phases: Project development (PD), engineering, and construction. For Small Starts projects, this process includes two phases: PD and construction. After receiving a letter from the project sponsor requesting entry into the PD phase, FTA must respond in writing within 45 days whether the information was sufficient for entry. If FTA's correspondence indicates the information was sufficient and the New Starts, Small Starts or Core Capacity project enters PD, FTA extends pre-award authority at that time to the project sponsor to incur costs for PD activities. PD activities include the work necessary to complete the environmental review process and as much engineering and design activities as the project sponsor believes are necessary to support the environmental review process. Upon completion of the environmental review process with a combined FEIS/ROD, ROD, FONSI, or CE determination by FTA for a New Starts, Small Starts, or Core Capacity Improvement project, FTA extends pre-award authority to the project sponsor to incur costs for as much engineering and design as needed to develop a reasonable cost estimate and financial plan for the project, utility relocation, and real property acquisition and associated relocations for any property acquisitions not already accomplished as a separate project for hardship or protective purposes or right-of-way under 49 U.S.C. 5323(q).

For Small Starts projects, upon completion of the environmental review process and confirmation from FTA that the overall project rating is at least a Medium, FTA extends pre-award authority for vehicle purchases. Upon receipt of a letter notifying a New Starts or Core Capacity project sponsor of the project's approval into the engineering phase, FTA extends pre-award authority for vehicle purchases as well as any remaining engineering and design, demolition, and procurement of long lead items for which market conditions play a significant role in the acquisition price. The long lead items include, but are not limited to, procurement of rails, ties, and other specialized equipment, and commodities.

Please contact the FTA Regional Office for a determination of activities not listed here, but which meet the intent described above. FTA provides this pre-award authority in recognition of the long lead time and complexity involved with purchasing vehicles as well as their relationship to the ''critical path'' project schedule. FTA cautions recipients that do not currently operate the type of vehicle proposed in the project about exercising this pre-award authority. FTA encourages these sponsors to wait until later in the process when project plans are more fully developed. FTA reminds project sponsors that the procurement of vehicles must comply with all Federal requirements, including, but not limited to, competitive procurement practices, the Americans with Disabilities Act, Disadvantaged Business Enterprise program requirements and Buy America. FTA encourages project sponsors to discuss the procurement of vehicles with FTA in regard to Federal requirements before exercising pre-award authority. Because there is not a formal engineering phase for Small Starts projects, FTA does not extend pre-award authority for demolition and procurement of long lead items. Instead, this work must await receipt of a construction grant award or an expedited grant agreement.

a. Real Property Acquisition

As stated above, FTA extends pre-award authority for the acquisition of real property and real property rights for CIG projects (New or Small Starts or Core Capacity) upon completion of the environmental review process for that project. The environmental review process is completed when FTA signs a combined FEIS/ROD, ROD, FONSI, or makes a CE determination. With the limitations and caveats described below, real estate acquisition may commence, at the project sponsor's risk. To maintain eligibility for a possible future FTA grant award, any acquisition of real property or real property rights must be conducted in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) and its implementing regulations, 49 CFR part 24. This pre-award authority is strictly limited to costs incurred: (i) To acquire real property and real property rights in accordance with the URA regulation; and (ii) to provide relocation assistance in accordance with the URA regulation. This pre-award authority is limited to the acquisition of real property and real property rights that are explicitly identified in the draft environmental impact statement (DEIS), FEIS, environmental assessment (EA), or CE documentation, as needed for the selected alternative that is the subject of the FTA-signed combined FEIS/ROD, ROD, FONSI, or CE determination. This pre-award authority regarding property acquisition that is granted at the completion of the environmental review process does not cover site preparation, demolition, or any other activity that is not strictly necessary to comply with the URA, with one exception—namely when a building that has been acquired, vacated, and awaits demolition poses a potential fire safety hazard or other hazard to the community in which it is located, or is susceptible to unauthorized occupants. Demolition of the building is also covered by this pre-award authority upon FTA's written agreement that the adverse condition exists. Pre-award authority for property acquisition is also provided when FTA makes a CE determination for a protective buy or hardship acquisition in accordance with 23 CFR 771.118(d)(3). Pre-award authority for property acquisition is also provided when FTA completes the environmental review process for the acquisition of right-of-way as a separate project in accordance with 49 U.S.C. 5323(q). When a tiered environmental review in accordance with 23 CFR 771.111(g) is used, pre-award authority is NOT provided upon completion of the first-tier environmental document except when the Tier-1 ROD or FONSI signed by FTA explicitly provides such pre-award authority for a particular, identified acquisition. Project sponsors should use pre-award authority for real property acquisition relocation assistance with a clear understanding that it does not constitute a funding commitment by FTA. FTA provides pre-award authority upon completion of the environmental review process for real property acquisition and relocation assistance for displaced persons and businesses in accordance with the requirements of the URA.

b. Reimbursement of Costs Incurred Under Pre-Award Authority

Although FTA provides pre-award authority for property acquisition, long lead items, demolition, utility relocation, and vehicle purchases upon completion of the environmental review process, FTA does not award Federal funding for these activities conducted under pre-award authority until the project receives a CIG program construction grant. This is to ensure that Federal funds are not risked on a project whose advancement into construction is not yet assured.

c. National Environmental Policy Act (NEPA) Activities

NEPA requires that certain projects proposed for FTA funding assistance be subjected to a public and interagency review of the need for the project, its environmental and community impacts, and alternatives to avoid and reduce adverse impacts. Projects of more limited scope also need a level of environmental review to determine whether there are significant environmental impacts or confirmation that a CE applies. FTA's regulation titled ''Environmental Impact and Related Procedures,'' at 23 CFR part 771 states that the costs incurred by a grant applicant for the preparation of environmental documents requested by FTA are eligible for FTA financial assistance (23 CFR 771.105(f)). Accordingly, FTA extends pre-award authority for costs incurred to comply with NEPA regulations and to conduct NEPA-related activities, effective as of the earlier of the following two dates: (1) The date of the Federal approval of the relevant STIP or STIP amendment that includes the project or any phase of the project, or that includes a project grouping under 23 CFR 450.216(j) that includes the project; or (2) the date that FTA approves the project into the project development phase of the CIG program. The grant applicant must notify the appropriate FTA Regional Office to initiate the Federal environmental review process consistent with 23 CFR 771.111. NEPA-related activities include, but are not limited to, public involvement activities, historic preservation reviews, Section 4(f) evaluations, wetlands evaluations, and endangered species consultations. This pre-award authority is strictly limited to costs incurred to conduct the NEPA process and associated engineering, and to prepare environmental, historic preservation

and related documents. When a New Starts, Small Starts, or Core Capacity project is granted pre-award authority for the environmental review process, the reimbursement for NEPA activities conducted under pre-award authority may be sought at any time through Section 5307 (Urbanized Area Formula Program) or the flexible highway programs (*e.g.,* Surface Transportation Program or Congestion Mitigation and Air Quality Improvement Program). Reimbursement from the Section 5309 CIG program for NEPA activities conducted under pre-award authority is provided only for expenses incurred after entry into the project development phase and only once a construction grant agreement is signed. As with any pre-award authority, FTA reimbursement for costs incurred is not guaranteed and recipients may not start activities and incur costs under pre-award authority for property acquisition, demolition, construction, and acquisition of vehicles, equipment, or construction materials until the environmental review process is complete.

d. Other Activities Requiring Letter of No Prejudice (LONP).

Except as discussed in paragraphs a. through c. above, a CIG project sponsor must obtain a written LONP from FTA before incurring costs for any activity not covered by pre-award authority. To obtain an LONP, an applicant must submit a written request accompanied by adequate information and justification to the appropriate FTA Regional Office, as described in B. below.

For more information about the Fixed Guideway Capital Investment Grants program, including LONP policy, real property acquisition, and reimbursement of costs incurred under Pre-Award Authority, contact Elizabeth Day, Office of Capital Project Development, at (202) 366–5159 or elizabeth.day@dot.gov.

For more information about FTA's National Environmental Policy Act (NEPA) activities, contact Megan Blum, Office of Environmental Programs, at (202) 366–0463 or megan.blum@dot.gov.

5. Pre-Award Authority for the Expedited Project Delivery (EPD) Pilot Program

The EPD Pilot Program, as authorized by Section 3005(b) of the Fixing America's Surface Transportation Act (FAST Act), is aimed at expediting delivery of new fixed guideway capital projects, small starts projects, or core capacity improvement projects. Section 3005(b) requires the FTA to notify Congress and the applicant, in writing, within 120 days after the receipt of a complete application, on the decision of the application. FTA will extend pre-award authority for all eligible project costs at the time it is announced that a project has been selected. There is no pre-award authority provided until a project selection announcement is made, and costs incurred prior to project selection are not eligible. Letters of No Prejudice will not be provided for the EPD Pilot Program, as all eligible costs are covered by pre-award authority at the time of project selection.

Although FTA provides pre-award authority for eligible project costs, FTA does not award Federal funding for these activities conducted under pre-award authority until the project receives an EPD construction grant. This is to ensure that Federal funds are not risked on a project whose advancement into construction is not yet assured. To maintain eligibility for a possible future FTA grant award, any acquisition of real property or real property rights must be conducted in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) and its implementing regulations, 49 CFR part 24.

For more information about the Expedited Project Delivery Pilot Program, contact Mark Ferroni, Office of Planning and Environment, at (202) 366–3233 or mark.ferroni@dot.gov.

B. Letter of No Prejudice (LONP) Policy

1. Policy

LONP authority allows an applicant to incur costs on a project utilizing non-Federal resources, with the understanding that the costs incurred subsequent to the issuance of the LONP may be reimbursable as eligible expenses or eligible for credit toward the local match should FTA approve the project for a grant award at a later date. LONPs are applicable to projects and project activities not covered by automatic pre-award authority. The majority of LONPs will be for Section 5309 CIG program projects undertaking activities not covered under automatic pre-award authority. LONPs may be issued for formula funds beyond the life of the current authorization or FTA's extension of automatic pre-award authority; however, the LONP is limited to a five-year period, unless otherwise authorized in the LONP. Receipt of Federal funding under any program is not implied or guaranteed by an LONP.

2. Conditions and Federal Requirements

The conditions and requirements for pre-award authority specified in section V.A.4.b and V.A.4.c above apply to all LONPs for the CIG program. Because project implementation activities may not be initiated before completion of the environmental review process, FTA will not issue an LONP for such activities until the environmental review process has been completed with a combined FEIS/ROD, ROD, FONSI, or CE determination.

3. Request for LONP

Before incurring costs for project activities not covered by automatic pre-award authority, the project sponsor must first submit a written request for an LONP, accompanied by adequate information and justification, to the appropriate regional office and obtain written approval from FTA. FTA approval of an LONP is determined on a case-by-case basis. Federal funding under the CIG program is not implied or guaranteed by an LONP. Specifically, when requesting an LONP, the applicant shall provide the following items:

a. Description of the activities to be covered by the LONP.

b. Justification for advancing the identified activities. The justification should include an accurate assessment of the consequences to the project scope, schedule, and budget should the LONP not be approved.

c. Allocated level of risk and contingency for the activity requested.

C. FY 2021 Annual List of Certifications and Assurances

Section 5323(n) requires FTA to publish annually a list of all certifications required under Chapter 53 concurrently with the publication of this annual apportionment notice. The 2021 version of FTA's Certifications and Assurances is available on FTA's website. FTA cannot make an award or an amendment to an award unless the recipient has executed the latest version of FTA's Certifications and Assurances. FTA encourages recipients of formula funding to execute the new Certifications and Assurances within 90 days of this notice, to prevent any delay to application processing.

D. Civil Rights Requirements

1. Civil Rights Overview

Recipients must carry out provisions of the Americans with Disabilities Act (ADA) of 1990, Section 504 of the Rehabilitation Act of 1973, as amended, and the Department of Transportation's implementing regulations at 49 CFR parts 27, 37, 38, and 39. FTA's ADA

Circular (4710.1) provides guidance for carrying out the regulatory requirements of the ADA. In addition, recipients must regularly prepare and submit in TrAMS civil rights program plans and reports to establish voluntary compliance and document policies and practices in the following areas:

a. Title VI of the Civil Rights Act of 1964: The Department of Transportation's Title VI implementing regulations are found in 49 CFR part 21. FTA's Title VI Circular (4702.1B) provides guidance for carrying out the regulatory requirements and outlines the Title VI program submission process.

b. Disadvantaged Business Enterprise (DBE) program: The Department of Transportation's DBE implementing regulations are found in 49 CFR part 26 and sets forth requirements for implementing the DBE program in good faith and developing and reporting on the triennial DBE goal.

c. Title VII of the Civil Rights Act of 1964, Equal Employment Opportunity (EEO): The Department of Transportation's EEO implementing regulations are found in 49 CFR part 21. FTA's EEO Circular (4704.1A) provides guidance for carrying out the regulatory requirements and outlines the EEO program submission process.

2. Disadvantaged Business Enterprise Program

Recipients are expected to comply with the Disadvantaged Business Enterprise (DBE) regulations, including when exercising pre-award authority and purchasing transit vehicles. The COVID–19 pandemic has created challenges for many, including recipients and small businesses, such as DBEs. The Department of Transportation has emphasized the value and integrity of the DBE program while offering appropriate flexibility to recipients during the COVID–19 pandemic, currently in effect until June 30, 2021. For more information, see: *https://www.transportation.gov/mission/civil-rights/covid-19-guidance.* Recipients will find additional information on DBE in FTA's COVID–19 FAQs CR11, CR12 and CR13 at *www.transit.dot.gov/coronavirus.*

3. Title VI Service Equity Analyses

Under FTA's Title VI Circular (4702.1B), transit providers that operate 50 or more fixed route vehicles in peak service and are located in an urbanized area (UZA) with a population of 200,000 or more must perform a service equity analysis whenever they make a permanent major service change. When a full equity analysis is not required due to the size of the recipient or duration of a change, FTA expects agencies to take steps to ensure changes are equitable and nondiscriminatory.

FTA has not waived Title VI requirements for recipients during the COVID–19 pandemic. In addition to Circular 4702.1B, recipients will find information on equity analysis requirements in FTA's COVID–19 FAQs CR2 and CR15 at *www.transit.dot.gov/coronavirus.*

E. Consolidated Planning Grants

FTA and FHWA planning funds under both the Metropolitan Planning and State Planning and Research Programs can be consolidated into a single consolidated planning grant, awarded by either FTA or FHWA. The Consolidated Planning Grants (CPG) eliminate the need to monitor individual fund sources, if several have been used, and ensures that the oldest funds will always be used first.

Under the CPG, States can report metropolitan planning program expenditures, to comply with the Uniform Guidance 2 CFR part 200, subpart F, for both FTA and FHWA under the Catalogue of Federal Domestic Assistance number for FTA's Metropolitan Planning Program (20.505). Additionally, for States with an FHWA Metropolitan Planning (PL) fund-matching ratio greater than 80 percent, the State can waive the 20 percent local share requirement, with FTA's concurrence, to allow FTA funds used for metropolitan planning in a CPG to be granted at the higher FHWA rate. For some States, this Federal match rate can exceed 90 percent.

States interested in transferring planning funds between FTA and FHWA should contact the FTA Regional Office or FHWA Division Office for more detailed procedures. The FHWA Order 4551.1 dated August 12, 2013, on ''Funding Transfers to Other Agencies and Among Title 23 Programs'' provides guidance and more detailed information. This Order can be found on the FHWA website at: *https://www.fhwa.dot.gov/legsregs/directives/orders/45511.cfm.*

For more information on Consolidated Planning Grants, contact Ann Souvandara, Office of Budget and Policy, FTA, at (202) 366–0649 or ann.souvandara@dot.gov, or Victor Austin at (202) 366–2996 or victor.austin@dot.gov.

F. Grant Application Procedures

All applications for FTA funds should be submitted to the appropriate FTA Office. All applications are filed electronically. FTA continues to award and manage grants and cooperative agreements using the Transit Award Management System (TrAMS). To access TrAMS, contact your FTA Regional Office. Resources on using TrAMS can be found on FTA's website at *https://www.transit.dot.gov/TrAMS.*

FTA regional staff are responsible for working with recipients to review and process grant applications. For an application to be considered complete and ready for FTA to assign a Federal Award Identification Number (FAIN), enabling submission in TrAMS, and submission to the Department of Labor, when applicable, the following requirements must be met:

a. Recipient has registered in the System for Award Management (SAM) and its registration is current with an active status. To register an entity or check the status and renew registration, visit the SAM website at *https://www.sam.gov/SAM.*

b. Recipient's contact information, including Dun and Bradstreet Data Universal Numbering System (DUNS), is correct. To request a DUNS number, call Dun & Bradstreet at 1–866–705–5711 or visit the website at *http://fedgov.dnb.com/webform.*

c. Recipient has properly submitted its annual certifications and assurances.

d. Recipient's Civil Rights submissions are current.

e. Recipient has a Transit Asset Management plan in place that meets the requirements of 49 CFR part 625, or is covered by a compliant Group Plan.

f. Documentation is on file to support recipient's status as either a designated recipient for the program and area or a direct recipient.

g. Funding is available, including any flexible funds included in the budget, and split letters or suballocation letters on file, where applicable, to support the amount requested in the grant application.

h. The activity is listed in a currently approved Transportation Improvement Program (TIP); Statewide Transportation Improvement Program (STIP), or Unified Planning Work Program (UPWP) unless such requirements have been waived for the specific funding and activity type to facilitate response and recovery from the COVID–19 pandemic.

i. All eligibility issues are resolved.

j. Required environmental findings are made.

k. The application contains a well-defined scope of work, including at least one project with accompanying project narratives, at least one budget scope code and one activity line item, Federal and non-Federal funding amounts, and milestones.

l. Major Capital Projects as defined by 49 CFR part 633 ''Project Management Oversight'' must document FTA has reviewed the project management plan and provided approval.

m. Milestone information is complete. FTA will also review status of other open award reports to confirm financial and milestone information is current on other open awards.

n. Recipient has ensured that it has registered to report to the National Transit Database, and that any beneficiaries that provide public transportation service have also registered to report to the National Transit Database. FTA must also provide Congressional notification before awarding competitive grants.

Other important issues that impact FTA grant processing activities in addition to the list above are discussed below.

a. Award Budgets—Scope Codes and Activity Line Items (ALI) Codes; Financial Purpose Codes

FTA uses Scope and ALI Codes in the award budgets to track disbursements, monitor program trends, report to Congress, and to respond to requests from the Inspector General and the Government Accountability Office, as well as to manage grants. The accuracy of the data is dependent on the careful and correct use of codes.

b. Designated and Direct Recipients Documentation

For its formula programs, FTA primarily apportions funds to the designated recipient in the large UZAs (areas over 200,000), or for areas under 200,000 (small UZAs and rural areas), it apportions the funds to the Governor, or its designee (*e.g.,* State DOT). Depending on the program, as described in the individual program sections found in Section IV of this notice, further suballocation of funds may be permitted to eligible recipients who may then apply directly to FTA for the funding as direct recipients.

For the programs in which FTA may make grants to eligible direct recipients, other than the designated recipient(s), recipients are reminded that documentation must be on file to support: (1) The status of the recipient either as a designated recipient or direct recipient; and (2) the allocation of funds to the direct recipient.

Documentation to support existing designated recipients for the UZA must also be on file at the time of the first application in FY 2021. Split letters and/or suballocation letters (Governor's Apportionment letters), must also be on file to support grant applications for direct recipients. Once suballocation letters for FY 2021 funding are finalized, they should be uploaded as part of the application into TrAMS.

The Direct Recipient is required to upload to TrAMS a copy of the suballocation letter (Letter) indicating their allocation of funding, for the appropriate fund program, when the applicant transmits their application for initial review. The Letter must be signed by the Designated Recipient, or as applicable in accordance with their planning requirements. If there are two Designated Recipients, both entities must sign the Letter. The Letter must: (1) Indicate the allocations to the respective Direct Recipients listed in the letter; (2) incorporate language above the signatories to reflect this agreement; and (3) make clear that the Direct Recipient will assume any/all responsibility associated with the award for the funds. When drafting the Letter, Designated Recipients may use the template language below:

> As identified in this Letter, the Designated Recipient(s) authorize the reassignment/reallocation of [enter fund source; *e.g.,* Section 5307 funds] to the Direct Recipient(s) named herein. The undersigned agree to the amounts allocated/reassigned to each direct Recipient. Each Direct Recipient is responsible for its application to the Federal Transit Administration to receive such funds and assumes the responsibilities associated with any award for these funds.

The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

Recipients should refer to applicable regulations and statutes referenced in this document.

Nuria I. Fernandez,

Administrator.

[FR Doc. 2021–15576 Filed 7–21–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Joint notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the OCC, the Board, and the FDIC (the agencies) may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, has approved the agencies' publication for public comment of a proposal to revise and extend the Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031, FFIEC 041, and FFIEC 051), which are currently approved collections of information. The agencies are requesting comment on proposed changes to clarify instructions for reporting of deferred tax assets (DTAs) consistent with a proposed rule on tax allocation agreements and a new item related to the final rule on the standardized approach for counterparty credit risk.

DATES: Comments must be submitted on or before September 20, 2021.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the ''Call Report Revisions,'' will be shared among the agencies.

OCC: You may submit comments, which should refer to ''Call Report Revisions,'' by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Office of the Comptroller of the Currency, Attention: 1557–0081, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

Instructions: You must include ''OCC'' as the agency name and ''1557–0081'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or

supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this information collection beginning on the date of publication of the second notice for this collection by the following method:

• *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Click on the ''Information Collection Review'' link on the ''Information Collection Review'' tab. Underneath the ''Currently under Review'' section heading, from the drop-down menu select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching by OMB control number ''1557–0081.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.

• For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.

Board: You may submit comments, which should refer to ''Call Report Revisions,'' by any of the following methods:

• *Agency Website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at: *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*

• *Email: regs.comments@federalreserve.gov.* Include ''Call Report Reporting Revisions'' 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 on the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information.

FDIC: You may submit comments, which should refer to ''Call Report Revisions,'' by any of the following methods:

• *Agency Website: https://www.fdic.gov/regulations/laws/federal/.* Follow the instructions for submitting comments on the FDIC's website.

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

• *Email: comments@FDIC.gov.* Include ''Call Report Revisions'' in the subject line of the message.

• *Mail:* Manuel E. Cabeza, Counsel, Attn: Comments, Room MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

• *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

• *Public Inspection:* All comments received will be posted without change to *https://www.fdic.gov/regulations/laws/federal/* including any personal information provided. Paper copies of public comments may be requested from the FDIC Public Information Center by telephone at (877) 275–3342 or (703) 562–2200.

Additionally, commenters may send a copy of their comments to the OMB desk officers for the agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503; by fax to (202) 395–6974; or by email to *oira_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For further information about the proposed revisions to the information collections discussed in this notice, please contact any of the agency staff whose names appear below. In addition, copies of the report forms for the Call Reports can be obtained at the FFIEC's website (*https://www.ffiec.gov/ffiec_report_forms.htm*).

OCC: Kevin Korzeniewski, Counsel, Chief Counsel's Office, (202) 649–5490.

Board: Nuha Elmaghrabi, Federal Reserve Board Clearance Officer, (202) 452–3884, Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

FDIC: Manuel E. Cabeza, Counsel, (202) 898–3767, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Report Summary

The agencies propose to extend for three years, with revision, the FFIEC 031, FFIEC 041, and FFIEC 051 Call Reports.

Report Title: Consolidated Reports of Condition and Income (Call Report).

Form Number: FFIEC 031 (Consolidated Reports of Condition and Income for a Bank with Domestic and Foreign Offices), FFIEC 041 (Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only), and FFIEC 051 (Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only and Total Assets Less Than $5 Billion).

Frequency of Response: Quarterly.

Affected Public: Business or other for-profit.

Type of Review: Revision and extension of currently approved collections.

OCC

OMB Control No.: 1557–0081.

Estimated Number of Respondents: 1,090 national banks and federal savings associations.

Estimated Average Burden per Response: 42.10 burden hours per quarter to file.

Estimated Total Annual Burden: 183,556 burden hours to file.

Board

OMB Control No.: 7100–0036.

Estimated Number of Respondents: 728 state member banks.

Estimated Average Burden per Response: 45.62 burden hours per quarter to file.

Estimated Total Annual Burden: 132,845 burden hours to file.

FDIC

OMB Control No.: 3064–0052.

Estimated Number of Respondents: 3,209 insured state nonmember banks and state savings associations.

Estimated Average Burden per Response: 40.13 burden hours per quarter to file.

Estimated Total Annual Burden: 515,109 burden hours to file.

The estimated average burden hours collectively reflect the estimates for the FFIEC 031, the FFIEC 041, and the FFIEC 051 reports for each agency. When the estimates are calculated by type of report across the agencies, the estimated average burden hours per quarter are 86.49 (FFIEC 031), 55.53 (FFIEC 041), and 35.38 (FFIEC 051). The changes to the FFIEC 031, FFIEC 041 and FFIEC 051 Call Report forms and instructions proposed in this notice would not have a material impact on the existing burden estimates. The estimated burden per response for the quarterly filings of the Call Report is an average that varies by agency because of differences in the composition of the institutions under each agency's supervision (*e.g.,* size distribution of institutions, types of activities in which they are engaged, and existence of foreign offices).

Type of Review: Extension and revision of currently approved collections. In addition to the proposed revisions discussed below, Call Reports are periodically updated to clarify instructional guidance and correct grammatical and typographical errors on the forms and instructions, which are published on the FFIEC website.[1] These non-substantive updates may also be commented upon.

Legal Basis and Need for Collections

The Call Report information collections are mandatory: 12 U.S.C. 161 (national banks), 12 U.S.C. 324 (state member banks), 12 U.S.C. 1817 (insured state nonmember commercial and savings banks), and 12 U.S.C. 1464 (federal and state savings associations). At present, except for selected data items and text, these information collections are not given confidential treatment.

Banks and savings associations submit Call Report data to the agencies each quarter for the agencies' use in monitoring the condition, performance, and risk profile of individual institutions and the industry as a whole. Call Report data serve a regulatory or public policy purpose by assisting the agencies in fulfilling their shared missions of ensuring the safety and soundness of financial institutions and the financial system and protecting consumer financial rights, as well as agency-specific missions affecting national and state-chartered institutions, such as conducting monetary policy, ensuring financial stability, and administering federal deposit insurance. Call Reports are the source of the most current statistical data available for identifying areas of focus for on-site and off-site examinations. Among other purposes, the agencies use Call Report data in evaluating institutions' corporate applications, including interstate merger and acquisition applications for which the agencies are required by law to determine whether the resulting institution would control more than 10 percent of the total amount of deposits of insured depository institutions in the United States. Call Report data also are used to calculate institutions' deposit insurance assessments and national banks' and federal savings associations' semiannual assessment fees.

[1] *www.ffiec.gov/forms031.htm; www.ffiec.gov/forms041.htm; www.ffiec.gov/forms051.htm.*

II. Current Actions

A. Deferred Tax Items

Background

On May 10, 2021, the agencies published a proposed rule on Tax Allocation Agreements (Tax NPR).[2] The Tax NPR addresses safety and soundness requirements and appropriate accounting for these agreements. Consistent with the proposed requirements and discussion in the Tax NPR, the agencies propose to revise the Call Report instructions to clarify the Glossary entry for ''Income Taxes'' to address treatment of temporary difference deferred tax items and operating loss and tax credit carryforward deferred tax assets (DTAs).

Temporary Difference Deferred Tax Items

Consistent with the separate entity basis reporting requirement, separating DTAs and deferred tax liabilities (DTLs) from the associated assets or liabilities that gave rise to the deferred tax items would depart from one of the primary objectives related to accounting for income taxes, which is to recognize deferred tax items for the future tax consequences of events that have been recognized in an entity's financial statements or tax returns.[3] The relevant accounting standards specifically state that a temporary difference refers to a difference between the tax basis of an asset or liability and its reported amount in the financial statements that will result in taxable or deductible amounts in future years when the reported amount of the asset or liability is recovered or settled, respectively.[4] More specifically, DTAs are the deferred tax consequences attributable to deductible temporary differences and carryforwards, while DTLs are the deferred tax consequences attributable to taxable temporary differences.[5]

Based on the description of deferred tax items in ASC paragraph 740–10–05–7 and the uncertainty over the actual amounts at which deferred tax items will be settled or realized in future periods, temporary difference deferred tax items should remain on the balance sheet as long as the associated assets or liabilities that give rise to those deferred tax items remain on the balance sheet. Accordingly, an institution's purchase, sale, or other transfer of deferred tax items arising from temporary differences is not acceptable under U.S. generally accepted accounting principles (GAAP) unless these items are transferred in connection with the transfer of the associated assets or liabilities. In the case of timing differences, it may be appropriate to transfer DTAs or DTLs resulting from a timing difference when the underlying asset or liability that created the future tax benefit or obligation is being purchased, sold, or transferred within the consolidated group.[6] In addition, when the DTA or DTL can be realized or is absorbed by the consolidated group in the current period tax return, it would be appropriate to settle or recover the DTA or DTL, respectively.[7] Therefore, the agencies propose to revise the Glossary entry for ''Income Taxes'' to clarify the treatment for transfers of temporary difference deferred tax items as described above.

Operating Loss and Tax Credit Carryforward DTAs

Carryforwards are deductions or credits that cannot be utilized on the tax return during a year that may be carried forward to reduce taxable income or taxes payable in a future year.[8] Thus, in contrast to temporary differences, carryforwards do not arise directly from book-tax basis differences associated with particular assets or liabilities.

GAAP does not require a single allocation method for income taxes when members of a consolidated group issue separate financial statements.[9] The commonly applied ''separate-return'' method, which would reflect DTAs for net operating losses (NOLs) and tax credit carryforwards on a separate return basis, would meet the relevant criteria.[10] Other systematic and rational methods that are consistent with the broad principles established by ASC Topic 740 are also acceptable under GAAP.

As described in detail in **SUPPLEMENTARY INFORMATION** section of the Tax NPR, the agencies have determined that the derecognition by insured depository institutions of DTAs for NOL or tax credit carryforwards in

[2] 86 FR 24755 (May 10, 2021).

[3] Accounting Standards Codification (ASC) Topic 740 ¶ 740–10–10–1 (Fin. Acct. Standards Bd. 2019).

[4] *Id.* ¶ 740–10–05–7.

[5] *Id.* ¶ 740–10–20.

[6] When an asset or liability is transferred outside the consolidated group, the institution would no longer recognize the associated DTA or DTL. The institution would include the tax consequences of the transaction in the calculation of its current period tax expense or benefit.

[7] Under GAAP, a deferred tax item generally becomes a current tax item when it is expected to be used to calculate estimated taxes payable or receivable on tax returns for current and prior years. ASC Topic 740 ¶ 740–10–25–2(a) (Fin. Acct. Standards Bd. 2019).

[8] *Id.* ¶ 740–10–20.

[9] *See id.* ¶ 740–10–30–27 (referring to ASC subtopic 740–10).

[10] *Id.*

the Call Report raises significant supervisory and other concerns. Consistent with that determination, the agencies propose to revise the instructions to clarify that an institution must not derecognize DTAs for NOLs or tax credit carryforwards on its separate-entity regulatory reports prior to the time when such carryforwards are absorbed by the consolidated group.

B. Standardized Approach for Counterparty Credit Risk (SA–CCR)

The agencies are proposing a revision to add a new item to the Call Report forms related to early or voluntary adoption of the standardized approach for counterparty credit risk methodology in the agencies' capital rules.[11]

Background

On January 24, 2020, the agencies issued a final rule [12] (SA–CCR final rule) that amends the regulatory capital rule to implement a new approach for calculating the exposure amount for derivative contracts for purposes of calculating the total risk-weighted assets (RWA), which is called SA–CCR. The final rule also incorporates SA–CCR into the determination of the exposure amount of derivatives for total leverage exposure under the supplementary leverage ratio, and the cleared transaction framework under the capital rule.

Banking institutions that are not advanced approaches institutions may elect to use SA–CCR to calculate standardized total RWA by notifying their appropriate federal supervisor.[13] Advanced approaches institutions are required to use SA–CCR to calculate standardized total RWA starting on January 1, 2022. Advanced approaches institutions may adopt SA–CCR prior to January 1, 2022, but must notify their appropriate federal supervisor of early adoption.[14]

Proposed Change

The agencies are proposing to revise Schedule RC–R, Part I, Regulatory Capital Components and Ratios, on all versions of the Call Report by adding a new line item 31.b, ''Standardized Approach for Counterparty Credit Risk opt-in election.'' The agencies are proposing to add this new item to identify institutions that have chosen to early adopt or voluntarily elect SA–CCR, which would allow for enhanced comparability of the reported derivative data and for better supervision of the implementation of the framework at these institutions. Due to the inherent complexity of adopting SA–CCR, this identification is particularly important for non-advanced approaches institutions that choose to voluntarily adopt SA–CCR.

A non-advanced approaches institution that adopts SA–CCR would enter ''1'' for ''Yes'' in line item 31.b. All other non-advanced approaches institutions would leave this item blank. If a non-advanced approaches institution has elected to use SA–CCR, the institution may change its election only with prior approval of its appropriate federal regulator.[15] An advanced approaches institution that elects to early adopt SA–CCR prior to the January 1, 2022, mandatory compliance date would enter ''1'' for ''Yes'' in line item 31.b. After January 1, 2022, an advanced approaches institution would leave this item blank. This proposed reporting change would take effect starting with the December 31, 2021, Call Report. This item would no longer be applicable to advanced approaches institutions starting with the March 31, 2022, report date.

III. Request for Comment

Public comment is requested on all aspects of this joint notice. Comment is specifically invited on:

(a) Whether the proposed revisions to the collections of information that are the subject of this notice are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimates of the burden of the information collections as they are proposed to be revised, 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 collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this joint notice will be shared among the agencies.

Theodore J. Dowd,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System.

Michelle Taylor Fennell,

Deputy Associate Secretary of the Board.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on July 13, 2021.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2021–15556 Filed 7–21–21; 8:45 am]

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[11] 12 CFR part 3 (OCC); 12 CFR part 217 (Board); 12 CFR part 324 (FDIC).

[12] 85 FR 4362 (Jan. 24, 2020).

[13] 12 CFR 3.34(a)(1)(ii) (OCC); 12 CFR 217.34(a)(1)(ii) (Board); 12 CFR 324.34(a)(1)(ii) (FDIC).

[14] 12 CFR 3.300(g) (OCC); 12 CFR 217.300(h) (Board); 12 CFR 324.300(g) (FDIC).

[15] 12 CFR 3.34(a)(1)(ii) (OCC); 12 CFR 217.34(a)(1)(ii) (Board); 12 CFR 324.34(a)(1)(ii) (FDIC).

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Prompt Payment Interest Rate; Contract Disputes Act

AGENCY: Bureau of the Fiscal Service, Treasury.

ACTION: Notice of prompt payment interest rate; Contract Disputes Act.

SUMMARY: For the period beginning July 1, 2021, and ending on December 31, 2021, the prompt payment interest rate is 1⅛ per centum per annum.

DATES: Effective July 1, 2021, to December 31, 2021.

ADDRESSES: Comments or inquiries may be mailed to: E-Commerce Division, Bureau of the Fiscal Service, 401 14th Street SW, Room 306F, Washington, DC 20227. Comments or inquiries may also be emailed to *PromptPayment@fiscal.treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Thomas M. Burnum, E-Commerce Division, (202) 874–6430; or Thomas Kearns, Senior Counsel, Office of the Chief Counsel, (202) 874–7036.

SUPPLEMENTARY INFORMATION: An agency that has acquired property or service from a business concern and has failed to pay for the complete delivery of property or service by the required payment date shall pay the business concern an interest penalty. 31 U.S.C. 3902(a). The Contract Disputes Act of 1978, Sec. 12, Public Law 95–563, 92 Stat. 2389, and the Prompt Payment Act, 31 U.S.C. 3902(a), provide for the calculation of interest due on claims at the rate established by the Secretary of the Treasury.

The Secretary of the Treasury has the authority to specify the rate by which the interest shall be computed for interest payments under section 12 of the Contract Disputes Act of 1978 and

under the Prompt Payment Act. Under the Prompt Payment Act, if an interest penalty is owed to a business concern, the penalty shall be paid regardless of whether the business concern requested payment of such penalty. 31 U.S.C. 3902(c)(1). Agencies must pay the interest penalty calculated with the interest rate, which is in effect at the time the agency accrues the obligation to pay a late payment interest penalty. 31 U.S.C. 3902(a). ''The interest penalty shall be paid for the period beginning on the day after the required payment date and ending on the date on which payment is made.'' 31 U.S.C. 3902(b).

Therefore, notice is given that the Secretary of the Treasury has determined that the rate of interest applicable for the period beginning July 1, 2021, and ending on December 31, 2021, is 1⅛ per centum per annum.

Matthew J. Miller,

Acting Commissioner, Bureau of the Fiscal Service.

[FR Doc. 2021–15613 Filed 7–21–21; 8:45 am]

BILLING CODE 4810–AS–P

FEDERAL REGISTER

Vol. 86 Thursday,

No. 138 July 22, 2021

Part II

Department of Labor

29 CFR Parts 10 and 23

Increasing the Minimum Wage for Federal Contractors; Proposed Rule

DEPARTMENT OF LABOR

Office of the Secretary of Labor

29 CFR Parts 10 and 23

RIN 1235–AA41

Increasing the Minimum Wage for Federal Contractors

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes regulations to implement an Executive order titled ''Increasing the Minimum Wage for Federal Contractors,'' which was signed by President Joseph R. Biden Jr. on April 27, 2021. The Executive order states that the Federal Government's procurement interests in economy and efficiency are promoted when the Federal Government contracts with sources that adequately compensate their workers. The Executive order therefore seeks to raise the hourly minimum wage paid by those contractors to workers performing work on or in connection with covered Federal contracts to $15.00 per hour, beginning January 30, 2022; and beginning January 1, 2023, and annually thereafter, an amount determined by the Secretary of Labor (Secretary). The Executive order directs the Secretary to issue regulations by November 24, 2021, consistent with applicable law, to implement the order's requirements. This proposed rule therefore establishes standards and procedures for implementing and enforcing the minimum wage protections of the Executive order. As required by the order, the proposed rule incorporates to the extent practicable existing definitions, principles, procedures, remedies, and enforcement processes under the Fair Labor Standards Act of 1938, the Service Contract Act, the Davis-Bacon Act, and the Executive order of February 12, 2014, entitled ''Establishing a Minimum Wage for Contractors,'' as well as the regulations issued to implement that order.

DATES: Interested persons are invited to submit written comments on this notice of proposed rulemaking on or before August 23, 2021.

ADDRESSES: You may submit comments, identified by Regulatory Information Number (RIN) 1235–AA41, by either of the following methods: *Electronic Comments:* Submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the instructions for submitting comments. *Mail:* Address written submissions to Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210. *Instructions:* Please submit only one copy of your comments by only one method. Commenters submitting file attachments on *www.regulations.gov* are advised that uploading text-recognized documents—*i.e.,* documents in a native file format or documents which have undergone optical character recognition (OCR)—enable staff at the Department to more easily search and retrieve specific content included in your comment for consideration. Anyone who submits a comment (including duplicate comments) should understand and expect that the comment will become a matter of public record and will be posted without change to *https://www.regulations.gov,* including any personal information provided. The Wage and Hour Division (WHD) posts comments gathered and submitted by a third-party organization as a group under a single document ID number on *https://www.regulations.gov.* Comments must be received by 11:59 p.m. on August 23, 2021 for consideration in this rulemaking. Commenters should transmit comments early to ensure timely receipt prior to the close of the comment period, as the Department continues to experience delays in the receipt of mail. Submit only one copy of your comments by only one method. *Docket:* For access to the docket to read background documents or comments, go to the Federal eRulemaking Portal at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Amy DeBisschop, Director of the Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210, telephone: (202) 693–0406 (this is not a toll-free number). *Accessible Format:* Copies of this notice of proposed rulemaking may be obtained in alternative formats (Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, large print, braille, audiotape, compact disc, or other accessible format), upon request, by calling (202) 693–0675 (this is not a toll-free number). TTY/TDD callers may dial toll-free (877) 889–5627 to obtain information or request materials in alternative formats.

Questions of interpretation or enforcement of the agency's existing regulations may be directed to the nearest WHD district office. Locate the nearest office by calling the WHD's toll-free help line at (866) 4US–WAGE ((866) 487–9243) between 8 a.m. and 5 p.m. in your local time zone, or log onto WHD's website at *https://www.dol.gov//whd/contact/local-offices* for a nationwide listing of WHD district and area offices.

SUPPLEMENTARY INFORMATION:

I. Background

On April 27, 2021, President Joseph R. Biden Jr. issued Executive Order 14026, ''Increasing the Minimum Wage for Federal Contractors.'' This Executive order explains that increasing the hourly minimum wage paid to workers performing on or in connection with covered Federal contracts to $15.00 beginning January 30, 2022 will ''bolster economy and efficiency in Federal procurement.'' 86 FR 22835. The order builds on the foundation established by Executive Order 13658, ''Establishing a Minimum Wage for Contractors,'' which was signed by President Barack Obama on February 12, 2014. *See* 79 FR 9851. Before discussing Executive Order 14026 in greater detail, the Department provides a high-level summary of the relevant history leading to the issuance of this order.

A. Prior Relevant Executive Orders

On February 12, 2014, President Barack Obama signed Executive Order 13658, ''Establishing a Minimum Wage for Contractors.'' *See* 79 FR 9851. Executive Order 13658 stated that the Federal Government's procurement interests in economy and efficiency are promoted when the Federal Government contracts with sources that adequately compensate their workers. *Id.* Executive Order 13658 therefore sought to increase efficiency and cost savings in the work performed by parties that contract with the Federal Government by raising the hourly minimum wage paid by those contractors to workers performing on or in connection with covered Federal contracts to: (i) $10.10 per hour, beginning January 1, 2015; and (ii) beginning January 1, 2016, and annually thereafter, an amount determined and announced by the Secretary, accounting for changes in inflation as measured by the Consumer Price Index. *Id.* Section 3 of Executive Order 13658 also established a minimum hourly cash wage requirement for tipped employees performing on or in connection with covered contracts, initially set at $4.90 per hour for 2015 and gradually increasing to 70 percent of the full Executive Order 13658 minimum wage over a period of years.

Section 4 of Executive Order 13658 directed the Secretary to issue regulations to implement the order's requirements. *See* 79 FR 9852. Accordingly, after engaging in notice-

and-comment rulemaking, the Department published a final rule on October 7, 2014, to implement the Executive order. *See* 79 FR 60634. The final regulations, set forth at 29 CFR part 10, established standards and procedures for implementing and enforcing the minimum wage protections of the Executive order. Pursuant to the methodology established by Executive Order 13658, the applicable minimum wage rate has increased each year since 2015. Executive Order 13658's minimum wage requirement and its minimum cash wage requirement for tipped employees were most recently increased on January 1, 2021, to $10.95 per hour and $7.65 per hour, respectively. *See* 85 FR 53850.

On May 25, 2018, President Donald J. Trump issued Executive Order 13838, titled ''Exemption from Executive Order 13658 for Recreational Services on Federal Lands.'' *See* 83 FR 25341. Section 2 of Executive Order 13838 amended Executive Order 13658 to add language providing that the provisions of Executive Order 13658 do ''not apply to [Federal] contracts or contract-like instruments'' entered into ''in connection with seasonal recreational services or seasonal recreational equipment rental.'' *Id.* Executive Order 13838 additionally stated that seasonal recreational services include ''river running, hunting, fishing, horseback riding, camping, mountaineering activities, recreational ski services, and youth camps.'' *Id.* Executive Order 13838 further specified that this exemption does not apply to ''lodging and food services associated with seasonal recreational activities.'' *Id.* Executive Order 13838 did not otherwise amend Executive Order 13658. On September 26, 2018, the Department implemented Executive Order 13838 by adding the required exclusion to the regulations for Executive Order 13658 at 29 CFR 10.4(g). *See* 83 FR 48537.

B. Executive Order 14026

On April 27, 2021, President Joseph R. Biden Jr. signed Executive Order 14026, ''Increasing the Minimum Wage for Federal Contractors.'' 86 FR 22835. Executive Order 14026 states that the Federal Government's procurement interests in economy and efficiency are promoted when the Federal Government contracts with sources that adequately compensate their workers. *Id.* Executive Order 14026 therefore seeks to promote economy and efficiency in Federal procurement by raising the hourly minimum wage paid by those contractors to workers performing work on or in connection with covered Federal contracts to (i) $15.00 per hour, beginning January 30, 2022; and (ii) beginning January 1, 2023, and annually thereafter, an amount determined by the Secretary in accordance with the Executive order. *Id.*

Section 1 of Executive Order 14026 sets forth a general position of the Federal Government that increasing the hourly minimum wage paid by Federal contractors to $15.00 will ''bolster economy and efficiency in Federal procurement.'' 86 FR 22835. The order states that raising the minimum wage ''enhances worker productivity and generates higher-quality work by boosting workers' health, morale, and effort; reducing absenteeism and turnover; and lowering supervisory and training costs.'' *Id.* The order further states that these savings and quality improvements will lead to improved economy and efficiency in Government procurement. *Id.*

Section 2 of Executive Order 14026 therefore increases the minimum wage for Federal contractors and subcontractors. 86 FR 22835. The order provides that executive departments and agencies, including independent establishments subject to the Federal Property and Administrative Services Act, 40 U.S.C. 102(4)(A), (5) (agencies), shall, to the extent permitted by law, ensure that contracts and contract-like instruments (collectively referred to as ''contracts''), as described in section 8(a) of the order and defined in this rule, include a particular clause that the contractor and any covered subcontractors shall incorporate into lower-tier subcontracts. 86 FR 22835. That contractual clause, the order states, shall specify, as a condition of payment, that the minimum wage to be paid to workers employed in the performance of the contract or any covered subcontract thereunder, including workers whose wages are calculated pursuant to special certificates issued under section 14(c) of the Fair Labor Standards Act of 1938 (FLSA), 29 U.S.C. 214(c),[1] shall be at least: (i) $15.00 per hour beginning January 30, 2022; and (ii) beginning January 1, 2023, and annually thereafter, an amount determined by the Secretary in accordance with the Executive order. 86 FR 22835. As required by the order, the minimum wage amount determined by the Secretary pursuant to this section shall be published by the Secretary at least 90 days before such new minimum wage is to take effect and shall be (A) not less than the amount in effect on the date of such determination; (B) increased from such amount by the annual percentage increase in the Consumer Price Index (CPI) for Urban Wage Earners and Clerical Workers (United States city average, all items, not seasonally adjusted) (CPI–W), or its successor publication, as determined by the Bureau of Labor Statistics; and (C) rounded to the nearest multiple of $0.05. *Id.*

Section 2 of the Executive order further explains that, in calculating the annual percentage increase in the CPI for purposes of that section, the Secretary shall compare such CPI for the most recent month, quarter, or year available (as selected by the Secretary prior to the first year for which a minimum wage determined by the Secretary is in effect pursuant to this section) with the CPI for the same month in the preceding year, the same quarter in the preceding year, or the preceding year, respectively. 86 FR 22835–36. Pursuant to that section, nothing in the order excuses noncompliance with any applicable Federal or state prevailing wage law or any applicable law or municipal ordinance establishing a minimum wage higher than the minimum wage established under the order. 86 FR 22836.

Section 3 of Executive Order 14026 explains the application of the order to tipped workers. 86 FR 22836. It provides that for workers covered by section 2 of the order who are tipped employees pursuant to section 3(t) of the FLSA, 29 U.S.C. 203(t), the cash wage that must be paid by an employer to such workers shall be at least: (i) $10.50 an hour, beginning on January 30, 2022; (ii) beginning January 1, 2023, 85 percent of the wage in effect under section 2 of the order, rounded to the nearest multiple of $0.05; and (iii) beginning January 1, 2024, and for each subsequent year, 100 percent of the wage in effect under section 2 of the order. 86 FR 22836. Where workers do not receive a sufficient additional amount on account of tips, when combined with the hourly cash wage paid by the employer, such that their total earnings are equal to the minimum wage under section 2 of the order, section 3 requires that the cash wage paid by the employer be increased such that the workers' total earnings equal that minimum wage . *Id.* Consistent with applicable law, if the wage required to be paid under the Service Contract Act (SCA), 41 U.S.C. 6701 *et seq.,* or any other applicable law or regulation is higher than the wage required by section 2 of the order, the employer must pay additional cash

[1] 29 U.S.C. 214(c) authorizes employers, after receiving a certificate from the WHD, to pay subminimum wages to workers whose earning or productive capacity is impaired by a physical or mental disability for the work to be performed.

wages sufficient to meet the highest wage required to be paid. 86 FR 22836.

Section 4 of Executive Order 14026 provides that the Secretary shall, consistent with applicable law, issue regulations by November 24, 2021, to implement the requirements of the order, including providing both definitions of relevant terms and exclusions from the requirements set forth in the order where appropriate. 86 FR 22836. It also requires that, to the extent permitted by law, within 60 days of the Secretary issuing such regulations, the Federal Acquisition Regulatory Council (FARC) shall amend the Federal Acquisition Regulation (FAR) to provide for inclusion of the contract clause described in section 2(a) of the order in Federal procurement solicitations and contracts subject to the order. *Id.* Additionally, section 4 states that within 60 days of the Secretary issuing regulations pursuant to the order, agencies must take steps, to the extent permitted by law, to exercise any applicable authority to ensure that certain contracts—specifically, contracts for concessions and contracts entered into with the Federal Government in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public—entered into on or after January 30, 2022, consistent with the effective date of such agency action, comply with the requirements set forth in sections 2 and 3 of the order. *Id.* The order further specifies that any regulations issued pursuant to section 4 of the order should, to the extent practicable, incorporate existing definitions, principles, procedures, remedies, and enforcement processes under the FLSA, 29 U.S.C. 201 *et seq.;* the SCA; the Davis-Bacon Act (DBA), 40 U.S.C. 3141 *et seq.;* Executive Order 13658 of February 12, 2014, ''Establishing a Minimum Wage for Contractors''; and regulations issued to implement that order. 86 FR 22836.[2]

Section 5 of Executive Order 14026 grants authority to the Secretary to investigate potential violations of and obtain compliance with the order. 86 FR 22836. It also explains that Executive Order 14026 does not create any rights under the Contract Disputes Act, 41 U.S.C. 7101 *et seq.,* and that disputes regarding whether a contractor has paid the wages prescribed by the order, as appropriate and consistent with applicable law, shall be disposed of only as provided by the Secretary in regulations issued pursuant to the order. *Id.*

Section 6 of Executive Order 14026 revokes and supersedes certain presidential actions. 86 FR 22836–37. Specifically, section 6 of Executive Order 14026 provides that Executive Order 13838 of May 25, 2018, ''Exemption From Executive Order 13658 for Recreational Services on Federal Lands'' is revoked as of January 30, 2022. *Id.* Section 6 of Executive Order 14026 also states that Executive Order 13658 of February 12, 2014, ''Establishing a Minimum Wage for Contractors'' is ''superseded, as of January 30, 2022, to the extent it is inconsistent with this order.'' *Id.*

Section 7 of Executive Order 14026 establishes that if any provision of the order, or the application of any such provision to any person or circumstance, is held to be invalid, the remainder of the order and the application shall not be affected. 86 FR 22837.

Section 8 of Executive Order 14026 establishes that the order shall apply to ''any new contract; new contract-like instrument; new solicitation; extension or renewal of an existing contract or contract-like instrument; and exercise of an option on an existing contract or contract-like instrument,'' if: (i)(A) It is a procurement contract for services or construction; (B) it is a contract for services covered by the SCA; (C) it is a contract for concessions, including any concessions contract excluded by Department of Labor (the Department) regulations at 29 CFR 4.133(b); or (D) it is a contract entered into with the Federal Government in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public; and (ii) the wages of workers under such contract are governed by the FLSA, the SCA, or the DBA. 86 FR 22837. Section 8 of the order also states that, for contracts covered by the SCA or the DBA, the order shall apply only to contracts at the thresholds specified in those statutes.[3] *Id.* Additionally, for procurement contracts where workers' wages are governed by the FLSA, the order specifies that it shall apply only to contracts that exceed the micro-purchase threshold, as defined in 41 U.S.C. 1902(a),[4] unless expressly made subject to the order pursuant to regulations or actions taken under section 4 of the order. *Id.* The order specifies that it shall not apply to grants; contracts or agreements with Indian Tribes under the Indian Self-Determination and Education Assistance Act (Public Law 93–638), as amended; or any contracts expressly excluded by the regulations issued pursuant to section 4(a) of the order. *Id.*

Section 9(a) of Executive Order 14026 provides that the order is effective immediately and shall apply to new contracts; new solicitations; extensions or renewals of existing contracts; and exercises of options on existing contracts, as described in section 8(a) of the order, where the relevant contract will be entered into, the relevant contract will be extended or renewed, or the relevant option will be exercised, on or after: (i) January 30, 2022, consistent with the effective date for the action taken by the FARC pursuant to section 4(a) of the order; or (ii) for contracts where an agency action is taken pursuant to section 4(b) of the order, January 30, 2022, consistent with the effective date for such action. 86 FR 22837.

Section 9(b) of Executive Order 14026 establishes an exception to section 9(a) where agencies have issued a solicitation before the effective date for the relevant action taken pursuant to section 4 of the order and entered into a new contract resulting from such solicitation within 60 days of such effective date. The order provides that, in such a circumstance, such agencies are strongly encouraged but not required to ensure that the minimum wages specified in sections 2 and 3 of the order are paid in the new contract. 86 FR 22837–38. The order clarifies, however, that if such contract is subsequently extended or renewed, or an option is subsequently exercised under that contract, the minimum wages specified in sections 2 and 3 of the order shall apply to that extension, renewal, or option. 86 FR 22838.

Section 9(c) also specifies that, for all existing contracts, solicitations issued between the date of the order and the effective dates set forth in that section, and contracts entered into between the date of the order and the effective dates set forth in that section, agencies are strongly encouraged, to the extent permitted by law, to ensure that the hourly wages paid under such contracts

[2] The Department recognizes that the FAR has been amended to refer to the Service Contract Act as the ''Service Contract Labor Standards'' statute and the Davis-Bacon Act as the ''Wage Rate Requirements (Construction)'' statute. *See* 79 FR 24192–02, 24193–95 (Apr. 29, 2014).

Consistent with the text of Executive Order 14026, as well as with Executive Order 13658 and its implementing regulations, the Department refers to these laws in this rule as the Service Contract Act and the Davis-Bacon Act, respectively.

[3] The prevailing wage requirements of the SCA apply to covered prime contracts in excess of $2,500. *See* 41 U.S.C. 6702(a)(2) (recodifying 41 U.S.C. 351(a)). The DBA applies to covered prime contracts that exceed $2,000. *See* 40 U.S.C. 3142(a). There is no value threshold requirement for subcontracts awarded under such prime contracts.

[4] 41 U.S.C. 1902(a) currently defines the micro-purchase threshold as $10,000.

are consistent with the minimum wage rates specified in sections 2 and 3 of the order. 86 FR 22838.

Section 10 of Executive Order 14026 provides that nothing in the order shall be construed to impair or otherwise affect the authority granted by law to an executive department or agency, or the head thereof; or the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals. 86 FR 22838. It also states that the order is to be implemented consistent with applicable law and subject to the availability of appropriations. *Id.* Finally, section 10 explains that the 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. *Id.*

II. Discussion of Proposed Rule

A. Legal Authority

President Biden issued Executive Order 14026 pursuant to his authority under ''the Constitution and the laws of the United States,'' expressly including the Federal Property and Administrative Services Act (Procurement Act), 40 U.S.C. 101 *et seq.* 86 FR 22835. The Procurement Act authorizes the President to ''prescribe policies and directives that the President considers necessary to carry out'' the statutory purposes of ensuring ''economical and efficient'' government procurement and administration of government property. 40 U.S.C. 101, 121(a). Executive Order 14026 delegates to the Secretary the authority to issue regulations to ''implement the requirements of this order.'' 86 FR 22836. The Secretary has delegated his authority to promulgate these regulations to the Administrator of the WHD and to the Deputy Administrator of the WHD if the Administrator position is vacant. Secretary's Order 01–2014 (Dec. 19, 2014), 79 FR 77527 (published Dec. 24, 2014); Secretary's Order 01–2017 (Jan. 12, 2017), 82 FR 6653 (published Jan. 19, 2017).

B. Overview of the Proposed Rule

This notice of proposed rulemaking (NPRM), which amends Title 29 of the Code of Federal Regulations (CFR) by revising part 10 and adding part 23, proposes standards and procedures for implementing and enforcing Executive Order 14026. Proposed subpart A of part 23 relates to general matters, including the purpose and scope of the rule, as well as the definitions, coverage, and exclusions that the rule provides pursuant to the Executive order. It also sets forth the general minimum wage requirement for contractors established by the Executive order, an antiretaliation provision, a prohibition against waiver of rights, and a severability clause. Proposed subpart B establishes requirements for contracting agencies and the Department to comply with the Executive order. Proposed subpart C establishes requirements for contractors to comply with the Executive order. Proposed subparts D and E specify standards and procedures related to complaint intake, investigations, remedies, and administrative enforcement proceedings. Proposed appendix A contains a contract clause to implement Executive Order 14026. An additional appendix, which will not publish in 29 CFR part 23, sets forth a poster regarding the Executive Order 14026 minimum wage for contractors with FLSA-covered workers performing work on or in connection with a covered contract. The Department also proposes a few conforming revisions to the existing regulations at part 10 implementing Executive Order 13658 to fully implement the requirements of Executive Order 14026 and provide additional clarity to the regulated community.

The following section-by-section discussion of this proposed rule presents the contents of each section in more detail. The Department invites comments on the issues addressed in this NPRM.

Part 23 Subpart A—General

Proposed subpart A of part 23 pertains to general matters, including the purpose and scope of the rule, as well as the definitions, coverage, and exclusions that the rule provides pursuant to the order. Proposed subpart A also includes the Executive Order 14026 minimum wage requirement for contractors, an antiretaliation provision, and a prohibition against waiver of rights.

Section 23.10 Purpose and Scope

Proposed § 23.10(a) explains that the purpose of the proposed rule is to implement Executive Order 14026, both in terms of its administration and enforcement. The paragraph emphasizes that the Executive order assigns responsibility for investigating potential violations of and obtaining compliance with the Executive order to the Department of Labor.

Proposed § 23.10(b) explains the underlying policy of Executive Order 14026. First, the paragraph repeats a statement from the Executive order that the Federal Government's procurement interests in economy and efficiency are promoted when the Federal Government contracts with sources that adequately compensate their workers. The proposed rule elaborates that raising the minimum wage enhances worker productivity and generates higher-quality work by boosting workers' health, morale, and effort; reducing absenteeism and turnover; and lowering supervisory and training costs. It is for these reasons that the Executive order concludes that raising, to $15.00 per hour, the minimum wage for work performed by parties who contract with the Federal Government will lead to improved economy and efficiency in Federal procurement. As explained more fully in section IV.C.4, the Department believes that, by increasing the quality and efficiency of services provided to the Federal Government, the Executive order will improve the value that taxpayers receive from the Federal Government's investment.

Proposed § 23.10(b) further explains the general requirement established in Executive Order 14026 that new covered solicitations and contracts with the Federal Government must include a clause, which the contractor and any covered subcontractors shall incorporate into lower-tier subcontracts, requiring, as a condition of payment, that the contractor and any subcontractors pay workers performing work on or in connection with the contract or any subcontract thereunder at least: (i) $15.00 per hour beginning January 30, 2022; and (ii) beginning January 1, 2023, and annually thereafter, an amount determined by the Secretary pursuant to the Executive order. Proposed § 23.10(b) also clarifies that nothing in Executive Order 14026 or part 23 is to be construed to excuse noncompliance with any applicable Federal or state prevailing wage law or any applicable law or municipal ordinance establishing a minimum wage higher than the minimum wage established under the Executive order.

Proposed § 23.10(c) outlines the scope of this proposed rule and provides that neither Executive Order 14026 nor part 23 creates or changes any rights under the Contract Disputes Act or any private right of action. The Department does not interpret the Executive order as limiting existing rights under the Contract Disputes Act. This provision also restates the Executive order's directive that disputes regarding whether a contractor has paid the minimum wages prescribed by the Executive order, to the extent permitted by law, shall be disposed of only as provided by the

Secretary in regulations issued under the Executive order. The provision clarifies, however, that nothing in the Executive order is intended to limit or preclude a civil action under the False Claims Act, 31 U.S.C. 3730, or criminal prosecution under 18 U.S.C. 1001. Finally, this paragraph clarifies that neither the Executive order nor the proposed rule would preclude judicial review of final decisions by the Secretary in accordance with the Administrative Procedure Act, 5 U.S.C. 701 *et seq.*

Section 23.20 Definitions

Proposed § 23.20 defines terms for purposes of this rule implementing Executive Order 14026. Section 4(c) of the Executive order instructs that any regulations issued pursuant to the order should ''incorporate existing definitions'' under the FLSA, the SCA, the DBA, Executive Order 13658, and the regulations at 29 CFR part 10 implementing Executive Order 13658 ''to the extent practicable.'' 86 FR 22836. Most of the definitions set forth in the Department's proposed rule are therefore based on either Executive Order 14026 itself or the definitions of relevant terms set forth in the statutory text or implementing regulations of the FLSA, SCA, DBA, or Executive Order 13658. Several proposed definitions adopt or rely upon definitions published by the FARC in section 2.101 of the FAR. 48 CFR 2.101. The Department notes that, while the proposed definitions discussed in this proposed rule would govern the implementation and enforcement of Executive Order 14026, nothing in the proposed rule is intended to alter the meaning of or to be interpreted inconsistently with the definitions set forth in the FAR for purposes of that regulation.

The Department proposes to define the term *agency head* to mean the Secretary, Attorney General, Administrator, Governor, Chairperson, or other chief official of an executive agency, unless otherwise indicated, including any deputy or assistant chief official of an executive agency or any persons authorized to act on behalf of the agency head. This proposed definition is based on the definition of the term set forth in section 2.101 of the FAR, *see* 48 CFR 2.101, and is identical to the definition provided in the implementing regulations for Executive Order 13658, *see* 29 CFR 10.2.

The Department proposes to define *concessions contract* (or *contract for concessions*) to mean a contract under which the Federal Government grants a right to use Federal property, including land or facilities, for furnishing services. This proposed definition does not contain a limitation regarding the beneficiary of the services, and such contracts may be of direct or indirect benefit to the Federal Government, its property, its civilian or military personnel, or the general public. *See* 29 CFR 4.133. The proposed definition covers but is not limited to all concessions contracts excluded from the SCA by Departmental regulations at 29 CFR 4.133(b). This definition is taken from 29 CFR 10.2, which defined the same term for purposes of Executive Order 13658.

The Department proposes to define *contract* and *contract-like instrument* collectively for purposes of the Executive order as an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law. This definition includes, but is not limited to, a mutually binding legal relationship obligating one party to furnish services (including construction) and another party to pay for them. The proposed definition of the term *contract* broadly includes all contracts and any subcontracts of any tier thereunder, whether negotiated or advertised, including any procurement actions, lease agreements, cooperative agreements, provider agreements, intergovernmental service agreements, service agreements, licenses, permits, or any other type of agreement, regardless of nomenclature, type, or particular form, and whether entered into verbally or in writing.

The proposed definition of the term *contract* is intended to be interpreted broadly to include, but not be limited to, any contract within the definition provided in the FAR or applicable Federal statutes. The proposed definition includes, but is not to be limited to, any contract that may be covered under any Federal procurement statute. The Department notes that under this definition contracts may be the result of competitive bidding or awarded to a single source under applicable authority to do so. The proposed definition also explains that, in addition to bilateral instruments, contracts include, but are not limited to, awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; exercised contract options; and bilateral contract modifications. The proposed definition also specifies that, for purposes of the minimum wage requirements of the Executive order, the term *contract* includes contracts covered by the SCA, contracts covered by the DBA, concessions contracts not otherwise subject to the SCA, and contracts in connection with Federal property or land and related to offering services for Federal employees, their dependents, or the general public, as provided in section 8(a) of the Executive order. *See* 86 FR 22837. The proposed definition of *contract* discussed herein is identical to the definition of *contract* in the regulations implementing Executive Order 13658, *see* 29 CFR 10.2, except that it includes ''exercised contract options'' as an example of a contract. The addition of this example reflects that, unlike Executive Order 13658, Executive Order 14026 expressly applies to option periods on existing contracts that are exercised on or after January 30, 2022. *See* 86 FR 22837.

As explained in the Department's final rule implementing Executive Order 13658, this definition of *contract* was originally derived from the definition of the term *contract* set forth in Black's Law Dictionary (9th ed. 2009) and section 2.101 of the FAR (48 CFR 2.101), as well as the descriptions of the term *contract* that appear in the SCA's regulations at 29 CFR 4.110 and 4.111, 4.130. *See* 79 FR 60638–41. The Department notes that the fact that a legal instrument constitutes a *contract* under this definition does not mean that the contract is covered by the Executive order. In order for a contract to be covered by the Executive order and the proposed rule, the contract must satisfy all of the following prongs: (1) It must qualify as a *contract* or *contract-like instrument* under the proposed definition set forth in part 23; (2) it must fall within one of the four specifically enumerated types of contracts set forth in section 8(a) of the order and § 23.30; and (3) it must be a ''new contract'' pursuant to the proposed definition described below. Further, in order for the minimum wage protections of the Executive order to extend to a particular worker performing work on or in connection with a covered contract, that worker's wages must also be governed by the DBA, SCA, or FLSA. For example, although an agreement between a contracting agency and a hotel located on private property pursuant to which the hotel accepts the General Services Administration (GSA) room rate for Federal Government workers would likely be regarded as a ''contract'' or ''contract-like instrument'' under the Department's proposed definition, such an agreement would not be covered by the Executive order and part 23 because it is not subject to the

DBA or SCA, is not a concessions contract, and is not entered into in connection with Federal property or lands. Similarly, a permit issued by the National Park Service (NPS) to an individual for purposes of conducting a wedding on Federal land would qualify as a ''contract'' or ''contract-like instrument'' but would not be subject to the Executive order because it would not be a contract covered by the SCA or DBA, a concessions contract, or a contract in connection with Federal property related to offering services to Federal employees, their dependents, or the general public.

The Department proposes to substantially adopt the definition of *contracting officer* in section 2.101 of the FAR, which means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the contracting officer acting within the limits of their authority as delegated by the contracting officer. *See* 48 CFR 2.101. This definition is identical to the definition provided in 29 CFR 10.2, which implemented Executive Order 13658.

The Department proposes to define *contractor* to mean any individual or other legal entity that is awarded a Federal Government contract or subcontract under a Federal Government contract. The Department notes that the term *contractor* refers to both a prime contractor and all of its subcontractors of any tier on a contract with the Federal Government. This proposed definition is consistent with the definition set forth in 29 CFR 10.2, which incorporates relevant aspects of the definitions of the term *contractor* in section 9.403 of the FAR, *see* 48 CFR 9.403, and the SCA's regulations at 29 CFR 4.1a(f). This proposed definition includes lessors and lessees, as well as employers of workers performing on or in connection with covered Federal contracts whose wages are computed pursuant to special certificates issued under 29 U.S.C. 214(c). The Department notes that the term *employer* is used interchangeably with the terms *contractor* and *subcontractor* in part 23. The U.S. Government, its agencies, and its instrumentalities are not considered contractors, subcontractors, employers, or joint employers for purposes of compliance with the provisions of Executive Order 14026.

Importantly, the Department notes that the fact that an individual or entity is a *contractor* under the Department's definition does not mean that such an entity has legal obligations under the Executive order. A contractor only has obligations under the Executive order if it has a contract with the Federal Government that is specifically covered by the order. Thus, an entity that is awarded a contract with the Federal Government will qualify as a ''contractor'' pursuant to the Department's definition, however, that entity will only be subject to the minimum wage requirements of the Executive order if such contractor is awarded or otherwise enters into a ''new'' contract that falls within the scope of one of the four specifically enumerated categories of contracts covered by the order.

The Department proposes to define the term *Davis-Bacon Act* to mean the Davis-Bacon Act of 1931, as amended, 40 U.S.C. 3141 *et seq.,* and its implementing regulations. This proposed definition is taken from 29 CFR 10.2.

Consistent with the regulations implementing Executive Order 13658, *see* 29 CFR 10.2, the Department proposes to define *executive departments and agencies* that are subject to Executive Order 14026 by adopting the definition of *executive agency* provided in section 2.101 of the FAR. 48 CFR 2.101. The Department therefore interprets the Executive order to apply to executive departments within the meaning of 5 U.S.C. 101, military departments within the meaning of 5 U.S.C. 102, independent establishments within the meaning of 5 U.S.C. 104(1), and wholly owned Government corporations within the meaning of 31 U.S.C. 9101. The Department notes that this proposed definition includes independent agencies. Such agencies were expressly excluded from coverage of Executive Order 13658, which ''strongly encouraged'' but did not require compliance by independent agencies. *See* 79 FR 9853 (section 7(g) of Executive Order 13658); *see also* 79 FR 60643, 60646 (final rule interpreting Executive Order 13658 to exclude from coverage independent regulatory agencies within the meaning of 44 U.S.C. 3502(5)). Because Executive Order 14026 does not contain such exclusionary language, independent agencies are covered by the order and part 23. The inclusion of independent agencies is discussed in greater detail below in the explanation of contracting agency coverage set forth at § 23.30. Finally, and consistent with the regulations implementing Executive Order 13658, the Department does not interpret the definition of *executive departments and agencies* as including the District of Columbia or any Territory or possession of the United States.

The Department proposes to define *Executive Order 13658* to mean Executive Order 13658 of February 12, 2014, ''Establishing a Minimum Wage for Contractors,'' 79 FR 9851 (Feb. 20, 2014), and its implementing regulations at 29 CFR part 10.

The Department proposes to define the term *Executive Order 14026 minimum wage* as a wage that is at least: (i) $15.00 per hour beginning January 30, 2022; and (ii) beginning January 1, 2023, and annually thereafter, an amount determined by the Secretary pursuant to section 2 of Executive Order 14026. This definition is based on the language set forth in section 2 of the Executive order. 86 FR 22835.

The Department proposes to define *Fair Labor Standards Act* as the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 201 *et seq.,* and its implementing regulations. This definition is adopted from 29 CFR 10.2.

The Department proposes to define the term *Federal Government* as an agency or instrumentality of the United States that enters into a contract pursuant to authority derived from the Constitution or the laws of the United States. This proposed definition is based on the definition set forth in the regulations implementing Executive Order 13658. *See* 29 CFR 10.2. Consistent with that definition and the SCA, the proposed definition of the term *Federal Government* includes nonappropriated fund instrumentalities under the jurisdiction of the Armed Forces or of other Federal agencies. *See* 29 CFR 4.107(a); 29 CFR 10.2. As explained above, and unlike the regulations implementing Executive Order 13658, this proposed definition also includes independent agencies because such agencies are subject to the order's requirements. For purposes of Executive Order 14026 and part 23, the Department's proposed definition does not include the District of Columbia or any Territory or possession of the United States.

The Department proposes to define the term *new contract* as a contract that is entered into on or after January 30, 2022, or a contract that is renewed or extended (pursuant to an exercised option or otherwise) on or after January 30, 2022. For purposes of Executive Order 14026, a contract that is entered into prior to January 30, 2022 will constitute a *new contract* if, on or after January 30, 2022: (1) The contract is renewed; (2) the contract is extended; or (3) an option on the contract is exercised. Under the proposed definition, a *new contract* includes contracts that result from solicitations issued prior to January 30, 2022, but

that are entered into on or after January 30, 2022, unless otherwise excluded by § 23.40; contracts that result from solicitations issued on or after January 30, 2022; contracts that are awarded outside the solicitation process on or after January 30, 2022; and contracts that were entered into prior to January 30, 2022 (an ''existing contract'') but that are subsequently renewed or extended, pursuant to an exercised option period or otherwise, on or after January 30, 2022.

This definition is based on sections 8(a) and 9(a) of Executive Order 14026. *See* 86 FR 22837. The Department notes that the plain language of Executive Order 14026 compels a more expansive definition of the term *new contract* here than was promulgated under Executive Order 13658. For example, the renewal or extension of a contract pursuant to the exercise of an option period on or after January 30, 2022, will qualify as a *new contract* for purposes of Executive Order 14026 and part 23; exercised option periods, however, generally did not qualify as ''new contracts'' under Executive Order 13658. *See* 29 CFR 10.2. The Department discusses the coverage of ''new contracts,'' and the interaction of Executive Order 14026 and Executive Order 13658 with respect to contract coverage, in more detail below in the preamble discussion accompanying proposed § 23.30.

Proposed § 23.20 defines the term *option* by adopting the definition set forth in 29 CFR 10.2 and in section 2.101 of the FAR, which provides that the term *option* means a unilateral right in a contract by which, for a specified time, the Federal Government may elect to purchase additional supplies or services called for by the contract, or may elect to extend the term of the contract. *See* 48 CFR 2.101. When used in this context, the Department notes that the additional ''services'' called for by the contract would include construction services. As discussed above, an option on an existing covered contract that is exercised on or after January 30, 2022, qualifies as a ''new contract'' subject to the Executive order and part 23.

The Department proposes to define the term *procurement contract for construction* to mean a procurement contract for the construction, alteration, or repair (including painting and decorating) of public buildings or public works and which requires or involves the employment of mechanics or laborers, and any subcontract of any tier thereunder. The proposed definition includes any contract subject to the provisions of the DBA, as amended, and its implementing regulations. This proposed definition is identical to that set forth in 29 CFR 10.2, which in turn was derived from language found at 40 U.S.C. 3142(a) and 29 CFR 5.2(h).

The Department proposes to define the term *procurement contract for services* to mean a contract the principal purpose of which is to furnish services in the United States through the use of service employees, and any subcontract of any tier thereunder. This proposed definition includes any contract subject to the provisions of the SCA, as amended, and its implementing regulations. This proposed definition is identical to that set forth in 29 CFR 10.2, which in turn was derived from language set forth in 41 U.S.C. 6702(a) and 29 CFR 4.1a(e).

The Department proposes to define the term *Service Contract Act* to mean the McNamara-O'Hara Service Contract Act of 1965, as amended, 41 U.S.C. 6701 *et seq.,* and its implementing regulations. *See* 29 CFR 4.1a(a).

The term *solicitation* is proposed to be defined to mean any request to submit offers, bids, or quotations to the Federal Government. This definition is based on the definition set forth at 29 CFR 10.2. The Department broadly interprets the term *solicitation* to apply to both traditional and nontraditional methods of solicitation, including informal requests by the Federal Government to submit offers or quotations. However, the Department notes that requests for information issued by Federal agencies and informal conversations with Federal workers are not ''solicitations'' for purposes of the Executive order.

The Department proposes to adopt the definition of *tipped employee* in section 3(t) of the FLSA, that is, any employee engaged in an occupation in which the employee customarily and regularly receives more than $30 a month in tips. *See* 29 U.S.C. 203(t). For purposes of the Executive order, a worker performing on or in connection with a contract covered by the Executive order who meets this definition is a tipped employee.

The Department proposes to define the term *United States* as the United States and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States, including corporations of which all or substantially all of the stock is owned by the United States, by the foregoing departments, establishments, agencies, instrumentalities, and including nonappropriated fund instrumentalities. This portion of the proposed definition is identical to the definition of *United States* in 29 CFR 10.2. When the term is used in a geographic sense, the Department proposes that the *United States* means the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf lands as defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Wake Island, and Johnston Island.

The geographic scope component of this proposed definition is derived from the definition of *United States* set forth in the regulations implementing the SCA. *See* 29 CFR 4.112(a). Although the Department only included the 50 States and the District of Columbia within the geographic scope of the regulations implementing Executive Order 13658, *see* 29 CFR 10.2, the Department notes that Executive Order 14026 directs the Department to establish ''definitions of relevant terms'' in its regulations. 86 FR 22835. As previously discussed, Executive Order 14026 also directs the Department to ''incorporate existing definitions'' under the FLSA, SCA, DBA, and Executive Order 13658 ''to the extent practicable.'' 86 FR 22836. Each of the territories listed above is covered by both the SCA, *see* 29 CFR 4.112(a), and the FLSA, *see, e.g.,* 29 U.S.C. 213(f); 29 CFR 776.7; Fair Minimum Wage Act of 2007, Pub. L. 110–28, 121 Stat. 112 (2007), but not the DBA, 40 U.S.C. 3142(a). Accordingly, it is not practicable to adopt all the cross-referenced existing definitions, and the Department must choose between them to incorporate existing definitions ''to the extent practicable.'' The Department proposes to exercise its discretion to select a definition that tracks the SCA and FLSA, for the following reasons. As reflected in the RIA, the Department has further examined the issue since its prior rulemaking in 2014 and consequently determined that the Federal Government's procurement interests in economy and efficiency would be promoted by extending the Executive Order 14026 minimum wage to workers performing on or in connection with covered contracts in Puerto Rico, the Virgin Islands, Outer Continental Shelf lands as defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Wake Island, and Johnston Island. To be clear, the Department is not proposing to extend coverage of this Executive order to contracts entered into with the governments of those territories, but rather is proposing to expand coverage to covered contracts with the Federal Government that are being performed inside the geographical limits of those territories. Because

contractors operating in those territories will generally have familiarity with many of the requirements set forth in part 23 based on their coverage by the SCA and/or the FLSA, the Department does not believe that the proposed extension of Executive Order 14026 and part 23 to such contractors will impose a significant burden.

The Department proposes to define *wage determination* as including any determination of minimum hourly wage rates or fringe benefits made by the Secretary pursuant to the provisions of the SCA or the DBA. This term includes the original determination and any subsequent determinations modifying, superseding, correcting, or otherwise changing the provisions of the original determination. The proposed definition is adopted from 29 CFR 10.2, which itself was derived from 29 CFR 4.1a(h) and 29 CFR 5.2(q).

The Department proposes to define *worker* as any person engaged in performing work on or in connection with a contract covered by the Executive order, and whose wages under such contract are governed by the FLSA, the SCA, or the DBA, regardless of the contractual relationship alleged to exist between the individual and the employer. The proposed definition also incorporates the Executive order's provision that the term *worker* includes any individual performing on or in connection with a covered contract whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c). *See* 86 FR 22835. The proposed definition also includes any person working on or in connection with a covered contract and individually registered in a bona fide apprenticeship or training program registered with the Department's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship. *See* 29 CFR 4.6(p) (SCA); 29 CFR 5.2(n) (DBA). The Department has included in the proposed definition of *worker* here a brief description of the meaning of working ''on or in connection with'' a covered contract. Specifically, the definition provides that a worker performs ''on'' a contract if the worker directly performs the specific services called for by the contract and that a worker performs ''in connection with'' a contract if the worker's work activities are necessary to the performance of a contract but are not the specific services called for by the contract. These concepts are discussed in greater detail below in the explanation of worker coverage set forth at § 23.30.

Consistent with the FLSA, SCA, and DBA and their implementing regulations, this proposed definition of *worker* excludes from coverage any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 CFR part 541. *See* 29 U.S.C. 213(a)(1) (FLSA); 41 U.S.C. 6701(3)(C) (SCA); 29 CFR 5.2(m) (DBA). The Department's proposed definition of *worker* is substantively identical to the definition that appears in the regulations implementing Executive Order 13658, *see* 29 CFR 10.2, but contains additional clarifying language regarding the ''on or in connection with'' standard in the proposed regulatory text itself.

Consistent with the Department's rulemaking under Executive Order 13658, as well as with the FLSA, DBA, and SCA, the Department emphasizes the well-established principle that worker coverage does not depend upon the existence or form of any contractual relationship that may be alleged to exist between the contractor or subcontractor and such persons. *See, e.g.,* 29 U.S.C. 203(d), (e)(1), (g) (FLSA); 41 U.S.C. 6701(3)(B), 29 CFR 4.155 (SCA); 29 CFR 5.5(a)(1)(i) (DBA). The Department notes that, as reflected in the proposed definition, the Executive order is intended to apply to a wide range of employment relationships. Neither an individual's subjective belief about his or her employment status nor the existence of a contractual relationship is determinative of whether a worker is covered by the Executive order.

Finally, the Department proposes to adopt the definitions of the terms *Administrative Review Board, Administrator, Office of Administrative Law Judges,* and *Wage and Hour Division* set forth in 29 CFR 10.2.

Section 23.30 Coverage

Proposed § 23.30 addresses and implements the coverage provisions of Executive Order 14026. Proposed § 23.30 explains the scope of the Executive order and its coverage of executive agencies, new contracts, types of contractual arrangements, and workers. Proposed § 23.40 implements the exclusions expressly set forth in section 8(c) of the Executive order and provides other limited exclusions to coverage as authorized by section 4(a) of the order. 86 FR 22836–37.

Executive Order 14026 provides that agencies must, to the extent permitted by law, ensure that contracts, as defined in part 23 and as described in section 8(a) of the order, include a clause specifying, as a condition of payment, that the minimum wage to be paid to workers employed in the performance of the contract shall be at least: (i) $15.00 per hour beginning January 30, 2022; and (ii) beginning January 1, 2023, and annually thereafter, an amount determined by the Secretary. 86 FR 22835. (*See* proposed § 23.50(b) for a discussion of the methodology established by the Executive order to determine the future annual minimum wage increases.) Section 8(a) of the Executive order establishes that the order's minimum wage requirement only applies to a new contract, new solicitation, extension or renewal of an existing contract, and exercise of an option on an existing contract (which are collectively referred to in this proposed rule as ''new contracts''), if: (i)(A) It is a procurement contract for services or construction; (B) it is a contract for services covered by the SCA; (C) it is a contract for concessions, including any concessions contract excluded by the Department's regulations at 29 CFR 4.133(b); or (D) it is a contract entered into with the Federal Government in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public; and (ii) the wages of workers under such contract are governed by the FLSA, the SCA, or the DBA. 86 FR 22837. Section 8(b) of the order states that, for contracts covered by the SCA or the DBA, the order applies only to contracts at the thresholds specified in those statutes. *Id.* It also specifies that, for procurement contracts where workers' wages are governed by the FLSA, the order applies only to contracts that exceed the micro-purchase threshold, as defined in 41 U.S.C. 1902(a), unless expressly made subject to the order pursuant to regulations or actions taken under section 4 of the order. *Id.* The Executive order states that it does not apply to grants; contracts or agreements with Indian Tribes under the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638), as amended; or any contracts expressly excluded by the regulations issued pursuant to section 4(a) of the order. *Id.*

Proposed § 23.30(a) implements these coverage provisions by stating that Executive Order 14026 and part 23 apply to, unless excluded by § 23.40, any new contract as defined in § 23.20, provided that: (1)(i) It is a procurement contract for construction covered by the DBA; (ii) it is a contract for services covered by the SCA; (iii) it is a contract for concessions, including any concessions contract excluded by Departmental regulations at 29 CFR 4.133(b); or (iv) it is a contract in

connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public; and (2) the wages of workers under such contract are governed by the FLSA, the SCA, or the DBA. 86 FR 22837. Proposed § 23.30(b) incorporates the monetary value thresholds referred to in section 8(b) of the Executive order. *Id.* Finally, proposed § 23.30(c) states that the Executive order and part 23 only apply to contracts with the Federal Government requiring performance in whole or in part within the United States. Several issues relating to the coverage provisions of the Executive order and proposed § 23.30 are discussed below.

Coverage of Executive Agencies and Departments

Executive Order 14026 applies to all ''[e]xecutive departments and agencies, including independent establishments subject to the Federal Property and Administrative Services Act, 40 U.S.C. 102(4)(A), (5).'' 86 FR 22835. As explained above, the Department proposes to define *executive departments and agencies* by adopting the definition of *executive agency* provided in 29 CFR 10.2 and section 2.101 of the FAR. 48 CFR 2.101. The proposed rule therefore interprets the Executive order as applying to executive departments within the meaning of 5 U.S.C. 101, military departments within the meaning of 5 U.S.C. 102, independent establishments within the meaning of 5 U.S.C. 104(1), and wholly owned Government corporations within the meaning of 31 U.S.C. 9101. As discussed above, this proposed definition includes independent agencies. Accordingly, independent agencies are covered contracting agencies for purposes of Executive Order 14026 and part 23.

Additionally, Section 7(g) of Executive Order 13658 ''strongly encouraged'' but did not require independent agencies to comply with its requirements. 79 FR 9853. Therefore, in the final rule implementing Executive Order 13658, the Department interpreted such language to exclude independent regulatory agencies as defined in 44 U.S.C. 3502(5) from coverage of Executive Order 13658. *See, e.g.,* 79 FR 60643, 60646. Unlike Executive Order 13658, Executive Order 14026 does not set forth any exclusion for independent agencies. Executive Order 14026 and part 23 thus apply to a broader universe of contracting agencies than were covered by Executive Order 13658 and its implementing regulations at 29 CFR part 10.

Finally, pursuant to this proposed definition, contracts awarded by the District of Columbia or any Territory or possession of the United States would not be covered by the order.

Coverage of New Contracts With the Federal Government

Proposed § 23.30(a) provides that the requirements of the Executive order generally apply to ''contracts with the Federal Government.'' As discussed above, and consistent with the Department's regulations implementing Executive Order 13658, the Department proposes to set forth a broadly inclusive definition of the term *contract* that would include all contracts and any subcontracts of any tier thereunder, whether negotiated or advertised, including any procurement actions, lease agreements, cooperative agreements, provider agreements, intergovernmental service agreements, service agreements, licenses, permits, or any other type of agreement, regardless of nomenclature, type, or particular form, and whether entered into verbally or in writing. The Department intends that the term *contract* be interpreted broadly as to include, but not be limited to, any contract within the definition provided in the FAR or applicable Federal statutes. This definition includes, but is not limited to, any contract that may be covered under any Federal procurement statute. Contracts may be the result of competitive bidding or awarded to a single source under applicable authority to do so. In addition to bilateral instruments, contracts include, but are not limited to, awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; exercised contract options; and bilateral contract modifications. Unless otherwise noted, the use of the term *contract* throughout the Executive order and part 23 therefore includes *contract-like instruments* and subcontracts of any tier.

As reflected in proposed § 23.30(a), the minimum wage requirements of Executive Order 14026 apply only to ''new contracts'' with the Federal Government within the meaning of sections 8(a) and 9(a) of the order and as defined in part 23. 86 FR 22837. Section 9 of the Executive order states that the order shall apply to covered new contracts, new solicitations, extensions or renewals of existing contracts, and exercises of options on existing contracts, as described in section 8(a) of the order, where the relevant contract is entered into, or extended or renewed, or the relevant option will be exercised, on or after: (i) January 30, 2022, consistent with the effective date for the action taken by the FARC pursuant to section 4(a) of the order; or (ii) for contracts where an agency action is taken pursuant to section 4(b) of the order, on or after January 30, 2022, consistent with the effective date for such action. *Id.* Proposed § 23.30(a) of this rule therefore states that, unless excluded by § 23.40, part 23 applies to any new contract with the Federal Government as defined in § 23.20. As explained in the proposed definition of *new contract* above, a *new contract* means a contract that is entered into on or after January 30, 2022, or a contract that is renewed or extended (pursuant to an exercised option or otherwise) on or after January 30, 2022. For purposes of the Executive order, a contract that is entered into prior to January 30, 2022 will constitute a *new contract* if, on or after January 30, 2022: (1) The contract is renewed; (2) the contract is extended; or (3) an option on the contract is exercised. To be clear, for contracts that were entered into prior to January 30, 2022, the Executive Order 14026 minimum wage requirement applies prospectively as of the date that such contract is renewed or extended (pursuant to an exercised option or otherwise) on or after January 30, 2022; the Executive order does not apply retroactively to the date that the contract was originally entered into.

The Department notes that the plain language of Executive Order 14026 compels a more expansive definition of the term *new contract* here than under Executive Order 13658. For example, Executive Order 13658 coverage was not triggered by the unilateral exercise of a pre-negotiated option to renew an existing contract by the Federal Government, *see* 29 CFR 10.2. However, section 8(a) of this order makes clear that Executive Order 14026 applies to the ''exercise of an option on an existing contract'' where such exercise occurs on or after January 30, 2022. 86 FR 22837. The Department notes that, under the SCA and DBA, the Department and the FARC generally require the inclusion of a new or current prevailing wage determination upon the exercise of an option clause that extends the term of an existing contract. *See, e.g.,* 29 CFR 4.143(b); 48 CFR 22.404–1(a)(1); All Agency Memorandum (AAM) No. 157 (1992); *In the Matter of the United States Army,* ARB Case No. 96–133,

1997 WL 399373 (ARB July 17, 1997).[5] The SCA's regulations, for example, provide that when the term of an existing contract is extended pursuant to an option clause, the contract extension is viewed as a ''new contract'' for SCA purposes. *See* 29 CFR 4.143(b). The application of Executive Order 14026's minimum wage requirements to contracts for which an option period is exercised on or after January 30, 2022 should be easily understood by contracting agencies and contractors.

Under this proposed rule, a contract awarded under the GSA Schedules will be considered a ''new contract'' in certain situations. Of particular note, any covered contracts that are added to the GSA Schedule on or after January 30, 2022 will generally qualify as ''new contracts'' subject to the order, unless excluded by § 23.40; any covered task orders issued pursuant to those contracts would also be deemed to be ''new contracts.'' This would include contracts to add new covered services as well as contracts to replace expiring contracts. Consistent with section 9(c) of the Executive order, agencies are strongly encouraged to bilaterally modify existing contracts, as appropriate, to include the minimum wage requirements of this rule even when such contracts are not otherwise considered to be a ''new contract'' under the terms of this rule. 86 FR 22838. For example, pursuant to the order, contracting officers are encouraged to modify existing indefinite-delivery, indefinite-quantity contracts in accordance with FAR section 1.108(d)(3) to include the Executive Order 14026 minimum wage requirements.

Interaction With Contract Coverage Under Executive Order 13658

Beginning January 1, 2015, covered contracts with the Federal Government were generally subject to the minimum wage requirements of Executive Order 13658 and its implementing regulations at 29 CFR part 10. Executive Order 13658, which was issued in February 2014, required Federal contractors to pay workers working on or in connection with covered Federal contracts at least $10.10 per hour beginning January 1, 2015 and, pursuant to that order, the minimum wage rate has increased annually based on inflation. The Executive Order 13658 minimum wage is currently $10.95 per hour and the minimum hourly cash wage for tipped employees is $7.65 per hour. *See* 85 FR 53850. Executive Order 13658 applies to the same four types of Federal contracts as are covered by Executive Order 14026. *Compare* 79 FR 9853 (section 7(d) of Executive Order 13658) *with* 86 FR 22837 (section 8(a) of Executive Order 14026).

Section 6 of Executive Order 14026 states that, as of January 30, 2022, the order supersedes Executive Order 13658 to the extent that it is inconsistent with this order. 86 FR 22836–37. The Department interprets this language to mean that workers performing on or in connection with a contract that would be covered by both Executive Order 13658 and Executive Order 14026 are entitled to be paid the higher minimum wage rate under this new order. The Department therefore proposes to include language at § 23.50(d) briefly discussing the relationship between Executive Order 13658 and this order, namely to make clear that workers performing on or in connection with a covered new contract as defined in part 23 must be paid at least the higher minimum wage rate established by Executive Order 14026 rather than the lower minimum wage rate established by Executive Order 13658.

As explained above, however, Executive Order 14026 and part 23 only apply to a ''new contract'' with the Federal Government, which means a contract that is entered into on or after January 30, 2022, or a contract that is renewed or extended (pursuant to an exercised option or otherwise) on or after January 30, 2022. For some amount of time, the Department anticipates that there will be some existing contracts with the Federal Government that do not qualify as a ''new contract'' for purposes of Executive Order 14026 and thus will remain subject to the minimum wage requirements of Executive Order 13658. For example, an SCA-covered contract entered into on February 15, 2021 is currently subject to the $10.95 minimum wage rate established by Executive Order 13658. That contract will remain subject to the minimum wage rate under Executive Order 13658 until such time as it is renewed or extended, pursuant to an exercised option or otherwise, on or after January 30, 2022, at which time it will become subject to the Executive Order 14026 minimum wage rate. For example, if that contract is subsequently extended on February 15, 2022, the contract will become subject to the $15.00 minimum wage rate established by Executive Order 14026 on the date of extension, February 15, 2022. The Department anticipates that, in the relatively near future, essentially all covered contracts with the Federal Government will qualify as ''new contracts'' under part 23 and thus will be subject to the higher Executive Order 14026 minimum wage rate; until such time, however, Executive Order 13658 and its regulations at 29 CFR part 10 must remain in place.

In order to minimize potential stakeholder confusion as to whether a particular contract is subject to Executive Order 13658 or to Executive Order 14026, the Department is proposing to add clarifying language to the definition of ''new contract'' in the regulations that implemented Executive Order 13658, *see* 29 CFR 10.2, to make clear that a contract that is entered into on or after January 30, 2022, or a contract that was awarded prior to January 30, 2022, but is subsequently extended or renewed (pursuant to an option or otherwise) on or after January 30, 2022, is subject to Executive Order 14026 and part 23 instead of Executive Order 13658 and the 29 CFR part 10 regulations. The provision at 29 CFR 10.2 currently defines a ''new contract'' for purposes of Executive Order 13658 to mean ''a contract that results from a solicitation issued on or after January 1, 2015, or a contract that is awarded outside the solicitation process on or after January 1, 2015.'' That definition further provides, inter alia, that Executive Order 13658 also applies to contracts entered into prior to January 1, 2015, if, through bilateral negotiation, on or after January 1, 2015, the contract is renewed, extended, or amended pursuant to certain specified limitations explained in that regulation. *Id.* To provide clarity to stakeholders, the Department proposes to amend the definition of a ''new contract'' under Executive Order 13658 in 29 CFR 10.2 by changing the three references to ''on or after January 1, 2015'' to ''on or between January 1, 2015 and January 29, 2022.'' This clarifying edit is intended to assist stakeholders in recognizing that, beginning January 30, 2022, the higher minimum wage requirement of Executive Order 14026 applies to new contracts.

As previously mentioned, the Department also proposes to add language to part 23 at § 23.50(d) explaining that, unless otherwise excluded by § 23.40, workers performing on or in connection with a covered new contract, as defined in § 23.20, must be paid at least the higher minimum hourly wage rate established

[5] As stated in AAM 157, the Department does not assert that the exercise of an option period qualifies as a new contract in all cases for purposes of the DBA and SCA. *See* 63 FR 64542 (Nov. 20, 1998). The Department considers the specific contract requirements at issue in making this determination. For example, under those statutes, the Department does not consider that a new contract has been created where a contractor is simply given additional time to complete its original obligations under the contract. *Id.*

by Executive Order 14026 and part 23 rather than the lower hourly minimum wage rate established by Executive Order 13658 and its regulations. The Department further proposes to add substantially similar language to the Executive Order 13658 regulations at § 10.1 to ensure that the contracting community is fully aware of which Executive order and regulations apply to their particular contract. Specifically, the Department proposes to amend § 10.1 by adding paragraph (d), which explains that, as of January 30, 2022, Executive Order 13658 is superseded to the extent that it is inconsistent with Executive Order 14026 and part 23. The proposed new paragraph would further clarify that a covered contract that is entered into on or after January 30, 2022, or that is renewed or extended (pursuant to an option or otherwise) on or after January 30, 2022, is generally subject to the higher minimum wage rate established by Executive Order 14026 and part 23. The Department also proposes to add corresponding information to § 10.5(c) to ensure that stakeholders are aware of their potential obligations under Executive Order 14026 and part 23 even if they inadvertently consult the regulations that were issued under Executive Order 13658.

In sum, a Federal contract entered into on or after January 1, 2015, that falls within one of the four specified categories of contracts described in part 23 will generally be subject to the minimum wage requirements of either Executive Order 13658 or Executive Order 14026; the date upon which the relevant contract was entered into, extended, or renewed will determine whether the contract qualifies as a ''new contract'' under this Executive order and part or whether it is subject to the lower minimum wage requirement of Executive Order 13658 and the part 10 regulations.

The Department notes that contracts with independent regulatory agencies and contracts performed in the territories (*i.e.,* Puerto Rico, the Virgin Islands, Outer Continental Shelf lands as defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Wake Island, and Johnston Island) are not subject to Executive Order 13658 or part 10; this rule does not alter that determination. However, as discussed above, such contracts with the Federal Government are covered by Executive Order 14026 and part 23 to the extent that they fall within the four general types of covered contracts and are entered into, extended, or renewed on or after January 30, 2022. For example, a concessions contract with the Federal Government that is performed wholly within Puerto Rico and that was entered into on October 1, 2020, is not subject to the minimum wage requirement of Executive Order 13658 or 14026. However, if that contract is renewed on October 1, 2022, it will become subject to the minimum wage requirement of Executive Order 14026.

Coverage of Types of Contractual Arrangements

Proposed § 23.30(a)(1) sets forth the specific types of contractual arrangements with the Federal Government that are covered by Executive Order 14026. The Department notes that Executive Order 14026 and part 23 are intended to apply to a wide range of contracts with the Federal Government for services or construction. Proposed § 23.30(a)(1) implements the Executive order by generally extending coverage to procurement contracts for construction covered by the DBA; service contracts covered by the SCA; concessions contracts, including any concessions contract excluded by the Department's regulations at 29 CFR 4.133(b); and contracts in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public. Each of these categories of contractual agreements is discussed in greater detail below. The Department further notes that, as was also the case under the Executive Order 13658 rulemaking, these categories are not mutually exclusive—a concessions contract might also be covered by the SCA, as might a contract in connection with Federal property or lands, for example. A contract that falls within any one of the four categories is covered.

Procurement Contracts for Construction: Section 8(a)(i)(A) of the Executive order extends coverage to ''procurement contract[s]'' for ''construction.'' 86 FR 22837. The proposed rule at § 23.30(a)(1)(i) interprets this provision of the order as referring to any contract covered by the DBA, as amended, and its implementing regulations. The Department notes that this provision reflects that the Executive order and part 23 apply to contracts subject to the DBA itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). This interpretation is consistent with the discussion of procurement contracts for construction set forth in the Department's final rule implementing Executive Order 13658. *See* 79 FR 60650. For ease of reference, much of that discussion is repeated here.

The DBA applies, in relevant part, to contracts to which the Federal Government is a party, for the construction, alteration, or repair, including painting and decorating, of public buildings and public works of the Federal Government and which require or involve the employment of mechanics or laborers. 40 U.S.C. 3142(a). The DBA's regulatory definition of *construction* is expansive and includes all types of work done on a particular building or work by laborers and mechanics employed by a construction contractor or construction subcontractor. *See* 29 CFR 5.2(j). For purposes of the DBA and thereby the Executive order, a contract is ''for construction'' if ''more than an incidental amount of construction-type activity'' is involved in its performance. *See, e.g., In the Matter of Crown Point, Indiana Outpatient Clinic,* WAB Case No. 86–33, 1987 WL 247049, at *2 (June 26, 1987) (citing *In re: Military Housing, Fort Drum, New York,* WAB Case No. 85–16, 1985 WL 167239 (Aug. 23, 1985)), *aff'd sub nom., Building and Construction Trades Dep't, AFL–CIO* v. *Turnage,* 705 F. Supp. 5 (D.D.C. 1988); 18 Op. O.L.C. 109, 1994 WL 810699, at *5 (May 23, 1994). The term ''public building or public work'' includes any building or work, the construction, prosecution, completion, or repair of which is carried on directly by authority of or with funds of a Federal agency to serve the interest of the general public. *See* 29 CFR 5.2(k).

Proposed § 23.30(b) implements section 8(b) of Executive Order 14026, 86 FR 22837, which provides that the order applies only to DBA-covered prime contracts that exceed the $2,000 value threshold specified in the DBA. *See* 40 U.S.C. 3142(a). Consistent with the DBA, there is no value threshold requirement for subcontracts awarded under such prime contracts.

Contracts for Services: Proposed § 23.30(a)(1)(ii) provides that coverage of the Executive order and part 23 encompasses ''contract[s] for services covered by the Service Contract Act.'' This proposed provision implements sections 8(a)(i)(A) and (B) of the Executive order, which state that the order applies respectively to a ''procurement contract . . . for services'' and a ''contract or contract-like instrument for services covered by the Service Contract Act.'' 86 FR 22837. The Department interprets a ''procurement contract . . . for services,'' as set forth in section 8(a)(i)(A) of the Executive order, to mean a procurement contract that is

subject to the SCA, as amended, and its implementing regulations. The Department views a ''contract . . . for services covered by the Service Contract Act'' under section 8(a)(i)(B) of the order as including both procurement and non-procurement contracts for services that are covered by the SCA. The Department therefore incorporates sections 8(a)(i)(A) and (B) of the Executive order in proposed § 23.30(a)(1)(ii) by expressly stating that the requirements of the order apply to service contracts covered by the SCA. This interpretation and approach is consistent with the treatment of service contracts set forth in the Department's final rule implementing Executive Order 13658. *See* 79 FR 60650–51. For ease of reference, much of that discussion is repeated here.

The SCA generally applies to every contract entered into by the United States that ''has as its principal purpose the furnishing of services in the United States through the use of service employees.'' 41 U.S.C. 6702(a)(3). The SCA is intended to cover a wide variety of service contracts with the Federal Government, so long as the principal purpose of the contract is to provide services using service employees. *See, e.g.,* 29 CFR 4.130(a). As reflected in the SCA's regulations, where the principal purpose of the contract with the Federal Government is to provide services through the use of service employees, the contract is covered by the SCA. *See* 29 CFR 4.133(a). Such coverage exists regardless of the direct beneficiary of the services or the source of the funds from which the contractor is paid for the service and irrespective of whether the contractor performs the work in its own establishment, on a Government installation, or elsewhere. *Id.* Coverage of the SCA, however, does not extend to contracts for services to be performed exclusively by persons who are not service employees, *i.e.,* persons who qualify as bona fide executive, administrative, or professional employees as defined in the FLSA's regulations at 29 CFR part 541. Similarly, a contract for professional services performed essentially by bona fide professional employees, with the use of service employees being only a minor factor in contract performance, is not covered by the SCA and thus would not be covered by the Executive order or part 23. *See* 41 U.S.C. 6702(a)(3); 29 CFR 4.113(a), 4.156; WHD Field Operations Handbook (FOH) ¶¶ 14b05, 14c07.

Although the SCA covers contracts with the Federal Government that have the ''principal purpose'' of furnishing services in the United States through the use of service employees regardless of the value of the contract, the prevailing wage requirements of the SCA only apply to covered contracts in excess of $2,500. 41 U.S.C. 6702(a)(2) (recodifying 41 U.S.C. 351(a)). Proposed § 23.30(b) of this rule implements section 8(b) of the Executive order, which provides that for SCA-covered contracts, the Executive order applies only to those prime contracts that exceed the $2,500 threshold for prevailing wage requirements specified in the SCA. 86 FR 22837. Consistent with the SCA, there is no value threshold requirement for subcontracts awarded under such prime contracts.

The Department emphasizes that service contracts that are not subject to the SCA may still be covered by the order if such contracts qualify as concessions contracts or contracts in connection with Federal property or lands and related to offering services to Federal employees, their dependents, or the general public pursuant to sections 8(a)(i)(C) and (D) of the order. Because service contracts may be covered by the order if they fall within any of these three categories (*e.g.,* SCA-covered contracts, concessions contracts, or contracts in connection with Federal property and related to offering services), the Department anticipates that most contracts for services with the Federal Government will be covered by the Executive order and part 23.

Contracts for Concessions: Proposed § 23.30(a)(1)(iii) implements Executive Order 14026's coverage of a ''contract or contract-like instrument for concessions, including any concessions contract excluded by Department of Labor regulations at 29 CFR 4.133(b).'' 86 FR 22837. The proposed definition of *concessions contract* is addressed in the discussion of proposed § 23.20. The discussion of covered concessions contracts herein is consistent with the treatment of concessions contracts set forth in the Department's final rule implementing Executive Order 13658. *See* 79 FR 60652.

The SCA generally covers contracts for concessionaire services. *See* 29 CFR 4.130(a)(11). Pursuant to the Secretary's authority under section 4(b) of the SCA, however, the SCA's regulations specifically exempt from coverage concession contracts ''principally for the furnishing of food, lodging, automobile fuel, souvenirs, newspaper stands, and recreational equipment to the general public.'' 29 CFR 4.133(b); 48 FR 49736, 49753 (Oct. 27, 1983).[6]

Proposed § 23.30(a)(1)(iii) extends coverage of the Executive order and part 23 to all concession contracts with the Federal Government, including those exempted from SCA coverage. For example, the Executive order generally covers souvenir shops at national monuments as well as boat rental facilities and fast food restaurants at National Parks. The Department notes that Executive Order 14026 and part 23 cover contracts in connection with both seasonal recreational services and seasonal recreational equipment rental when such services and equipment are offered to the general public on Federal lands. In addition, consistent with the SCA's implementing regulations at 29 CFR 4.107(a), the Department notes that the Executive order generally applies to concessions contracts with nonappropriated fund instrumentalities under the jurisdiction of the Armed Forces or other Federal agencies.

Proposed § 23.30(b) is substantively identical to the analogous provision in the regulations implementing Executive Order 13658, *see* 29 CFR 10.3(b), and implements the value threshold requirements of section 8(b) of Executive Order 14026. 86 FR 22837. Pursuant to that section, the Executive order applies to an SCA-covered concessions contract only if it exceeds $2,500. *Id.;* 41 U.S.C. 6702(a)(2). Section 8(b) of the Executive order further provides that, for procurement contracts or contract-like instruments where workers' wages are governed by the FLSA, such as any procurement contracts for concessionaire services that are excluded from SCA coverage under 29 CFR 4.133(b), part 23 applies only to contracts that exceed the $10,000 micro-purchase threshold, as defined in 41 U.S.C. 1902(a). There is no value threshold for application of Executive Order 14026 and part 23 to subcontracts awarded under covered prime contracts or for non-procurement concessions contracts that are not covered by the SCA.

Contracts in Connection with Federal Property or Lands and Related to Offering Services: Proposed § 23.30(a)(1)(iv) implements section 8(a)(i)(D) of the Executive order, which extends coverage to contracts entered into with the Federal Government in

[6] This exemption applies to certain concessions contracts that provide services to the general public, but does not apply to concessions contracts that provide services to the Federal Government or its personnel or to concessions services provided incidentally to the principal purpose of a covered SCA contract. *See, e.g.,* 29 CFR 4.130 (providing an illustrative list of SCA-covered contracts); *In the Matter of Alcatraz Cruises, LLC,* ARB Case No. 07–024, 2009 WL 250456 (ARB Jan. 23, 2009) (holding that the SCA regulatory exemption at 29 CFR 4.133(b) does not apply to National Park Service contracts for ferry transportation services to and from Alcatraz Island).

connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public. *See* 86 FR 22837; *see also* 79 FR 60655 (Executive Order 13658 final rule preamble discussion of identical provisions in Executive Order 13658 and 29 CFR part 10). To the extent that such agreements are not otherwise covered by § 23.30(a)(1), the Department interprets this provision as generally including leases of Federal property, including space and facilities, and licenses to use such property entered into by the Federal Government for the purpose of offering services to the Federal Government, its personnel, or the general public. In other words, a private entity that leases space in a Federal building to provide services to Federal employees or the general public would be covered by the Executive order and part 23 regardless of whether the lease is subject to the SCA. Although evidence that an agency has retained some measure of control over the terms and conditions of the lease or license to provide services is not necessary for purposes of determining applicability of this section, such a circumstance strongly indicates that the agreement involved is covered by section 8(a)(i)(D) of the Executive order and proposed § 23.30(a)(1)(iv). For example, a private fast food or casual dining restaurant that rents space in a Federal building and serves food to the general public would be subject to the Executive order's minimum wage requirements even if the contract does not constitute a concessions contract for purposes of the order and part 23. Additional examples of agreements that would generally be covered by the Executive order and part 23 under this approach, regardless of whether they are subject to the SCA, include delegated leases of space in a Federal building from an agency to a contractor whereby the contractor operates a child care center, credit union, gift shop, health clinic, or fitness center in the space to serve Federal employees and/or the general public. Consistent with contract coverage under Executive Order 13658, the Department reiterates that the four categories of contracts covered by Executive Order 14026 are not mutually exclusive. A delegated lease of space on a military base from an agency to a contractor whereby the contractor operates a barber shop, for example, would likely qualify both as an SCA-covered contract for services and as a contract entered into with the Federal Government in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public.

Despite this broad definition, the Department notes some limitations to the order's coverage. Coverage under this section only extends to contracts that are in connection with Federal property or lands. The Department does not interpret section 8(a)(i)(D)'s reference to ''[F]ederal property'' to encompass money; as a result, purely financial transactions with the Federal Government, *i.e.,* contracts that are not in connection with physical property or lands, would not be covered by the Executive order or part 23. For example, if a Federal agency contracts with an outside catering company to provide and deliver coffee for a conference, such a contract will not be considered a covered contract under section 8(a)(i)(D), although it would be a covered contract under section 8(a)(i)(B) if it is covered by the SCA. In addition, section 8(a)(i)(D) coverage only extends to contracts ''related to offering services for [F]ederal employees, their dependents, or the general public.'' Therefore, if a Federal agency contracts with a company to solely supply materials in connection with Federal property or lands (such as napkins or utensils for a concession stand), the Department will not consider the contract to be covered by section 8(a)(i)(D) because it is not a contract related to offering services. Likewise, because a license or permit to conduct a wedding on Federal property or lands generally would not relate to offering services for Federal employees, their dependents, or the general public, but rather would only relate to offering services to the specific individual applicant(s), the Department would not consider such a contract covered by section 8(a)(i)(D).

Pursuant to section 8(b) of Executive Order 14026, 86 FR 22837, and an analogous provision in the regulations implementing Executive Order 13658, *see* 29 CFR 10.3(b), proposed § 23.30(b) explains that the order and part 23 apply only to SCA-covered prime contracts in connection with Federal property and related to offering services if such contracts exceed $2,500. *Id.;* 41 U.S.C. 6702(a)(2). For procurement contracts in connection with Federal property and related to offering services where employees' wages are governed by the FLSA (rather than the SCA), part 23 applies only to such contracts that exceed the $10,000 micro-purchase threshold, as defined in 41 U.S.C. 1902(a). As to subcontracts awarded under prime contracts in this category and non-procurement contracts in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public that are not SCA-covered, there is no value threshold for coverage under Executive Order 14026 and part 23.

Relation to the Walsh-Healey Public Contracts Act: Finally, the Department proposes to include as § 23.30(d) a statement that contracts for the manufacturing or furnishing of materials, supplies, articles, or equipment to the Federal Government, including those subject to the Walsh-Healey Public Contracts Act (PCA), 41 U.S.C. 6501 *et seq.,* are not covered by Executive Order 14026 or part 23. Consistent with the implementation of Executive Order 13658, *see* 79 FR 60657, the Department intends to follow the SCA's regulations at 29 CFR 4.117 in distinguishing between work that is subject to the PCA and work that is subject to the SCA (and therefore Executive Order 14026). The Department similarly proposes to follow the regulations set forth in the FAR at 48 CFR 22.402(b) in addressing whether the DBA (and thus the Executive order) applies to construction work on a PCA contract. Under that proposed approach, where a PCA-covered contract involves a substantial and segregable amount of construction work that is subject to the DBA, workers whose wages are governed by the DBA or FLSA are covered by the Executive order for the hours that they spend performing on such DBA-covered construction work.

Coverage of Subcontracts

Consistent with the rulemaking implementing Executive Order 13658, *see* 79 FR 60657–58, the Department notes that the same test for determining application of Executive Order 14026 to prime contracts applies to the determination of whether a subcontract is covered by the order, with the sole distinction that the value threshold requirements set forth in section 8(b) of the order do not apply to subcontracts. In other words, in order for the requirements of Executive Order 14026 to apply to a subcontract, the subcontract must satisfy all of the following prongs: (1) It must qualify as a *contract* or *contract-like instrument* under the definition set forth in part 23, (2) it must fall within one of the four specifically enumerated types of contracts set forth in section 8(a) of the order and § 23.30, and (3) the wages of workers under the contract must be governed by the DBA, SCA, or FLSA.

Pursuant to this approach, only covered subcontracts of covered prime contracts are subject to the requirements of the Executive order. Just as the

Executive order does not apply to prime contracts for the manufacturing or furnishing of materials, supplies, articles, or equipment, it likewise does not apply to subcontracts for the manufacturing or furnishing of materials, supplies, articles, or equipment. In other words, the Executive order does not apply to subcontracts for the manufacturing or furnishing of materials, supplies, articles, or equipment between a manufacturer or other supplier and a covered contractor for use on a covered Federal contract. For example, a subcontract to supply napkins and utensils to a covered prime contractor operating a fast food restaurant on a military base is not a covered subcontract for purposes of this order. The Executive order likewise does not apply to contracts under which a contractor orders materials from a construction materials retailer.

Coverage of Workers

Proposed § 23.30(a)(2) implements section 8(a)(ii) of Executive Order 14026, which provides that the minimum wage requirements of the order only apply to contracts covered by section 8(a)(i) of the order if the wages of workers under such contracts are subject to the FLSA, SCA, or DBA. 86 FR 22837. The Executive order thus provides that its protections only extend to workers performing on or in connection with contracts covered by the Executive order whose wages are governed by the FLSA, SCA, or DBA. *Id.* For example, the order does not extend to workers whose wages are governed by the PCA. Moreover, as discussed below, the Department proposes that, except for workers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c) and workers who are otherwise covered by the SCA or DBA, employees who are exempt from the minimum wage protections of the FLSA under 29 U.S.C. 213(a) are similarly not subject to the minimum wage protections of Executive Order 14026 and part 23. The following discussion of worker coverage under Executive Order 14026 is consistent with the analysis of worker coverage that appeared in the Department's final rule implementing Executive Order 13658, *see* 79 FR 60658, but is repeated here for ease of reference.

Workers Whose Wages Are ''Governed By'' the FLSA, SCA, or DBA

In determining whether a worker's wages are ''governed by'' the FLSA for purposes of section 8(a)(ii) of the Executive order and part 23, the Department interprets this provision as referring to employees who are entitled to the minimum wage under FLSA section 6(a)(1), employees whose wages are calculated pursuant to special certificates issued under FLSA section 14(c), and tipped employees under FLSA section 3(t) who are not otherwise covered by the SCA or the DBA. *See* 29 U.S.C. 203(t), 206(a)(1), 214(c).

In evaluating whether a worker's wages are ''governed by'' the SCA for purposes of the Executive order, the Department interprets such provision as referring to service employees who are entitled to prevailing wages under the SCA. *See* 29 CFR 4.150 through 4.156. The Department notes that workers whose wages are subject to the SCA include individuals who are employed on an SCA contract and individually registered in a bona fide apprenticeship program registered with the Department's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship.

The Department also interprets the language in section 8(a)(ii) of Executive Order 14026 and proposed § 23.30(a)(2) as extending coverage to FLSA-covered employees who provide support on an SCA-covered contract but who are not entitled to prevailing wages under the SCA. 41 U.S.C. 6701(3).[7] The Department notes that such workers would be covered by the plain language of section 8(a) of the Executive order because they are performing in connection with a contract covered by the order and their wages are governed by the FLSA.

In evaluating whether a worker's wages are ''governed by'' the DBA for purposes of the order, the proposed rule interprets such language as referring to laborers and mechanics who are covered by the DBA. This includes any individual who is employed on a DBA-covered contract and individually registered in a bona fide apprenticeship program registered with the Department's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship. The Department also interprets the language in section 8(a)(ii) of Executive Order 14026 and proposed § 23.30(a)(2) as extending coverage to workers performing on or in connection with DBA-covered contracts for construction who are not laborers or mechanics but whose wages are governed by the FLSA. Although such workers are not covered by the DBA itself because they are not ''laborers and mechanics,'' 40 U.S.C. 3142(b), such individuals are workers performing on or in connection with a contract subject to the Executive order whose wages are governed by the FLSA and thus are covered by the plain language of section 8(a) of the Executive order. 86 FR 22837. The proposed rule extends this coverage to FLSA-covered employees working on or in connection with DBA-covered contracts regardless of whether such employees are physically present on the DBA-covered construction worksite.

The Department notes that where state or local government employees are performing on or in connection with covered contracts and their wages are subject to the FLSA or the SCA, such employees are entitled to the protections of the Executive order and part 23. The DBA does not apply to construction performed by state or local government employees.

Workers Performing ''On Or In Connection With'' Covered Contracts

Section 1 of Executive Order 14026 expressly states that the minimum wage requirements of the order apply to workers performing work ''on or in connection with'' covered contracts. 86 FR 22835. Consistent with the Executive Order 13658 rulemaking, *see* 79 FR 60659–62, the Department proposes to interpret these terms in a manner consistent with SCA regulations, *see, e.g.,* 29 CFR 4.150–4.155. In this proposed rule, the Department reiterates these interpretations, which are summarized below and in the proposed regulatory text pertaining to the definition of *worker* in § 23.20 for purposes of clarity.

Specifically, the Department notes that workers performing ''on'' a covered contract are those workers directly performing the specific services called for by the contract, and whether a worker is performing ''on'' a covered contract would be determined, as explained in the final rule implementing Executive Order 13658, *see* 79 FR 60660, in part by the scope of work or a similar statement set forth in the covered contract that identifies the work (*e.g.,* the services or

[7] The Department notes that, under the SCA, ''service employees'' directly engaged in providing specific services called for by the SCA-covered contract are entitled to SCA prevailing wage rates. Meanwhile, ''service employees'' who do not perform the services required by an SCA-covered contract but whose duties are necessary to the contract's performance must be paid at least the FLSA minimum wage. *See* 29 CFR 4.150 through 4.155; WHD FOH ¶ 14b05(c). For purposes of clarity, the Department refers to this latter category of workers who are entitled to receive the FLSA minimum wage as ''FLSA-covered'' workers throughout this rule even though those workers' right to the FLSA minimum wage technically derives from the SCA itself. *See* 41 U.S.C. 6704(a).

construction) to be performed under the contract. Under this approach, all laborers and mechanics engaged in the construction of a public building or public work on the site of the work will be regarded as performing ''on'' a DBA-covered contract, and all service employees performing the specific services called for by an SCA-covered contract will also be regarded as performing ''on'' a contract covered by the Executive order. In other words, any worker who is entitled to be paid prevailing wages under the DBA or SCA would necessarily be performing ''on'' a covered contract. For purposes of concessions contracts and contracts in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public that are not covered by the SCA, the Department would regard any worker performing the specific services called for by the contract as performing ''on'' the covered contract.

The Department further notes that it would consider a worker performing ''in connection with'' a covered contract to be any worker who is performing work activities that are necessary to the performance of a covered contract but who is not directly engaged in performing the specific services called for by the contract itself. For example, a payroll clerk who is not a DBA-covered laborer or mechanic directly performing the construction identified in the DBA contract, but whose services are necessary to the performance of the contract, would necessarily be performing ''in connection with'' a covered contract. This standard, also articulated in the Executive Order 13658 rulemaking, was derived from SCA regulations. *See* 79 FR 60659 (citing 29 CFR 4.150–4.155).

The Department notes that it is proposing to include, as it did in the Executive Order 13658 rulemaking, an exclusion from coverage for workers who spend less than 20 percent of their work hours in a workweek performing ''in connection with'' covered contracts. This proposed exclusion does not apply to any worker performing ''on'' a covered contract whose wages are governed by the FLSA, SCA, or DBA. The proposed exclusion, which appears in § 23.40(f), is explained in greater detail below in the discussion of the Exclusions section.

The Department noted in the final rule implementing Executive Order 13658 and reiterates here that the Executive order does not extend to workers who are not engaged in working on or in connection with a covered contract. For example, a technician who is hired to repair a DBA contractor's electronic time system or a janitor who is hired to clean the bathrooms at the DBA contractor's company headquarters are not covered by the order because they are not performing the specific duties called for by the contract or other services or work necessary to the performance of the contract. Similarly, the Executive order would not apply to a landscaper at the office of an SCA contractor because that worker is not performing the specific duties called for by the SCA contract or other services or work necessary to the performance of the contract. Similarly, the Executive order would not apply to a worker hired by a covered concessionaire to redesign the storefront sign for a snack shop in a National Park unless the redesign of the sign was called for by the concessions contract itself or otherwise necessary to the performance of the contract. The Department notes that because Executive Order 14026 and part 23 do not apply to workers of Federal contractors who do no work on or in connection with a covered contract, a contractor could be required to pay the Executive order minimum wage to some of its workers but not others. In other words, it is not the case that because a contractor has one or more Federal contracts, all of its workers or projects are covered by the order.

The Department further notes that Executive Order 14026's minimum wage requirements only extend to the hours worked by covered workers performing on or in connection with covered contracts. As the Department explained in the final rule implementing Executive Order 13658, *see* 79 FR 60672, in situations where contractors are not exclusively engaged in contract work covered by the Executive order, and there are adequate records segregating the periods in which work was performed on or in connection with covered contracts subject to the order from periods in which other work was performed, the Executive order minimum wage does not apply to hours spent on work not covered by the order. Accordingly, the proposed regulatory text at § 23.220(a) emphasizes that contractors must pay covered workers performing on or in connection with a covered contract no less than the applicable Executive order minimum wage for hours worked on or in connection with the covered contract.

FLSA Section 14(c) Workers

Executive Order 14026 expressly provides that its minimum wage protections extend to workers with disabilities whose wage rates are calculated pursuant to special certificates issued under section 14(c) of the FLSA. *See* 86 FR 22835. Consistent with the final rule implementing Executive Order 13658, *see* 79 FR 60662, the Department has proposed to include language in the contract clause set forth in appendix A explicitly stating that workers with disabilities whose wages are calculated pursuant to special certificates issued under section 14(c) of the FLSA must be paid at least the Executive Order 14026 minimum wage (or the applicable commensurate wage rate under the certificate, if such rate is higher than the Executive order minimum wage) for hours spent performing on or in connection with covered contracts. All workers performing on or in connection with covered contracts whose wages are governed by FLSA section 14(c), regardless of whether they are considered to be ''employees,'' ''clients,'' or ''consumers,'' are covered by the Executive order (unless the 20 percent of hours worked exclusion applies). Moreover, all of the Federal contractor requirements set forth in this proposed rule apply with equal force to contractors employing FLSA section 14(c) workers performing on or in connection with covered contracts.

Apprentices, Students, Interns, and Seasonal Workers

Consistent with the Department's final rule implementing Executive Order 13658, *see* 79 FR 60663, the Department's proposed rule explains that individuals who are employed on an SCA- or DBA-covered contract and individually registered in a bona fide apprenticeship program registered with the Department's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship, are entitled to the Executive order minimum wage for the hours they spend working on or in connection with covered contracts.

The Department thus proposes that DBA- and SCA-covered apprentices are subject to the Executive order but that workers whose wages are governed by special subminimum wage certificates under FLSA sections 14(a) and (b) are excluded from the order (*i.e.,* FLSA-covered learners, apprentices, messengers, and full-time students). The Department notes that the vast majority of apprentices employed by contractors on covered contracts will be individuals who are registered in a bona fide apprenticeship program registered with the Department's Employment and Training Administration, Office of Apprenticeship, or with a State

Apprenticeship Agency recognized by the Office of Apprenticeship. Such apprentices are entitled to receive the full Executive order minimum wage for all hours worked on or in connection with a covered contract. The Executive order directs that the minimum wage applies to workers performing on or in connection with a covered contract whose wages are governed by the DBA and the SCA. Moreover, the Department believes that the Federal Government's interests in economy and efficiency are best promoted by extending coverage of the order to apprentices covered by the DBA and the SCA.

However, and consistent with the Department's final rule implementing Executive Order 13658, *see* 79 FR 60663–64, the Department proposes to interpret the plain language of the Executive order as excluding workers whose wages are governed by FLSA sections 14(a) and (b) subminimum wage certificates (*i.e.,* FLSA-covered apprentices, learners, messengers, and full-time students). The order expressly states that the minimum wage must ''be paid to workers employed in the performance of the contract or any covered subcontract thereunder, including workers whose wages are calculated pursuant to special certificates issued under section 14(c).'' 86 FR 22835. The Department believes that the explicit inclusion of FLSA section 14(c) workers reflects an intent to omit from coverage workers whose wages are calculated pursuant to special certificates issued under FLSA sections 14(a) and (b).

The Department's proposed rule does not contain a general exclusion for seasonal workers or students. However, except with respect to workers who are otherwise covered by the SCA or the DBA, the proposed rule states that part 23 does not apply to employees who are not entitled to the minimum wage set forth at 29 U.S.C. 206(a)(1) of the FLSA pursuant to 29 U.S.C. 213(a) and 214(a)–(b). Pursuant to this exclusion, the Executive order does not apply to full-time students whose wages are calculated pursuant to special certificates issued under section 14(b) of the FLSA, unless they are otherwise covered by the DBA or SCA. The exclusion would also apply to employees employed by certain seasonal and recreational establishments pursuant to 29 U.S.C. 213(a)(3).

Geographic Scope

Finally, proposed § 23.30(c) provides that the Executive order and part 23 only apply to contracts with the Federal Government requiring performance in whole or in part within the United States, which is defined in proposed § 23.20 to mean, when used in a geographic sense, the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf lands as defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Wake Island, and Johnston Island. Under this approach, the minimum wage requirements of the Executive order and part 23 would not apply to contracts with the Federal Government to be performed in their entirety outside the geographical limits of the United States as thus defined. However, if a contract with the Federal Government is to be performed in part within and in part outside these geographical limits and is otherwise covered by the Executive order and part 23, the minimum wage requirements of the order and part 23 would apply with respect to that part of the contract that is performed within these geographical limits.

As explained above in the discussion of the proposed definition of *United States,* the geographic scope of Executive Order 14026 and part 23 is more expansive than the regulations implementing Executive Order 13658, which only applied to contracts performed in the 50 States and the District of Columbia. However, as noted above, each of the territories listed above is covered by both the SCA, *see* 29 CFR 4.112(a), and the FLSA. *See, e.g.,* 29 U.S.C. 213(f), 29 CFR 776.7; Fair Minimum Wage Act of 2007, Public Law 110–28, 121 Stat. 112 (2007). Contractors operating in those territories will therefore generally have familiarity with many of the requirements set forth in part 23 based on their coverage by the SCA and/or the FLSA.

Section 23.40 Exclusions

Proposed § 23.40 addresses and implements the exclusionary provisions expressly set forth in section 8(c) of Executive Order 14026 and provides other limited exclusions to coverage as authorized by section 4(a) of the Executive order. *See* 86 FR 22836–37. Specifically, proposed § 23.40(a) through (d) and (g) set forth the limited categories of contractual arrangements for services or construction that are excluded from the minimum wage requirements of the Executive order and part 23, while proposed § 23.40(e) and (f) establish narrow categories of workers that are excluded from coverage of the order and part 23. Each of these proposed exclusions is discussed below.

Exclusion of grants: Proposed § 23.40(a) implements section 8(c) of Executive Order 14026, which states that the order does not apply to ''grants.'' 86 FR 22837. Consistent with the regulations implementing Executive Order 13658, *see* 29 CFR 10.4(a), the Department interprets this provision to mean that the minimum wage requirements of the Executive order and part 23 do not apply to grants, as that term is used in the Federal Grant and Cooperative Agreement Act, 31 U.S.C. 6301 *et seq.* That statute defines a ''grant agreement'' as ''the legal instrument reflecting a relationship between the United States Government and a State, a local government, or other recipient'' when two conditions are satisfied. 31 U.S.C. 6304. First, ''the principal purpose of the relationship is to transfer a thing of value to the state or local government or other recipient to carry out a public purpose of support or stimulation authorized by a law of the United States instead of acquiring (by purchase, lease, or barter) property or services for the direct benefit or use of the United States Government.'' *Id.* Second, ''substantial involvement is not expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement.'' *Id.* Section 2.101 of the FAR similarly excludes ''grants,'' as defined in the Federal Grant and Cooperative Agreement Act, from its coverage of contracts. 48 CFR 2.101. Several appellate courts have similarly adopted this construction of ''grants'' in defining the term for purposes of other Federal statutory schemes. *See, e.g., Chem. Service, Inc.* v. *Environmental Monitoring Systems Laboratory,* 12 F.3d 1256, 1258 (3d Cir. 1993) (applying same definition of ''grants'' for purposes of 15 U.S.C. 3710a); *East Arkansas Legal Services* v. *Legal Services Corp.,* 742 F.2d 1472, 1478 (D.C. Cir. 1984) (applying same definition of ''grants'' in interpreting 42 U.S.C. 2996a). If a contract qualifies as a grant within the meaning of the Federal Grant and Cooperative Agreement Act, it would thereby be excluded from coverage of Executive Order 14026 and part 23 pursuant to the proposed rule.

Exclusion of contracts or agreements with Indian Tribes: Proposed § 23.40(b) implements the other exclusion set forth in section 8(c) of Executive Order 14026, which states that the order does not apply to ''contracts, contract-like instruments, or agreements with Indian Tribes under the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638), as amended.'' 86 FR 22837.

The remaining exclusionary provisions of the proposed rule are

derived from the authority granted to the Secretary pursuant to section 4(a) of the Executive order to ''include . . . as appropriate, exclusions from the requirements of this order'' in implementing regulations. 86 FR 22836. In issuing such regulations, the Executive order instructs the Secretary to ''incorporate existing definitions'' under the FLSA, SCA, DBA, and Executive Order 13658 ''to the extent practicable.'' *Id.* Accordingly, the proposed exclusions discussed below incorporate existing applicable statutory and regulatory exclusions and exemptions set forth in the FLSA, SCA, DBA, and Executive Order 13658.

Exclusion for procurement contracts for construction that are excluded from DBA coverage: As discussed in the coverage section above, the Department proposes to interpret section 8(a)(i)(A) of the Executive order, which states that the order applies to ''procurement contract[s]'' for ''construction,'' 86 FR 22837, as referring to any contract covered by the DBA, as amended, and its implementing regulations. *See* proposed § 23.30(a)(1)(i). In order to provide further definitional clarity to the regulated community for purposes of proposed § 23.30(a)(1)(i), and consistent with the regulations implementing Executive Order 13658, the Department thus establishes in proposed § 23.40(c) that any procurement contracts for construction that are not subject to the DBA are similarly excluded from coverage of the Executive order and part 23. For example, a prime procurement contract for construction valued at less than $2,000 would not be covered by the DBA and thus is not covered by Executive Order 14026 and part 23. To assist all interested parties in understanding their rights and obligations under Executive Order 14026, the Department proposes to make coverage of construction contracts under Executive Order 14026 and part 23 consistent with coverage under the DBA and Executive Order 13658 to the greatest extent possible.

Exclusion for contracts for services that are exempted from SCA coverage: Similarly, the Department proposes to implement the coverage provisions set forth in sections 8(a)(i)(A) and (B) of the Executive order, which state that the order applies respectively to a ''procurement contract . . . for services'' and a ''contract or contract-like instrument for services covered by the Service Contract Act,'' 86 FR 22837, by providing that the requirements of the order apply to all service contracts covered by the SCA. *See* proposed § 23.30(a)(1)(ii). Proposed § 23.40(d) provides additional clarification by incorporating, where appropriate, the SCA's exclusion of certain service contracts into the exclusionary provisions of the Executive order. This proposed provision excludes from coverage of the Executive order and part 23 any contracts for services, except for those expressly covered by proposed § 23.30(a)(1)(ii)–(iv), that are exempted from coverage under the SCA. The SCA specifically exempts from coverage seven types of contracts (or work) that might otherwise be subject to its requirements. *See* 41 U.S.C. 6702(b). Pursuant to this statutory provision, the SCA expressly does not apply to (1) a contract of the Federal Government or the District of Columbia for the construction, alteration, or repair, including painting and decorating, of public buildings or public works; (2) any work required to be done in accordance with chapter 65 of title 41; (3) a contract for the carriage of freight or personnel by vessel, airplane, bus, truck, express, railway line or oil or gas pipeline where published tariff rates are in effect; (4) a contract for the furnishing of services by radio, telephone, telegraph, or cable companies, subject to the Communications Act of 1934, 47 U.S.C. 151 *et seq.;* (5) a contract for public utility services, including electric light and power, water, steam, and gas; (6) an employment contract providing for direct services to a Federal agency by an individual; or (7) a contract with the United States Postal Service, the principal purpose of which is the operation of postal contract stations. *Id.; see* 29 CFR 4.115–4.122; WHD FOH ¶ 14c00.

The SCA also authorizes the Secretary to ''provide reasonable limitations'' and to prescribe regulations allowing reasonable variation, tolerances, and exemptions with respect to the chapter but only in special circumstances where the Secretary determines that the limitation, variation, tolerance, or exemption is necessary and proper in the public interest or to avoid the serious impairment of Federal Government business, and is in accord with the remedial purpose of the chapter to protect prevailing labor standards. 41 U.S.C. 6707(b); *see* 29 CFR 4.123. Pursuant to this authority, the Secretary has exempted a specific list of contracts from SCA coverage to the extent regulatory criteria for exclusion from coverage are satisfied as provided at 29 CFR 4.123(d) and (e). To assist all interested parties in understanding their rights and obligations under Executive Order 14026, the Department proposes to make coverage of service contracts under the Executive order and part 23 consistent with coverage under the SCA to the greatest extent possible.

Therefore, the Department provides in proposed § 23.40(d) that contracts for services that are exempt from SCA coverage pursuant to its statutory language or implementing regulations are not subject to part 23 unless expressly included by proposed § 23.30(a)(1)(ii)–(iv). For example, the SCA exempts contracts for public utility services, including electric light and power, water, steam, and gas, from its coverage. *See* 41 U.S.C. 6702(b)(5); 29 CFR 4.120. Such contracts would also be excluded from coverage of the Executive order and part 23 under the proposed rule. Similarly, certain contracts principally for the maintenance, calibration, or repair of automated data processing equipment and office information/word processing systems are exempted from SCA coverage pursuant to the SCA's implementing regulations at 29 CFR 4.123(e)(1)(i)(A); such contracts would thus not be covered by the Executive order or the proposed rule. However, certain types of concessions contracts are excluded from SCA coverage pursuant to 29 CFR 4.133(b) but are explicitly covered by the Executive order and part 23 under proposed § 23.30(a)(1)(iii). 86 FR 22837. Moreover, to the extent that a contract is excluded from SCA coverage but subject to the DBA (*e.g.,* a contract with the Federal Government for the construction, alteration, or repair, including painting and decorating, of public buildings or public works that would be excluded from the SCA under 41 U.S.C. 6702(b)(1)), such a contract would be covered by the Executive order and part 23 as a ''procurement contract'' for ''construction.'' 86 FR 22837; proposed § 23.30(a)(1)(i). In sum, all of the SCA's exemptions are applicable to the Executive order, unless such SCA-exempted contracts are otherwise covered by the Executive order and this proposed rule (*e.g.,* they qualify as concessions contracts or contracts in connection with Federal land and related to offering services). The Department notes that subregulatory and other coverage determinations made by the Department for purposes of the SCA will also govern whether a contract is covered by the SCA for purposes of the Executive order. This proposed exclusion is identical to that adopted in the regulations implementing Executive Order 13658. *See* 29 CFR 10.4(d).

Exclusion for employees who are exempt from the minimum wage requirements of the FLSA under 29

U.S.C. 213(a) and 214(a)–(b): Consistent with the regulations implementing Executive Order 13658, the Department proposes to provide in § 23.40(e) that, except for workers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c) and workers who are otherwise covered by the SCA or DBA, employees who are exempt from the minimum wage protections of the FLSA under 29 U.S.C. 213(a) are similarly not subject to the minimum wage protections of Executive Order 14026 and part 23. Proposed § 23.40(e)(1) through (3), which are discussed briefly below, highlighted some of the narrow categories of employees that are not entitled to the minimum wage protections of the order and part 23 pursuant to this exclusion.

Proposed § 23.40(e)(1) and (2) specifically exclude from the requirements of Executive Order 14026 and part 23 workers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(a) and (b). Specifically, proposed § 23.40(e)(1) excludes from coverage learners, apprentices, or messengers employed under special certificates pursuant to 29 U.S.C. 214(a). *Id.; see* 29 CFR part 520. Proposed § 23.40(e)(2) also excludes from coverage full-time students employed under special certificates issued under 29 U.S.C. 214(b). *Id.; see* 29 CFR part 519. Proposed § 23.40(e)(3) provides that the Executive order and part 23 do not apply to individuals employed in a bona fide executive, administrative, or professional capacity, as those terms are defined and delimited in 29 CFR part 541. This proposed exclusion is consistent with the regulations for Executive Order 13658, *see* 29 CFR 10.4(e), as well as with the FLSA, SCA, and DBA and their implementing regulations. *See, e.g.,* 29 U.S.C. 213(a)(1) (FLSA); 41 U.S.C. 6701(3)(C) (SCA); 29 CFR 5.2(m) (DBA).

Exclusion for FLSA-covered workers performing in connection with covered contracts for less than 20 percent of their work hours in a given workweek: As discussed earlier in the context of the ''on or in connection with'' standard for worker coverage, proposed § 23.40(f) establishes an explicit exclusion for FLSA-covered workers performing ''in connection with'' covered contracts for less than 20 percent of their hours worked in a given workweek.

This exclusion is identical to the exclusion that appears in the Department's regulations implementing Executive Order 13658. *See* 29 CFR 10.4(f). As the Department explained in the final rule for those regulations, *see* 79 FR 60660, the Department has used a 20 percent threshold for coverage determinations in a variety of SCA and DBA contexts. For example, 29 CFR 4.123(e)(2) exempts from SCA coverage contracts for seven types of commercial services, such as financial services involving the issuance and servicing of cards (including credit cards, debit cards, purchase cards, smart cards, and similar card services), contracts with hotels for conferences, transportation by common carriers of persons by air, real estate services, and relocation services. Certain criteria must be satisfied for the exemption to apply to a contract, including that each service employee spend only ''a small portion of his or her time'' servicing the contract. 29 CFR 4.123(e)(2)(ii)(D). The exemption defines ''small portion'' in relative terms and as ''less than 20 percent'' of the employee's available time. *Id.* Likewise, the Department has determined that the DBA applies to certain categories of workers (*i.e.,* air balance engineers, employees of traffic service companies, material suppliers, and repair employees) only if they spend 20 percent or more of their hours worked in a workweek performing laborer or mechanic duties on the covered site. *See* WHD FOH ¶¶ 15e06, 15e10(b), 15e16(c), and 15e19.

In light of the exclusion that was adopted in the Department's regulations implementing Executive Order 13658, as well as the above-discussed administrative practice under the SCA and the DBA of applying a 20 percent threshold to certain coverage determinations, the Department proposes an exclusion in § 23.40(f) whereby any covered worker performing only ''in connection with'' covered contracts for less than 20 percent of his or her hours worked in a given workweek will not be entitled to the Executive Order 14026 minimum wage for any hours worked.

This proposed exclusion does not apply to any worker performing ''on'' a covered contract whose wages are governed by the FLSA, SCA, or DBA. Such workers will be entitled to the Executive Order 14026 minimum wage for all hours worked performing on or in connection with covered contracts. However, for a worker solely performing ''in connection with'' a covered contract, the Executive Order 14026 minimum wage requirements will only apply if that worker spends 20 percent or more of his or her hours worked in a given workweek performing in connection with covered contracts. Thus, in order to apply this exclusion correctly, contractors must accurately distinguish between workers performing ''on'' a covered contract and those workers performing ''in connection with'' a covered contract based on the guidance provided in this section. The 20 percent of hours worked exclusion does not apply to any worker who spends any hours performing ''on'' a covered contract; rather, it applies only to workers performing ''in connection with'' a covered contract who do not spend any hours worked performing ''on'' the contract in a given workweek.

For purposes of administering the 20 percent of hours worked exclusion under the Executive order, the Department views workers performing ''on'' a covered contract as those workers directly performing the specific services called for by the contract. Whether a worker is performing ''on'' a covered contract will be determined in part by the scope of work or a similar statement set forth in the covered contract that identifies the work (*e.g.,* the services or construction) to be performed under the contract. Specifically, consistent with the SCA, *see, e.g.,* 29 CFR 4.153, a worker will be considered to be performing ''on'' a covered contract if the employee is directly engaged in the performance of specified contract services or construction. All laborers and mechanics engaged in the construction of a public building or public work on the site of the work thus will be regarded as performing ''on'' a DBA-covered contract. All service employees performing the specific services called for by an SCA-covered contract will also be regarded as performing ''on'' a contract covered by the Executive order. In other words, any worker who is entitled to be paid DBA or SCA prevailing wages is entitled to receive the Executive Order 14026 minimum wage for all hours worked on covered contracts, regardless of whether such covered work constitutes less than 20 percent of his or her overall hours worked in a particular workweek. For purposes of concessions contracts and contracts in connection with Federal property and related to offering services that are not covered by the SCA, the Department will regard any employee performing the specific services called for by the contract as performing ''on'' the covered contract in the same manner described above. Such workers will therefore be entitled to receive the Executive Order 14026 minimum wage for all hours worked on covered contracts, even if such time represents less than 20 percent of his or her overall work hours in a particular workweek.

However, for purposes of the Executive order, the Department will view any worker who performs solely

''in connection with'' covered contracts for less than 20 percent of his or her hours worked in a given workweek to be excluded from the order and part 23. In other words, such workers will not be entitled to be paid the Executive order minimum wage for any hours that they spend performing in connection with a covered contract if such time represents less than 20 percent of their hours worked in a given workweek. For purposes of this proposed exclusion, the Department regards a worker performing ''in connection with'' a covered contract as any worker who is performing work activities that are necessary to the performance of a covered contract but who are not directly engaged in performing the specific services called for by the contract itself.

Therefore, the 20 percent of hours worked exclusion may apply to any FLSA-covered employees who are not directly engaged in performing the specific construction identified in a DBA contract (*i.e.,* they are not DBA-covered laborers or mechanics) but whose services are necessary to the performance of the DBA contract. In other words, workers who may fall within the scope of this exclusion are FLSA-covered workers who do not perform the construction identified in the DBA contract either due to the nature of their non-physical duties and/or because they are not present on the site of the work, but whose duties would be regarded as essential for the performance of the contract.

In the context of DBA-covered contracts, workers who may qualify for this exclusion if they spend less than 20 percent of their hours worked performing in connection with covered contracts could include an FLSA-covered security guard patrolling or monitoring a construction worksite where DBA-covered work is being performed or an FLSA-covered clerk who processes the payroll for DBA contracts (either on or off the site of the work). However, if the security guard or clerk in these examples also performed the duties of a DBA-covered laborer or mechanic (for example, by painting or moving construction materials), the 20 percent of hours worked exclusion would not apply to any hours worked on or in connection with the contract because that worker performed ''on'' the covered contract at some point in the workweek.

The Department also reaffirms that the protections of the order do not extend to workers who are not engaged in working on or in connection with a covered contract. For example, an FLSA-covered technician who is hired to repair a DBA contractor's electronic time system or an FLSA-covered janitor who is hired to clean the bathrooms at the DBA contractor's company headquarters are not covered by the order because they are not performing the specific duties called for by the contract or other services or work necessary to the performance of the contract.

In the context of SCA-covered contracts, the 20 percent of hours worked exclusion may apply to any FLSA-covered employees performing in connection with an SCA contract who are not directly engaged in performing the specific services identified in the contract (*i.e.,* they are not ''service employees'' entitled to SCA prevailing wages) but whose services are necessary to the performance of the SCA contract. Any workers performing work in connection with an SCA contract who are not entitled to SCA prevailing wages but are entitled to at least the FLSA minimum wage pursuant to 41 U.S.C. 6704(a) would fall within the scope of this exclusion.

Examples of workers in the SCA context who may qualify for this exclusion if they perform in connection with covered contracts for less than 20 percent of their hours worked in a given workweek include an accounting clerk who processes a few invoices for SCA contracts out of thousands of other invoices for non-covered contracts during the workweek or an FLSA-covered human resources employee who assists for short periods of time in the hiring of the workers performing on the SCA-covered contract in addition to the hiring of workers on other non-covered projects. Neither the Executive order nor the exclusion would apply, however, to an FLSA-covered landscaper at the office of an SCA contractor because that worker is not performing the specific duties called for by the SCA contract or other services or work necessary to the performance of the contract.

With respect to concessions contracts and contracts in connection with Federal property or lands and related to offering services, the 20 percent of hours worked exclusion may apply to any FLSA-covered employees performing work in connection with such contracts who are not at any time directly engaged in performing the specific services identified in the contract but whose services or work duties are necessary to the performance of the covered contract. One example of a worker who may qualify for this exclusion if the worker performed work in connection with covered contracts for less than 20 percent of his or her hours in a given workweek includes an FLSA-covered clerk who handles the payroll for a fitness center that leases space in a Federal agency building as well as the center's other locations that are not covered by the Executive order. Another such example of a worker who may qualify for this exclusion if the worker performed work in connection with covered contracts for less than 20 percent of his or her hours worked in a given workweek would be a job coach whose wages are governed by the FLSA who assists FLSA section 14(c) workers in performing work at a fast food franchise located on a military base as well as that franchisee's other restaurant locations off the base. Neither the Executive order nor the exclusion would apply, however, to an FLSA-covered employee hired by a covered concessionaire to redesign the storefront sign for a snack shop in a national park unless the redesign of the sign was called for by the SCA contract itself or otherwise necessary to the performance of the contract.

As explained above, pursuant to this exclusion, if a covered worker performs work ''in connection with'' contracts covered by the Executive order as well as on other work that is not within the scope of the order during a particular workweek, the Executive Order 14026 minimum wage would not apply for any hours worked if the number of the individual's work hours spent performing in connection with the covered contract is less than 20 percent of that worker's total hours worked in that workweek. Importantly, however, this rule is only applicable if the contractor has correctly determined the hours worked and if it appears from the contractor's properly kept records or other affirmative proof that the contractor appropriately segregated the hours worked in connection with the covered contract from other work not subject to the Executive order for that worker. *See, e.g.,* 29 CFR 4.169, 4.179. As discussed in greater detail in the preamble pertaining to rate of pay and recordkeeping requirements in §§ 23.220 and 23.260, if a covered contractor during any workweek is not exclusively engaged in performing covered contracts, or if while so engaged it has workers who spend a portion but not all of their hours worked in the workweek in performing work on or in connection with such contracts, it is necessary for the contractor to identify accurately in its records, or by other means, those periods in each such workweek when the contractor and each such worker performed work on or in connection with such contracts. *See* 29 CFR 4.179.

In the absence of records adequately segregating non-covered work from the work performed on or in connection with a covered contract, all workers working in the establishment or department where such covered work is performed will be presumed to have worked on or in connection with the contract during the period of its performance, unless affirmative proof establishing the contrary is presented. Similarly, in the absence of such records, a worker performing any work on or in connection with the contract in a workweek shall be presumed to have continued to perform such work throughout the workweek, unless affirmative proof establishing the contrary is presented. *Id.*

The quantum of affirmative proof necessary to adequately segregate non-covered work from the work performed on or in connection with a covered contract—or to establish, for example, that all of a worker's time associated with a contract was spent performing ''in connection with'' rather than ''on'' the contract—will vary with the circumstances. For example, it may require considerably less affirmative proof to satisfy the 20 percent of hours worked exclusion with respect to an FLSA-covered accounting clerk who only occasionally processes an SCA-contract-related invoice than would be necessary to establish the 20 percent of hours worked exclusion with respect to a security guard who works on a DBA-covered site at least several hours each week.

Finally, the Department notes that in calculating hours worked by a particular worker in connection with covered contracts for purposes of determining whether this exclusion may apply, contractors must determine the aggregate amount of hours worked on or in connection with covered contracts in a given workweek by that worker. For example, if an FLSA-covered administrative assistant works 40 hours per week and spends two hours each week handling payroll for each of four separate SCA contracts, the eight hours that the worker spends performing in connection with the four covered contracts must be aggregated for that workweek in order to determine whether the 20 percent of hours worked exclusion applies; in this example, the worker would be entitled to the Executive order minimum wage for all eight hours worked in connection with the SCA contracts because such work constitutes 20 percent of her total hours worked for that workweek.

Exclusion for contracts that result from a solicitation issued before January 30, 2022 and that are entered into on or between January 30, 2022 and March 30, 2022: Section 9(b) of Executive Order 14026 provides that as an ''exception'' to the general coverage of new contracts, where agencies have issued a solicitation before January 30, 2022, and entered into a new contract resulting from such solicitation within 60 days of such date, such agencies are strongly encouraged but not required to ensure that the Executive Order 14026 minimum wage rates are paid under the new contract. 86 FR 22837–38. The order further provides, however, that if such contract is subsequently extended or renewed, or an option is subsequently exercised under that contract, the Executive order 14026 minimum wage requirements will apply to that extension, renewal, or option. 86 FR 22838. Accordingly, the Department proposes to insert at § 23.40(g) an exclusion providing that part 23 does not apply to contracts that result from a solicitation issued prior to January 30, 2022, and that are entered into on or between January 30, 2022 and March 30, 2022. For stakeholder clarity, and consistent with section 9(b) of the order, the proposed exclusion states that, if such a contract is subsequently extended or renewed, or an option is subsequently exercised under that contract, the Executive order and part 23 will apply to that extension, renewal, or option. The Department notes that, based on a plain reading of the language of section 9(b) of the order, this exclusion is only applicable to contracts resulting from solicitations that are issued prior to January 30, 2022, and that are entered into by March 30, 2022. Any covered contract entered into on or after March 31, 2022, will be subject to Executive Order 14026 and part 23 regardless of when such solicitation was issued. Moreover, the Department notes that this exclusion does not apply to contracts that are awarded outside the solicitation process.

Rescission of Executive Order 13838 Exemption for Contracts in Connection with Seasonal Recreational Services and Seasonal Recreational Equipment Rental Offered for Public Use on Federal Lands: As previously discussed, Executive Order 13658 was issued on February 12, 2014, and established a minimum wage rate that applied to the same four types of Federal contracts to which Executive Order 14026 applies. On May 25, 2018, Executive Order 13838 amended Executive Order 13658 to exclude from coverage contracts entered into with the Federal Government in connection with seasonal recreational services or seasonal recreational equipment rental for the general public on Federal lands. On September 26, 2018, the Department implemented Executive Order 13838 by adding the required exclusion to the regulations for Executive Order 13658 at 29 CFR 10.4(g). *See* 83 FR 48537.

Section 6 of Executive Order 14026 revokes Executive Order 13838 as of January 30, 2022. *See* 86 FR 22836. Accordingly, as of January 30, 2022, contracts entered into with the Federal Government in connection with seasonal recreational services or seasonal recreational equipment rental for the general public on Federal lands will be subject to the minimum wage requirements of either Executive Order 13658 or Executive Order 14026 depending on the date that the relevant contract was entered into, renewed, or extended. (See the preamble discussion accompanying proposed § 23.30 above for more information regarding the interaction between Executive Orders 13658 and 14026 with respect to contract coverage.) Such contracts include contracts in connection with river running, hunting, fishing, horseback riding, camping, mountaineering activities, recreational ski services, and youth camps offered for public use on Federal lands. To effectuate the rescission of Executive Order 13838, the Department is proposing to remove in its entirety the exclusion of such contracts set forth at § 10.4(g) in the regulations implementing Executive Order 13658. Consistent with such rescission, the Department also declines to exclude such contracts in part 23.

Section 23.50 Minimum Wage for Federal Contractors and Subcontractors

Proposed § 23.50 sets forth the minimum wage rate requirement for Federal contractors and subcontractors established in Executive Order 14026. *See* 86 FR 22835–36. This section generally discusses the minimum hourly wage protections provided by the Executive order for workers performing on or in connection with covered contracts with the Federal Government, as well as the methodology that the Secretary will use for determining the applicable minimum wage rate under the Executive order on an annual basis beginning at least 90 days before January 1, 2023. The Executive order provides that the minimum wage beginning January 1, 2023, and annually thereafter, will be an amount determined by the Secretary. It further provides that such rates be increased by the annual percentage increase in the CPI for the most recent month, quarter, or year available as determined by the Secretary. Consistent with the

regulations implementing Executive Order 13658, *see* 29 CFR 10.5, the Secretary proposes to base such increases on the most recent year available to minimize the impact of seasonal fluctuations on the Executive order minimum wage rate. This section also emphasizes that nothing in the Executive order or part 23 shall excuse noncompliance with any applicable Federal or state prevailing wage law or any applicable law or municipal ordinance establishing a minimum wage higher than the minimum wage established under the Executive order and part 23. *See* 86 FR 22836.

Finally, the Department proposes at § 23.50(d) to add language briefly discussing the relationship between Executive Order 13658 and this order. Consistent with section 6 of Executive Order 14026, *see* 86 FR 22836–37, the proposed provision would explain that, as of January 30, 2022, Executive Order 13658 is superseded to the extent that it is inconsistent with Executive Order 14026 and part 23. The Department proposes to explain that, unless otherwise excluded by § 23.40, workers performing on or in connection with a covered new contract, as defined in § 23.20, must be paid the minimum hourly wage rate established by Executive Order 14026 and part 23 rather than the lower hourly minimum wage rate established by Executive Order 13658 and its regulations. A more detailed discussion of the interaction between the Executive orders appears above in the discussion of contract coverage under § 23.30.

Section 23.60 Antiretaliation

Proposed § 23.60 establishes an antiretaliation provision stating that it shall be unlawful for any person to discharge or in any other manner discriminate against any worker because such worker has filed any complaint or instituted or caused to be instituted any proceeding under or related to Executive Order 14026 or part 23, or has testified or is about to testify in any such proceeding. Consistent with the Executive Order 13658 regulations, *see* 29 CFR 10.6, this language is derived from the FLSA's antiretaliation provision set forth at 29 U.S.C. 215(a)(3) and is consistent with the Executive order's direction to adopt enforcement mechanisms as consistent as practicable with the FLSA, SCA, or DBA. The Department believes that such a provision will help ensure effective enforcement of Executive Order 14026. Consistent with the Supreme Court's observation in interpreting the scope of the FLSA's antiretaliation provision, enforcement of Executive Order 14026 will depend ''upon information and complaints received from employees seeking to vindicate rights claimed to have been denied.'' *Kasten* v. *Saint-Gobain Performance Plastics Corp.,* 563 U.S. 1, 11 (2011) (internal quotation marks omitted). Accordingly, the Department proposes to include an antiretaliation provision based on the FLSA's antiretaliation provision. *See* 29 U.S.C. 215(a)(3). Importantly, and consistent with the Supreme Court's interpretation of the FLSA's antiretaliation provision, the Department's proposed rule would protect workers who file oral as well as written complaints. *See Kasten,* 563 U.S. at 17.

Moreover, as under the FLSA, the proposed antiretaliation provision under part 23 would protect workers who complain to the Department as well as those who complain internally to their employers about alleged violations of the order or part 23. *See, e.g., Greathouse* v. *JHS Sec. Inc.,* 784 F.3d 105, 111–16 (2d Cir. 2015); *Minor* v. *Bostwick Labs. Inc.,* 669 F.3d 428, 438 (4th Cir. 2012); *Hagan* v. *Echostar Satellite, LLC,* 529 F.3d 617, 626 (5th Cir. 2008); *Lambert* v. *Ackerley,* 180 F.3d 997, 1008 (9th Cir. 1999) (en banc); *Valerio* v. *Putnam Assocs. Inc.,* 173 F.3d 35, 43 (1st Cir. 1999); *EEOC* v. *Romeo Comty Sch.,* 976 F.2d 985, 989 (6th Cir. 1992). The Department also notes that the antiretaliation provision set forth in the proposed rule, like the FLSA's antiretaliation provision, would apply in situations where there is no current employment relationship between the parties; for example, it would protect a worker from retaliation by a prospective or former employer, or by a person acting directly or indirectly in the interest of an employer. *See Arias* v. *Raimondo,* 860 F.3d 1185 (9th Cir. 2017); *see also* WHD Fact Sheet #77A (''Prohibiting Retaliation Under the Fair Labor Standards Act (FLSA)''), available at *https://www.dol.gov/agencies/whd/fact-sheets/77a-flsa-prohibiting-retaliation.*

Section 23.70 Waiver of Rights

Proposed § 23.70 provides that workers cannot waive, nor may contractors induce workers to waive, their rights under Executive Order 14026 or part 23. The Supreme Court has consistently concluded that an employee's rights and remedies under the FLSA, including payment of minimum wage and back wages, cannot be waived or abridged by contract. *See, e.g., Tony & Susan Alamo Found.* v. *Sec'y of Labor,* 471 U.S. 290, 302 (1985); *Barrentine* v. *Arkansas-Best Freight Sys., Inc.,* 450 U.S. 728, 740 (1981); *D.A. Schulte, Inc.* v. *Gangi,* 328 U.S. 108, 112–16 (1946); *Brooklyn Sav. Bank* v. *O'Neil,* 324 U.S. 697, 706–07 (1945). The Supreme Court has reasoned that the FLSA was intended to establish a ''uniform national policy of guaranteeing compensation for all work'' performed by covered employees. *Jewell Ridge Coal Corp.* v. *Local No. 6167, United Mine Workers,* 325 U.S. 161, 167 (1945) (internal quotation marks omitted). Consequently, the Court has held that ''[a]ny custom or contract falling short of that basic policy, like an agreement to pay less than the minimum wage requirements, cannot be utilized to deprive employees of their statutory rights.'' *Id.* (internal quotation marks omitted). In *Barrentine,* the Supreme Court reaffirmed the ''nonwaivable nature'' of these fundamental FLSA protections and stated that ''FLSA rights cannot be abridged by contract or otherwise waived because this would 'nullify the purposes' of the statute and thwart the legislative policies it was designed to effectuate.'' 450 U.S. at 740 (quoting *Brooklyn Sav. Bank,* 324 U.S. at 707). Moreover, FLSA rights are not subject to waiver because they serve an important public interest by protecting employers against unfair methods of competition in the national economy. *See Tony & Susan Alamo Found.,* 471 U.S. at 302. Releases and waivers executed by employees for unpaid wages (and fringe benefits) due them under the SCA are similarly without legal effect. 29 CFR 4.187(d). Because the public policy interests underlying the issuance of the Executive order would be similarly thwarted by permitting workers to waive, or contractors to induce workers to waive, their rights under Executive Order 14026 or part 23, proposed § 23.70 makes clear that such waiver of rights is impermissible.

Section 23.80 Severability

Section 7 of Executive Order 14026 states that if any provision of the order, or the application of any such provision to any person or circumstance, is held to be invalid, the remainder of the order and the application shall not be affected. *See* 86 FR 22837. Consistent with this directive, the Department proposes to include a severability clause in part 23. Proposed § 23.80 explains that, if any provision of part 23 is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, or stayed pending further agency action, the provision shall be construed so as to continue to give the maximum effect to the provision permitted by law, unless such holding shall be one of utter invalidity or

unenforceability, in which event the provision shall be severable from part 23 and shall not affect the remainder thereof.

Subpart B—Federal Government Requirements

The Department proposes subpart B of part 23 to establish the requirements for the Federal Government to implement and comply with Executive Order 14026. The Department proposes § 23.110 to address contracting agency requirements and proposes § 23.120 to address the requirements placed upon the Department.

Section 23.110 Contracting Agency Requirements

Proposed § 23.110(a) would implement section 2 of Executive Order 14026, which directs that executive departments and agencies must include a contract clause in any new contracts or solicitations for contracts covered by the Executive order. 86 FR 22835. The proposed section describes the basic function of the contract clause, which is to require that workers performing work on or in connection with covered contracts be paid the applicable Executive order minimum wage. The proposed section states that for all contracts subject to Executive Order 14026, except for procurement contracts subject to the FAR, the contracting agency must include the Executive order minimum wage contract clause set forth in appendix A of part 23 in all covered contracts and solicitations for such contracts, as described in § 23.30. It further states that the required contract clause directs, as a condition of payment, that all workers performing work on or in connection with covered contracts must be paid the applicable, currently effective minimum wage under Executive Order 14026 and § 23.50. The proposed section additionally provides that for procurement contracts subject to the FAR, contracting agencies must use the clause that will be set forth in the FAR to implement this rule. The FAR clause will accomplish the same purposes as the clause set forth in appendix A and be consistent with the requirements set forth in this rule.

As the Department noted in the rulemaking for Executive Order 13658, including the full contract clause in a covered contract is an effective and practical means of ensuring that contractors receive notice of their obligations under the Executive order. *See* 79 FR 60668. Therefore, the Department again prefers that covered contracts include the contract clause in full. At the same time, there will be instances in which a contracting agency, or a contractor, does not include the entire contract clause verbatim in a covered contract, but the facts and circumstances establish that the contracting agency, or contractor, sufficiently apprised a prime or lower-tier contractor that the Executive order and its requirements apply to the contract. It will be appropriate to find in such circumstances that the full contract clause has been properly incorporated by reference. *See Nat'l Electro-Coatings, Inc.* v. *Brock,* Case No. C86–2188, 1988 WL 125784 (N.D. Ohio 1988); *In re Progressive Design & Build, Inc.,* WAB Case No. 87–31, 1990 WL 484308 (WAB Feb. 21, 1990). The Department notes, for example, that the full contract clause will be deemed to have been incorporated by reference in a covered contract if the contract provides that ''Executive Order 14026 (Increasing the Minimum Wage for Federal Contractors), and its implementing regulations, including the applicable contract clause, are incorporated by reference into this contract as if fully set forth in this contract,'' with a citation to a web page that contains the contract clause in full, to the provision of the Code of Federal Regulations containing the contract clause set forth at appendix A, or to the provision of the FAR containing the contract clause promulgated by the FARC to implement Executive Order 14026 and this rule.

The Department's decision to include verbal agreements as part of its definition of the term ''contract'' derives from the SCA's regulations. *See* 29 CFR 4.110. Under the SCA, a contract may be embodied in a verbal agreement, *see id.,* notwithstanding the regulatory obligation to include the SCA contract clause found at 29 CFR 4.6 in the contract. The purpose of including verbal agreements in the definition of contract and contract-like instrument is to ensure that the Executive order's minimum wage protections apply in instances where the contracting parties, for whatever reason, rely on a verbal rather than written contract. This is consistent with the regulations implementing Executive Order 13658. *See* 29 CFR 10.2. As noted, such instances are likely to be exceedingly rare, but workers should not be deprived of the Executive order's minimum wage because contracting parties neglected to memorialize their understanding in a written contract.

As discussed more fully later in this preamble, the Department believes requiring non-procurement contractors potentially to become familiar with distinct Executive order contract clauses whenever they contract with more than one Federal agency, as opposed to the single, uniform clause attached as appendix A, imposes an unnecessary burden. The Department additionally believes that requiring such contractors to use multiple contract clauses could result in confusion, potentially undercutting the Department's mandate under the Executive order to adopt regulations that obtain compliance with the order.

Proposed § 23.110(a) requires the contracting agency to include the Executive order minimum wage contract clause set forth in appendix A in all covered contracts and solicitations for such contracts, as described in § 23.30, except for procurement contracts subject to the FAR. For procurement contracts subject to the FAR, contracting agencies shall use the clause set forth in the FAR developed to implement this rule; that clause must both accomplish the same purposes as the clause set forth in appendix A and be consistent with the requirements set forth in this rule.

Proposed § 23.110(b) states the consequences in the event that a contracting agency fails to include the contract clause in a covered contract. Proposed § 23.110(b) provides that if a contracting agency made an erroneous determination that Executive Order 14026 or part 23 did not apply to a particular contract or failed to include the applicable contract clause in a contract to which the Executive order applies, the contracting agency, on its own initiative or within 15 calendar days of notification by an authorized representative of the Department, must include the clause in the contract retroactive to commencement of performance under the contract through the exercise of any and all authority that may be needed. The Department notes that the Administrator possesses analogous authority under the DBA, *see* 29 CFR 1.6(f), and it believes that a similar mechanism for addressing an agency's failure to include the contract clause in a contract subject to the Executive order would enhance its ability to obtain compliance with the Executive order.

Where a contract clause should have been originally inserted by the contracting agency, a contractor is entitled to an adjustment where necessary to pay any necessary additional costs when a contracting agency initially omits and then subsequently includes the contract clause in a covered contract. This approach, which is consistent with the SCA's implementing regulations, *see* 29 CFR 4.5(c), is therefore reflected in revised § 23.440(e). The Department recognizes that the mechanics of

providing such an adjustment may differ between covered procurement contracts and the non-procurement contracts that the Department's contract clause covers. With respect to covered non-procurement contracts, the Department believes that the authority conferred on agencies that enter into such contracts under section 4(b) of the Executive order includes the authority to provide such an adjustment. The Department notes that such an adjustment is not warranted under the Executive order or part 23 when a contracting agency includes the applicable Executive order contract clause but fails to include an applicable SCA or DBA wage determination. This proposed rule would require inclusion of a contract clause, not a wage determination, in covered contracts; thus, unlike the DBA's regulations at 29 CFR 1.6(f), it is a contracting agency's failure to include the required contract clause, not a failure to include a wage determination, that would trigger the entitlement to an adjustment as described in this paragraph.

Proposed § 23.110(c) addresses the obligations of a contracting agency in the event that the contract clause has been included in a covered contract but the contractor may not have complied with its obligations under the Executive order or part 23. Specifically, proposed § 23.110(c) provides that the contracting agency must, upon its own action or upon written request of an authorized representative of the Department, withhold or cause to be withheld from the prime contractor under the contract or any other Federal contract with the same prime contractor, so much of the accrued payments or advances as may be necessary to pay workers the full amount of wages required by the Executive order. Both the SCA and DBA provide for withholding to ensure the availability of monies for the payment of back wages to covered workers when a contractor or subcontractor has failed to pay the full amount of required wages. 29 CFR 4.6(i); 29 CFR 5.5(a)(2). Withholding likewise is an appropriate remedy under the Executive order for all covered contracts because the order directs the Department to adopt SCA and DBA enforcement processes to the extent practicable and to exercise authority to obtain compliance with the order. 86 FR 22836. Consistent with withholding procedures under the SCA and DBA, proposed § 23.110(c) allows the contracting agency and the Department to withhold or cause to be withheld funds from the prime contractor not only under the contract on which covered workers were not paid the Executive order minimum wage, but also under any other contract that the prime contractor has entered into with the Federal Government. Finally, the Department notes that a withholding remedy is consistent with the requirement in section 2(a) of the Executive order that compliance with the specified obligations is an express ''condition of payment'' to a contractor or subcontractor. 86 FR 22835.

Proposed § 23.110(d) describes a contracting agency's responsibility to forward to the WHD any complaint alleging a contractor's non-compliance with Executive Order 14026, as well as any information related to the complaint. The Department recognizes that, in addition to filing complaints with WHD, some workers or other interested parties may file formal or informal complaints concerning alleged violations of the Executive order or part 23 with contracting agencies. Proposed § 23.110(d) therefore specifically requires the contracting agency to transmit the complaint-related information identified in § 23.110(d)(1)(ii)(A)–(E) to the WHD's Division of Government Contracts Enforcement within 14 calendar days of receipt of a complaint alleging a violation of the Executive order or part 23, or within 14 calendar days of being contacted by the WHD regarding any such complaint. This language is consistent with the Department's regulations implementing Executive Order 13658. *See* 29 CFR 10.11(d). The Department believes adoption of the language in proposed § 23.110(d), which includes an obligation to send such complaint-related information to WHD even absent a specific request (*e.g.,* when a complaint is filed with a contracting agency rather than with the WHD), is appropriate because prompt receipt of such information from the relevant contracting agency will allow the Department to fulfill its charge under the order to implement enforcement mechanisms for obtaining compliance with the order. 86 FR 22836.

Section 23.120 Department of Labor Requirements

Proposed § 23.120 addresses the Department's requirements under the Executive order. The order requires the Secretary to establish a minimum wage that contractors must pay to workers performing on or in connection with covered contracts. 86 FR 22835. Proposed § 23.120(a) sets forth the Secretary's obligation to establish the Executive order minimum wage on an annual basis in accordance with the order.

Proposed § 23.120(b) explains that the Secretary will determine the applicable minimum wages on an annual basis by using the method set forth in proposed § 23.50(b). The Department notes that contractors concerned about potential increases in the minimum wage provided under the Executive order may consult the CPI–W, which the Federal Government publishes monthly, to monitor the likely magnitude of the annual increase. Furthermore, the Department proposes to include language in the required contract clause (provided in appendix A) that, if appropriate, requires contractors to be compensated only for the increase in labor costs resulting from the annual inflation increases in the Executive order minimum wage beginning on January 1, 2023. This proposed provision in the contract clause should mitigate any potential contractor concerns about unanticipated financial burdens associated with annual increases in the Executive order minimum wage.

Proposed § 23.120(c) explains how the Secretary will provide notice to contractors and subcontractors of the applicable Executive order minimum wage on an annual basis. The proposed section indicates that the WHD Administrator will publish a notice in the **Federal Register** on an annual basis at least 90 days before any new minimum wage is to take effect. Additionally, the proposed provision states that the Administrator will publish and maintain on *https://alpha.sam.gov/content/wage-determinations,* or any successor website, the applicable minimum wage to be paid to workers performing on or in connection with covered contracts, including the cash wage to be paid to tipped employees. The proposed section further states that the Administrator may also publish the applicable wage to be paid to workers performing on or in connection with covered contracts, including the cash wage to be paid to tipped employees, on an annual basis at least 90 days before any such minimum wage is to take effect in any other manner the Administrator deems appropriate.

Consistent with the rulemaking implementing Executive Order 13658, *see* 29 CFR 10.12(c), the Department notes its intent to publish a prominent general notice on SCA and DBA wage determinations, stating the Executive Order 14026 minimum wage and that it applies to all DBA- and SCA-covered contracts. The Department intends to update this general notice on all DBA and SCA wage determinations annually to reflect any inflation-based

adjustments to the Executive order minimum wage. As discussed in more detail in the preamble section pertaining to proposed § 23.290 in subpart C, the Department also proposes developing a poster regarding the Executive order minimum wage for contractors with FLSA-covered workers performing on or in connection with a covered contract, as it did in response to Executive Order 13658. *See* 79 FR 60670. The Department proposes requiring that contractors provide notice of the Executive order minimum wage to FLSA-covered workers performing work on or in connection with covered contracts via posting of the poster that will be provided by the Department. This notice provision is discussed below in the preamble section pertaining to proposed § 23.290, and is also consistent with the rule implementing Executive Order 13658. *See* 29 CFR 10.29(b)

Consistent with the regulations implementing Executive Order 13658, proposed § 23.120(d) addresses the Department's obligation to notify a contractor in the event of a request for the withholding of funds. Under proposed § 23.110(c), the WHD Administrator may direct that payments due on the covered contract or any other contract between the contractor and the Federal Government may be withheld as may be considered necessary to pay unpaid wages. If the Administrator exercises his or her authority under § 23.110(c) to request withholding, proposed § 23.120(d) requires the Administrator or the contracting agency to notify the affected prime contractor of the Administrator's withholding request to the contracting agency. The Department notes that both the Administrator and the contracting agency may notify the contractor in the event of a withholding even though notice is required from only one of them.

Subpart C—Contractor Requirements

Proposed subpart C articulates the requirements that contractors must comply with under Executive Order 14026 and part 23. The subpart sets forth the general obligation to pay no less than the applicable Executive order minimum wage to workers for all hours worked on or in connection with the covered contract, and to include the Executive order minimum wage contract clause in all contracts and subcontracts of any tier thereunder. Proposed subpart C also sets forth contractor requirements pertaining to permissible deductions, frequency of pay, and recordkeeping, as well as a prohibition against taking kickbacks from wages paid on covered contracts.

Section 23.210 Contract Clause

Proposed § 23.210(a) requires the contractor, as a condition of payment, to abide by the terms of the Executive order minimum wage contract clause described in proposed § 23.110(a). The contract clause contains the obligations with which the contractor must comply on the covered contract and is reflective of the contractor's requirements as stated in the proposed regulations. Proposed § 23.210(b) articulates the obligation that contractors and subcontractors must insert the Executive order minimum wage contract clause in any covered subcontracts and must require, as a condition of payment, that subcontractors include the clause in all lower-tier subcontracts. Under the proposal, the prime contractor and upper-tier contractor would be responsible for compliance by any covered subcontractor or lower-tier subcontractor with the Executive order minimum wage contract clause. This responsibility on the part of prime and upper-tier contractors for subcontractor compliance parallels that of the SCA, DBA, and Executive Order 13658. *See* 29 CFR 4.114(b) (SCA); 29 CFR 5.5(a)(6) (DBA); 29 CFR 10.21 (Executive Order 13658).

Finally, the Department notes that, consistent with the rulemaking implementing Executive Order 13658, a contractor under part 23 is responsible for compliance by all covered lower-tier subcontractors. This obligation applies whether or not the contractor has included the Executive order contract clause, regardless of the number of covered lower-tier subcontractors, and regardless of how many levels of subcontractors separate the responsible prime or upper-tier contractor from the subcontractor that failed to comply with the Executive order.

Section 23.220 Rate of Pay

Proposed § 23.220 addresses contractors' obligations to pay the Executive order minimum wage to workers performing work on or in connection with a covered contract under Executive Order 14026. Proposed § 23.220(a) states the general obligation that contractors must pay workers the applicable minimum wage under Executive Order 14026 for all hours spent performing work on or in connection with the covered contract. The proposed section also provides that workers performing work on or in connection with contracts covered by the Executive order must receive not less than the minimum hourly wage of $15.00 beginning January 30, 2022. Under the proposal, in order to comply with the Executive order's minimum wage requirement, a contractor could compensate workers on a daily, weekly, or other time basis (no less often than semi-monthly), or by piece or task rates, so long as the measure of work and compensation used, when translated or reduced by computation to an hourly basis each workweek, will provide a rate per hour that is no lower than the applicable Executive order minimum wage. Whatever system of payment is used, however, must ensure that each hour of work in performance of the contract is compensated at not less than the required minimum rate. Failure to pay for certain hours at the required rate cannot be transformed into compliance with the Executive order or part 23 by reallocating portions of payments made for other hours that are in excess of the specified minimum.

In determining whether a worker is performing within the scope of a covered contract, the Department proposes that all workers who are engaged in working on or in connection with the contract, either in performing the specific services called for by its terms or in performing other duties necessary to the performance of the contract, are subject to the Executive order and part 23 unless a specific exemption is applicable. This standard was derived from the SCA's implementing regulations at 29 CFR 4.150, and is consistent with Executive Order 13658's implementing regulations at 29 CFR 10.22.

Because workers covered by the Executive order are entitled to its minimum wage protections for all hours spent performing work on or in connection with a covered contract, a computation of their hours worked on or in connection with the covered contract in each workweek is essential. *See* 29 CFR 4.178. The proposed rule provides that, for purposes of the Executive order, the hours worked by a worker generally include all periods in which the worker is suffered or permitted to work, whether or not required to do so, and all time during which the worker is required to be on duty or to be on the employer's premises or to be at a prescribed workplace. *Id.* The hours worked which are subject to the minimum wage requirement of the Executive order are those in which the worker is engaged in performing work on or in connection with a contract subject to the Executive order. *Id.* However, unless such hours are adequately segregated or there is affirmative proof to the contrary that such work did not continue throughout

the workweek, as discussed below, compensation in accordance with the Executive order will be required for all hours worked in any workweek in which the worker performs any work on or in connection with a contract covered by the Executive order. *Id.*

The Department further notes that, as explained in the rulemaking to implement Executive Order 13658, 79 FR 60672, in situations where contractors are not exclusively engaged in contract work covered by Executive Order 14026, and there are adequate records segregating the periods in which work was performed on or in connection with contracts subject to the order from periods in which other work was performed, the minimum wage requirement of Executive Order 14026 need not be paid for hours spent on work not covered by the order. *See* 29 CFR 4.169, 4.178, and 4.179. However, in the absence of records adequately segregating non-covered work from the work performed on or in connection with the covered contract, all workers working in the establishment or department where such covered work is performed shall be presumed to have worked on or in connection with the contract during the period of its performance, unless affirmative proof establishing the contrary is presented. *Id.* Similarly, a worker performing any work on or in connection with the covered contract in a workweek shall be presumed to have continued to perform such work throughout the workweek, unless affirmative proof establishing the contrary is presented. *Id.*

The Department notes in this proposed rule that if a contractor desires to segregate covered work from non-covered work under the Executive order for purposes of applying the minimum wage established in the order, the contractor must identify such covered work accurately in its records or by other means. The Department believes that the principles, processes, and practices that it uses in its implementing regulations under the SCA, which incorporate the principles applied under the FLSA as set forth in 29 CFR part 785, will be useful to contractors in determining and segregating hours worked on contracts with the Federal Government subject to the Executive order. *See* 29 CFR 4.169, 4.178, and 4.179; WHD FOH ¶¶ 14c07, 14g00–01.[8] In this regard, an arbitrary assignment of time on the basis of a formula, as between covered and non-covered work, is not sufficient. However, if the contractor does not wish to keep detailed hour-by-hour records for segregation purposes under the Executive order, records can be segregated on the wider basis of departments, work shifts, days, or weeks in which covered work was performed. For example, if on a given day no work covered by the Executive order was performed by a contractor, that day could be segregated and shown in the records. *See* WHD FOH ¶ 14g00.

Finally, the Department notes that the Supreme Court has held that when an employer has failed to keep adequate or accurate records of employees' hours under the FLSA, employees should not effectively be penalized by denying them recovery of back wages on the ground that the precise extent of their uncompensated work cannot be established. *See Anderson* v. *Mt. Clemens Pottery Co.,* 328 U.S. 680, 687 (1946). Specifically, the Supreme Court concluded that where an employer has not maintained adequate or accurate records of hours worked, an employee need only prove that ''he has in fact performed work for which he was improperly compensated'' and produce ''sufficient evidence to show the amount and extent of that work as a matter of just and reasonable inference.'' *Id.* Once the employee establishes the amount of uncompensated work as a matter of ''just and reasonable inference,'' the burden then shifts to the employer ''to come forward with evidence of the precise amount of work performed or with evidence to negative the reasonableness of the inference to be drawn from the employee's evidence.'' *Id.* at 687–88. If the employer fails to meet this burden, the court may award damages to the employee ''even though the result be only approximate.'' *Id.* at 688. These principles for determining hours worked and accompanying back wage liability apply with equal force to the Executive order.

The Department notes that the applicable minimum wage rate under Executive Order 14026 is subject to annual increases for the duration of multi-year contracts. As was the case under Executive Order 13658, nothing in Executive Order 14026 suggests that the minimum wage requirement can remain stagnant during the span of a covered multi-year contract. *See* 79 FR 60673 (discussing Executive Order 13658). Allowing the applicable minimum wage to increase throughout the duration of multi-year contracts fulfills the Executive order's intent to raise the minimum wage of workers according to annual increases in the CPI–W. It additionally ensures simultaneous application of the same minimum wage rate to all covered workers. However, as mentioned in the preamble section for § 23.110(b) and discussed in further detail in relation to § 23.440(e), the language of the contract clause contained in appendix A requires contracting agencies, if appropriate, to ensure the contractor is compensated only for the increase in labor costs resulting from the annual inflation increases in the Executive Order 14026 minimum wage beginning on January 1, 2023.

Proposed § 23.220(a) explains that the contractor's obligation to pay the applicable minimum wage to workers on or in connection with covered contracts does not excuse noncompliance with any applicable Federal or state prevailing wage law, or any applicable law or municipal ordinance establishing a minimum wage higher than the minimum wage established under Executive Order 14026. This provision implements section 2(c) of the Executive order. 86 FR 22836.

The Department notes that the minimum wage requirements of Executive Order 14026 are separate and distinct legal obligations from the prevailing wage requirements of the SCA and the DBA. If a contract is covered by the SCA or DBA and the wage rate on the applicable SCA or DBA wage determination for the classification of work the worker performs is less than the applicable Executive order minimum wage, the contractor must pay the Executive order minimum wage in order to comply with the Order and part 23. If, however, the applicable SCA or DBA prevailing wage rate exceeds the Executive order minimum wage rate, the contractor must pay that prevailing wage rate to the SCA- or DBA-covered worker in order to be in compliance with the SCA or DBA.[9]

[8] In the rulemaking implementing Executive Order 13658, the Department noted that contractors subject to the Executive order are likely already familiar with these segregation principles and should, as a matter of usual business practices, already have recordkeeping systems in place that enable the segregation of hours worked on different contracts or at different locations. 79 FR 60672, n.8. The Department further expressed its belief that such systems will enable contractors to identify and pay for hours worked subject to the Executive order without having to employ additional systems or processes. *Id.*

[9] The Department further notes that if a contract is covered by a state prevailing wage law that establishes a higher wage rate applicable to a particular worker than the Executive order minimum wage, the contractor must pay that higher prevailing wage rate to the worker. Section 2(c) of the order expressly provides that it does not excuse noncompliance with any applicable state prevailing wage law or any applicable law or municipal ordinance establishing a minimum wage higher than the Executive order minimum wage.

The Department also notes that the minimum wage requirements of Executive Order 14026 are also separate and distinct from the commensurate wage rates under 29 U.S.C. 214(c). If the commensurate wage rate paid to a worker performing on or in connection with a covered contract whose wages are calculated pursuant to a special certificate issued under 29 U.S.C. 214(c), whether hourly or piece rate, is less than the Executive Order 14026 minimum wage, the contractor must pay the Executive Order 14026 minimum wage rate to achieve compliance with the order. The Department notes that if the commensurate wage due under the certificate is greater than the Executive Order 14026 minimum wage, the contractor must pay the worker the greater commensurate wage. Paragraph (b)(5) of the contract clause states this point explicitly. A more detailed discussion of that provision is included in the preamble section for appendix A.

As in the rulemaking implementing Executive Order 13658, the Department notes that in the event that a collectively bargained wage rate is below the applicable DBA rate, a DBA-covered contractor must pay no less than the applicable DBA rate to covered workers on the project. *See* 79 FR 60673. Although a successor contractor on an SCA-covered contract is required only to pay wages and fringe benefits not less than those contained in the predecessor contractor's CBA even if an otherwise applicable area-wide SCA wage determination contains higher wage and fringe benefit rates, that requirement is derived from a specific statutory provision that expressly bases SCA obligations on the predecessor contractor's CBA wage and fringe benefit rates in particular circumstances. *See* 41 U.S.C. 6707(c); 29 CFR 4.1b. There is no similar indication in the Executive order of an intent to permit a CBA rate lower than the Executive order minimum wage rate to govern the wages of workers covered by the order. The Department accordingly proposes that the Executive order minimum wage will apply to a covered contract even if the contractor has negotiated a CBA wage rate lower than the order's minimum wage.

Proposed § 23.220(b) explains how a contractor's obligation to pay the applicable Executive order minimum wage applies to workers who receive fringe benefits. It proposes that a contractor may not discharge any part of its minimum wage obligation under the Executive order by furnishing fringe benefits or, with respect to workers whose wages are governed by the SCA, the cash equivalent thereof. Under the proposed rule, contractors must pay the Executive order minimum wage rate in monetary wages, and may not receive credit for the cost of fringe benefits furnished.

Executive Order 14026 increases, initially to $15.00, ''the hourly minimum wage'' paid by contractors with the Federal Government. 86 FR 22835. By repeatedly referencing that it is establishing a higher hourly minimum wage, without any reference to fringe benefits, the text of the Executive order makes clear that a contractor cannot discharge its minimum wage obligation by furnishing fringe benefits. This interpretation is consistent with the SCA, which does not permit a contractor to meet its minimum wage obligation through the furnishing of fringe benefits, but rather imposes distinct ''minimum wage'' and ''fringe benefit'' obligations on contractors. 41 U.S.C. 6703(1)–(2); 29 CFR 4.177(a). Similarly, the FLSA does not allow a contractor to meet its minimum wage obligation through the furnishing of fringe benefits. Although the DBA specifically includes fringe benefits within its definition of minimum wage, thereby allowing a contractor to meet its minimum wage obligation, in part, through the furnishing of fringe benefits, 40 U.S.C. 3141(2), Executive Order 14026 contains no similar provision expressly authorizing a contractor to discharge its Executive order minimum wage obligation through the furnishing of fringe benefits. Consistent with the Executive order, and the Department's regulations implementing Executive Order 13658, 29 CFR 10.22(b), proposed § 23.220(b) precludes a contractor from discharging its minimum wage obligation by furnishing fringe benefits.

Proposed § 23.220(b) also prohibits a contractor from discharging its Executive order minimum wage obligation to workers whose wages are governed by the SCA by furnishing the cash equivalent of fringe benefits. As noted, the SCA imposes distinct ''minimum wage'' and ''fringe benefit'' obligations on contractors. 41 U.S.C. 6703(1)–(2); 29 CFR 4.177(a). A contractor cannot satisfy any portion of its SCA minimum wage obligation by furnishing fringe benefits or their cash equivalent. *Id.* Consistent with the treatment of fringe benefits or their cash equivalent under the SCA, § 23.220(b) of this proposed rule does not allow contractors to discharge any portion of their minimum wage obligation under the Executive order to workers whose wages are governed by the SCA through the provision of either fringe benefits or their cash equivalent.

Proposed § 23.220(c) states that a contractor may satisfy the wage payment obligation to a tipped employee under the Executive order through a combination of an hourly cash wage and a credit based on tips received by such employee pursuant to the provisions in proposed § 23.280.

Section 23.230 Deductions

Proposed § 23.230 explains that deductions that reduce a worker's wages below the Executive order minimum wage rate may only be made under the limited circumstances set forth in this section. Proposed § 23.230(a) permits deductions required by Federal, state, or local law, including Federal or state withholding of income taxes. *See* 29 CFR 531.38 (FLSA); 29 CFR 4.168(a) (SCA); 29 CFR 3.5(a) (DBA). Proposed § 23.230(b) permits deductions for payments made to third parties pursuant to court orders. Permissible deductions made pursuant to a court order may include such deductions as those made for child support. *See* 29 CFR 531.39 (FLSA); 29 CFR 4.168(a) (SCA); 29 CFR 3.5(c) (DBA). Proposed § 23.230(b) echoes the principle established under the FLSA, SCA, and DBA that only garnishment orders made pursuant to an ''order of a court of competent and appropriate jurisdiction'' may deduct a worker's hourly wage below the minimum wage set forth under the Executive order. 29 CFR 531.39(a) (FLSA); 29 CFR 4.168(a) (SCA) (permitting garnishment deductions ''required by court order''); 29 CFR 3.5(c) (DBA) (permitting garnishment deductions ''required by court process''). For purposes of deductions made under Executive Order 14026, the phrase ''court order'' includes orders issued by Federal, state, local, and administrative courts.

Consistent with the rulemaking implementing previous Executive Order 13658, *see* 79 FR 60674, the Executive order minimum wage will not affect the formula for establishing the maximum amount of wage garnishment permitted under the Consumer Credit Protection Act (CCPA), which is derived in part from the FLSA minimum wage. *See* 15 U.S.C. 1673(a)(2).

Proposed § 23.230(c) permits deductions directed by a voluntary assignment of the worker or his or her authorized representative. *See* 29 CFR 531.40 (FLSA); 29 CFR 4.168(a) (SCA); 29 CFR 5.5(a)(1) (DBA). Deductions made for voluntary assignments include items such as, but not limited to, deductions for the purchase of U.S. savings bonds, donations to charitable organizations, and the payment of union dues. Deductions made for voluntary

assignments must be made for the worker's account and benefit pursuant to the request of the worker or his or her authorized representative. *See* 29 CFR 531.40 (FLSA); 29 CFR 4.168(a) (SCA); 29 CFR 5.5(a)(1) (DBA).

Deductions for health insurance premiums that reduce a worker's wages below the minimum wage required by the Executive order are generally impermissible under § 23.220(b). However, a contractor may make deductions for health insurance premiums that reduce a worker's wages below the Executive order minimum wage if the health insurance premiums are the type of deduction that 29 CFR 531.40(c) permits to reduce a worker's wages below the FLSA minimum wage. The regulations at 29 CFR 531.40(c) allow deductions for insurance premiums paid to independent insurance companies provided that such deductions occur as a result of a voluntary assignment from the employee or his or her authorized representative, where the employer is under no obligation to supply the insurance and derives, directly or indirectly, no benefit or profit from it. The Department reiterates, however, that in accordance with proposed § 23.220(b), a contractor may not discharge any part of its minimum wage obligation under the Executive order by furnishing fringe benefits or, with respect to workers whose wages are governed by the SCA, the cash equivalent thereof. This provision similarly does not change a contractor's obligation under the SCA to furnish fringe benefits (including health insurance) or the cash equivalent thereof ''separate from and in addition to the specified monetary wages'' under that Act. 29 CFR 4.170.

Finally, proposed § 23.230(d) permits deductions made for the reasonable cost or fair value of board, lodging, and other facilities. *See* 29 CFR part 531 (FLSA); 29 CFR 4.168(a) (SCA); 29 CFR 5.5(a)(1) (DBA). Deductions made for these items must be in compliance with the regulations in 29 CFR part 531. The Department notes that an employer may take credit for the reasonable cost or fair value of board, lodging, or other facilities against a worker's wages, rather than taking a deduction for the reasonable cost or fair value of these items. *See* 29 CFR part 531.

Section 23.240 Overtime Payments

Proposed § 23.240(a) explains that workers who are covered under the FLSA or the Contract Work Hours and Safety Standards Act (CWHSSA) must receive overtime pay of not less than one and one-half times the regular hourly rate of pay or basic rate of pay, respectively, for all hours worked over 40 hours in a workweek. *See* 29 U.S.C. 207(a); 40 U.S.C. 3702(a). These statutes, however, do not require workers to be compensated on an hourly rate basis; workers may be paid on a daily, weekly, or other time basis, or by piece rates, task rates, salary, or some other basis, so long as the measure of work and compensation used, when reduced by computation to an hourly basis each workweek, will provide a rate per hour (*i.e.,* the regular rate of pay) that will fulfill the requirements of the Executive order or applicable statute. The regular rate of pay under the FLSA is generally determined by dividing the worker's total earnings in any workweek by the total number of hours actually worked by the worker in that workweek for which such compensation was paid. *See* 29 CFR 778.5 through 778.7, 778.105, 778.107, 778.109, 778.115 (FLSA); 29 CFR 4.166, 4.180 through 4.182 (SCA); 29 CFR 5.32(a) (DBA).

Proposed § 23.240(b) addresses the payment of overtime premiums to tipped employees who are paid with a tip credit. In calculating overtime payments, the regular rate of an employee paid with a tip credit consists of both the cash wages paid and the amount of the tip credit taken by the contractor. Overtime payments are not computed based solely on the cash wage paid. For example, if on or after January 30, 2022, a contractor pays a tipped employee performing on a covered contract a cash wage of $10.50 and claims a tip credit of $4.50, the worker is entitled to $22.50 per hour for each overtime hour ($15.00 × 1.5), not $15.75 ($10.50 × 1.5). Accordingly, as of January 30, 2022, for contracts covered by the Executive order, if a contractor pays the minimum cash wage of $10.50 per hour and claims a tip credit of $4.50 per hour, then the cash wage due for each overtime hours would be $18.00 ($22.50 − $4.50). Tips received by a tipped employee in excess of the amount of the tip credit claimed are not considered to be wages under the Executive order and are not included in calculating the regular rate for overtime payments.

Section 23.250 Frequency of Pay

Proposed § 23.250 describes how frequently the contractor must pay its workers. Under the proposed rule, wages must be paid no later than one pay period following the end of the regular pay period in which such wages were earned or accrued. Proposed § 23.250 also provides that a pay period under the Executive order may not be of any duration longer than semi-monthly. (The Department notes that workers whose wages are governed by the DBA must be paid no less often than once a week and reiterates that compliance with the Executive order does not excuse noncompliance with applicable FLSA, SCA, or DBA requirements.) The Department derived proposed § 23.250 from the contract clauses applicable to contracts subject to the SCA and the DBA, *see* 29 CFR 4.6(h) (SCA); 29 CFR 5.5(a)(1) (DBA). While the FLSA does not expressly specify a minimum pay period duration, it is a violation of the FLSA not to pay a worker on his or her regular payday. *See Biggs* v. *Wilson,* 1 F.3d 1537, 1538 (9th Cir. 1993) (holding that ''under the FLSA wages are 'unpaid' unless they are paid on the employees' regular payday''). *See also* 29 CFR 778.106 (''The general rule is that overtime compensation earned in a particular workweek must be paid on the regular pay day for the period in which such workweek ends.''). As the Department's experience suggests that most covered contractors pay no less frequently than semi-monthly, the Department believes § 23.250 as proposed will not be a burden to FLSA-covered contractors.

Section 23.260 Records To Be Kept by Contractors

Proposed § 23.260 explains the recordkeeping and related requirements for contractors. The obligations set forth in proposed § 23.260 are derived from and consistent across the FLSA, SCA, DBA, and regulations implementing Executive Order 13658. *See* 29 CFR 516.2(a) (FLSA); 29 CFR 4.6(g)(1) (SCA); 29 CFR 5.5(a)(3)(i) (DBA); 29 CFR 10.26 (Executive Order 13658). Proposed § 23.260(a) states that contractors and subcontractors shall make and maintain, for three years, records containing the information enumerated in that section for each worker. The proposed section further provides that contractors performing work subject to the Executive order must make such records available for inspection and transcription by authorized representatives of the WHD.

The recordkeeping requirements enumerated in proposed § 23.260(a)(1)–(6) require that contractors maintain records reflecting each worker's (1) name, address, and social security number; (2) occupation or classification (or occupations/classifications); (3) rate or rates of wages paid; (4) number of daily and weekly hours worked; (5) any deductions made; and (6) total wages paid. Contractor obligations to maintain these records derive from and are consistent across the FLSA, SCA, and DBA, and are identical to the

recordkeeping requirements enumerated in 29 CFR 10.26(a), which implemented Executive Order 13658. These recordkeeping requirements thus imposes no new burdens on contractors.[10] The Department notes that while the concept of ''total wages paid'' is consistent in the FLSA's, SCA's, and DBA's implementing regulations, the exact wording of the requirement varies (''total wages paid each pay period,'' *see* 29 CFR 516.2(a)(11) (FLSA); ''total daily or weekly compensation of each employee,'' *see* 29 CFR 4.6(g)(1)(ii) (SCA); ''actual wages paid,'' *see* 29 CFR 5.5(a)(3)(i) (DBA)). The Department has opted to use the language ''total wages paid'' in this rule for simplicity; however, compliance with this recordkeeping requirement will be determined in relation to the applicable statute (FLSA, SCA, and/or DBA).

Proposed § 23.260(b) requires the contractor to permit authorized representatives of the WHD to conduct interviews of workers at the worksite during normal working hours. Proposed § 23.260(c) provides that nothing in part 23 limits or otherwise modifies a contractor's payroll and recordkeeping obligations, if any, under the FLSA, SCA, or DBA, or their implementing regulations, respectively.

Section 23.270 Anti-Kickback

Consistent with the regulations implementing Executive Order 13658, *see* 29 CFR 10.27, proposed § 23.270 makes clear that all wages paid to workers performing on or in connection with covered contracts must be paid free and clear and without subsequent deduction (unless set forth in proposed § 23.230), rebate, or kickback on any account. Kickbacks directly or indirectly to the contractor or to another person for the contractor's benefit for the whole or part of the wage are also prohibited. This proposal is intended to ensure full payment of the applicable Executive order minimum wage to covered workers. The Department also notes that kickbacks may be subject to civil penalties pursuant to the Anti-Kickback Act, 41 U.S.C. 8701–8707.

Section 23.280 Tipped Employees

Proposed § 23.280 explains how tipped workers must be compensated under the Executive order on covered contracts. Section 3 of the Executive order governs how the minimum wage for Federal contractors and subcontractors applies to tipped employees. Section 3 of the order provides: (a) For workers covered by section 2 of the order who are tipped employees pursuant to 29 U.S.C. 203(t), the hourly cash wage that must be paid by an employer to such workers shall be at least: (i) $10.50 an hour beginning on January 30, 2022; (ii) 85 percent of the wage in effect under section 2 of the order, rounded to the nearest multiple of $0.05, beginning January 1, 2023; and (iii) for each subsequent year, beginning January 1, 2024, 100 percent of the wage in effect under section 2 for such year; (b) Where workers do not receive a sufficient additional amount on account of tips, when combined with the hourly cash wage paid by the employer, such that their wages are equal to the minimum wage under section 2 of the order, the cash wage paid by the employer, as set forth in this section for those workers, shall be increased such that their wages equal the minimum wage under section 2 of the order. Consistent with applicable law, if the wage required to be paid under the Service Contract Act, 41 U.S.C. 6701 *et seq.,* or any other applicable law or regulation is higher than the wage required by section 2, the employer shall pay additional cash wages sufficient to meet the highest wage required to be paid.

Accordingly, as of January 30, 2022, section 3 of Executive Order 14026 requires contractors to pay tipped employees covered by the Executive order performing on covered contracts a cash wage of at least $10.50, provided the employees receive sufficient tips to equal the minimum wage under section 2 when combined with the cash wage. On January 1, 2023, the required cash wage increases to reach 85 percent of the minimum wage under section 2 of the Executive order, rounded to the nearest multiple of $0.05. For subsequent years, beginning on January 1, 2024, the cash wage for tipped employees is 100 percent of the applicable Executive Order 14026 minimum wage—*i.e.,* eliminating a contractor's ability to claim a tip credit under Executive Order 14026. When a contractor is using a tip credit to meet a portion of its wage obligations under the Executive order, the amount of tips received by the employee must equal at least the difference between the required cash wage paid and the Executive order minimum wage. If the employee does not receive sufficient tips, the contractor must increase the cash wage paid so that the cash wage in combination with the tips received equals the Executive order minimum wage.

For purposes of Executive Order 14026 and this proposal, tipped workers (or tipped employees) are defined by section 3(t) of the FLSA. 29 U.S.C. 203(t). The FLSA defines a tipped employee as ''any employee engaged in an occupation in which he customarily and regularly receives more than $30 a month in tips.'' *Id.* Section 3 of the Executive order sets forth a wage payment method for tipped employees that is similar to the tipped employee wage provision of the FLSA. 29 U.S.C. 203(m)(2)(A). As with the FLSA ''tip credit'' provision, the Executive order permits contractors to take a partial credit against their wage payment obligation to a tipped employee under the order based on tips received by the employee, until the Executive Order 14026 tip credit is phased out on January 1, 2024. The wage paid to the tipped employee to satisfy the Executive Order 14026 minimum wage comprises both the cash wage paid under section 3(a) of the Executive order and the amount of tips used for the tip credit, which is limited to the difference between the cash wage paid and the Executive order minimum wage. Because contractors with a contract subject to the Executive order may be required by the SCA or any other applicable law or regulation to pay a cash wage in excess of the Executive order minimum wage, section 3(b) of the order provides that in such circumstances contractors must pay the difference between the Executive order minimum wage and the higher required wage in cash to the tipped employees and may not make up the difference with additional tip credit.

In the proposed regulations implementing section 3 of the Executive order, the Department sets forth principles and procedures that closely follow the FLSA requirements for payment of tipped employees with which employers are already familiar. This is consistent with the directive in section 4(c) of the Executive order that regulations issued pursuant to the order should, to the extent practicable, incorporate existing principles and

[10] To alleviate any potential concerns that proposed § 23.260 might impose any new recordkeeping burdens on employers, the Department is specifically providing here the FLSA, SCA, and DBA regulatory citations from which these recordkeeping obligations are derived. The citations for all records named in the proposed rule are as follows: Name, address, and Social Security number (*see* 29 CFR 516.2(a)(1)–(2) (FLSA); 29 CFR 4.6(g)(1)(i) (SCA); 29 CFR 5.5(a)(3)(i) (DBA)); the occupation or occupations in which employed (*see* 29 CFR 516.2(a)(4) (FLSA); 29 CFR 4.6(g)(1)(ii) (SCA); 29 CFR 5.5(a)(3)(i) (DBA)); the rate or rates of wages paid to the worker (*see* 29 CFR 516.2(a)(6)(i–(ii) (FLSA); 29 CFR 4.6(g)(1)(ii) (SCA); 29 CFR 5.5(a)(3)(i) (DBA)); the number of daily and weekly hours worked by each worker (*see* 29 CFR 516.2(a)(7) (FLSA); 29 CFR 4.6(g)(1)(iii) (SCA); 29 CFR 5.5(a)(3)(i) (DBA)); any deductions made (*see* 29 CFR 516.2(a)(10) (FLSA); 29 CFR 4.6(g)(1)(iv) (SCA); 29 CFR 5.5(a)(3)(i) (DBA)).

procedures from the FLSA, SCA, and DBA. 86 FR 22836.

Proposed § 23.280(a) sets forth the provisions of section 3 of the Executive order explaining how contractors can meet their wage payment obligations under section 2 for tipped employees. Section 23.280(a)(1) and (2) makes clear that the wage paid to a tipped employee under section 2 of the Executive order consists of two components: A cash wage payment (which must be at least $10.50 as of January 30, 2022, and rises yearly thereafter) and a credit based on tips (tip credit) received by the worker equal to the difference between the cash wage paid and the Executive order minimum wage. Accordingly, on January 30, 2022, if a contractor pays a tipped employee performing on a covered contract a cash wage of $10.50 per hour, the contractor may claim a tip credit of $4.50 per hour (assuming the worker receives at least $4.50 per hour in tips) to reach the required Executive order wage payment of $15.00. Under no circumstances may a contractor claim a higher tip credit than the difference between the required cash wage and the Executive order minimum wage to meet its minimum wage obligations; contractors may, however, pay a higher cash wage than required by section 3 and claim a lower tip credit. Because the sum of the cash wage paid and the tip credit equals the Executive order minimum wage, any increase in the amount of the cash wage paid will result in a corresponding decrease in the amount of tip credit that may be claimed, except as provided in proposed § 23.280(a)(4). For example, if on January 30, 2022, a contractor on a contract subject to the Executive order paid a tipped worker a cash wage of $11.50 per hour instead of the minimum requirement of $10.50, the contractor would only be able to claim a tip credit of $3.50 per hour to reach the $15.00 Executive order minimum wage. If the tipped employee does not receive sufficient tips in the workweek to equal the amount of the tip credit claimed, the contractor must increase the cash wage paid so that the amount of cash wage paid and tips received by the employee equal the section 2 minimum wage for all hours in the workweek.

Proposed § 23.280(a)(3) of the regulations makes clear that a contractor may pay a higher cash wage than required by subsection (3)(a)(i) of the Executive order—and claim a correspondingly lower tip credit—but may not pay a lower cash wage than that required by section 3(a)(i) of the Executive order and claim a higher tip credit. In order for the contractor to claim a tip credit the employee must receive tips equal to at least the amount of the credit claimed. If the employee receives less in tips than the amount of the credit claimed, the contractor must pay the additional cash wages necessary to ensure the employee receives the Executive order minimum wage in effect under section 2 on the regular pay day.

Proposed § 23.280(a)(4) proposes the contractors' wage payment obligation when the cash wage required to be paid under the SCA or any other applicable law or regulation is higher than the Executive order minimum wage. In such circumstances, the contractor must pay the tipped employee additional cash wages equal to the difference between the Executive order minimum wage and the highest wage required to be paid by other applicable state or Federal law or regulation. This additional cash wage is on top of the cash wage paid under proposed § 23.280(a)(1) and any tip credit claimed. Unlike raising the cash wage paid under § 23.280(a)(1), additional cash wages paid under proposed § 23.280(a)(4) do not impact the calculation of the amount of tip credit the employer may claim.

Proposed § 23.280(c) provides that the same definitions and requirements set forth in 29 CFR 10.28(b)–(f) generally apply with respect to tipped employees performing on or in connection with covered contracts under this Executive order.[11] These definitions and requirements address the tip credit, the characteristics of tips, service charges, tip pooling, and notice. To the extent that § 10.28(f) requires that an employer provide notice of the ''amount of the cash wage that is to be paid by the employer, which cannot be lower than the cash wage required by paragraph (a)(1) of this section,'' the proposed regulation specifies that the minimum required cash wage shall be the minimum required cash wage described in proposed § 23.28(a)(1), rather than in § 10.28(a)(1). The definitions and requirements incorporated in § 23.28(b) generally follow definitions and requirements under the FLSA, and are familiar to employers of tipped employees generally, as well as to employers subject to § 10.28.

Section 23.290 Notice

As discussed earlier in the preamble section for § 23.120(c) in proposed subpart B, proposed § 23.290 requires that contractors notify all workers performing on or in connection with a covered contract of the applicable minimum wage rate under Executive Order 14026. The regulations implementing the FLSA, SCA, DBA, and Executive Order 13658 each contain separate notice requirements for the employers covered by those laws, so the Department believes that a similar notice requirement is necessary for effective implementation of the Executive order. *See, e.g.,* 29 CFR 516.4 (FLSA); 29 CFR 4.6(e) (SCA); 29 CFR 5.5(a)(1)(i) (DBA); 29 CFR 10.29 (Executive Order 13658). Because the Executive Order 14026 minimum wage rate will increase annually based on inflation, contractors must ensure that they are providing notice on at least an annual basis of the currently applicable rate. Moreover, the Department strongly encourages contractors to engage in regular outreach to workers performing on or in connection with covered contracts, particularly in the time period immediately before and after the annual minimum wage increase, to ensure such workers are aware of their rights and the wages to which they are entitled.

Consistent with the regulations implementing Executive Order 13658, *see* 29 CFR 10.29, contractors may satisfy this proposed notice requirement in a variety of ways. For example, with respect to service employees on contracts covered by the SCA and laborers and mechanics on contracts covered by the DBA, proposed § 23.290(a) clarifies that contractors may meet the notice requirement by posting, in a prominent and accessible place at the worksite, the applicable wage determination.[12] As stated earlier, the Department intends to publish a prominent general notice on all SCA and DBA wage determinations informing workers of the applicable Executive order minimum wage rate, to be updated on an annual basis in the event of any inflation-based increases to the rate pursuant to § 23.50(b)(2). Because contractors covered by the SCA and DBA are already required to display the applicable wage determination in a prominent and accessible place at the worksite pursuant to those statutes, *see* 29 CFR 4.6(e) (SCA), 29 CFR 5.5(a)(1)(i) (DBA), the notice requirement in

[11] On June 23, 2021, the Department issued a notice of proposed rulemaking, Tip Regulations Under the Fair Labor Standards Act (FLSA); Partial Withdrawal, proposing changes to 29 CFR 10.28(b). Comments on the changes proposed in the June 23, 2021 NPRM should be submitted to the docket for that NPRM, *see* RIN 1235–AA21.

[12] SCA contractors are required by 29 CFR 4.6(e) to notify workers of the minimum monetary wage and any fringe benefits required to be paid, or to post the wage determination for the contract. DBA contractors similarly are required by 29 CFR 5.5(a)(1)(i) to post the DBA wage determination and a poster at the site of the work in a prominent and accessible place where they can be easily seen by the workers. SCA and DBA contractors may use these same methods to notify workers of the Executive order minimum wage under proposed § 23.290.

proposed § 23.290 would not impose any additional burden on contractors with respect to those workers already covered by the SCA, DBA, or Executive Order 13658.

Proposed § 23.290(b) provides that contractors with FLSA-covered workers performing on or in connection with a covered contract may satisfy the notice requirement by displaying a poster provided by the Department of Labor in a prominent or accessible place at the worksite. This poster is appropriate for contractors with FLSA-covered workers performing work ''in connection with'' a covered SCA or DBA contract, as well as for contractors with FLSA-covered workers performing on or in connection with concessions contracts and contracts in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public. The Department will make the poster available on the WHD website and will provide the poster in a variety of languages. The Department notes that this poster will be updated annually to reflect any inflation-based increases to the Executive Order 14026 minimum wage rate that is published by the Department, and contractors must display the currently applicable poster.

Finally, proposed § 23.290(c) provides that contractors that customarily post notices to workers electronically may post the notice required by this section electronically, provided that such electronic posting is displayed prominently on any website that is maintained by the contractor, whether external or internal, and is customarily used for notices to workers about terms and conditions of employment. This kind of an electronic notice may be made in lieu of physically displaying the notice poster in a prominent or accessible place at the worksite.

As discussed earlier in the preamble section for proposed § 23.30, some FLSA-covered workers performing ''in connection with'' a covered contract may not work at the site of the work with other covered workers. These covered off-site workers nonetheless are entitled to adequate notice of the Executive order minimum wage rate under proposed § 23.290. For example, an off-site administrative assistant spending more than 20 percent of her weekly work hours processing paperwork for a DBA-covered contract would be entitled to notice under this section separate from the physical posting of the DBA wage determination at the main worksite where the DBA-covered laborers and mechanics perform ''on'' the contract. Contractors must notify these off-site workers of the Executive order minimum wage rate, either by displaying the poster for FLSA-covered workers described in proposed § 23.290(b) at the off-site worker's location, or if they customarily post notices to workers electronically, by providing an electronic notice that meets the criteria described in proposed § 23.290(c).

The Department further notes that contractors may have additional obligations under other laws, such as the Americans with Disabilities Act of 1990, to ensure that the notice required by part 23 is provided in an accessible format to workers with disabilities. The Department welcomes comments on the accessibility of any of the notice requirements or processes explained in this proposed rule.

The Department does not anticipate that this proposed notice requirement would impose a significant burden on contractors. As mentioned earlier, contractors are already required to notify workers of the required minimum wage and/or to display the applicable wage determination for workers covered by the SCA, DBA, or Executive Order 13658 in a prominent and accessible place at the worksite, which will satisfy this section's notice requirement with respect to those workers. To the extent that proposed § 23.290 imposes a new notice requirement with respect to workers whose wages are governed by the FLSA but were not covered by Executive Order 13658, such a requirement is not significantly different from the existing notice requirement for FLSA-covered workers provided at 29 CFR 516.4, which requires employers to post a notice explaining the FLSA in conspicuous places in every establishment where such employees are employed. Moreover, the Department will update and provide the Executive Order 14026 minimum wage poster. If display of the poster is necessary at more than one site in order to ensure that it is seen by all workers performing on or in connection with covered contracts, additional copies of the poster may be obtained without cost from the Department. Moreover, as discussed above, the Department will also permit contractors that customarily post notices electronically to use electronic posting of the notice. The Department's experience enforcing the FLSA, SCA, and DBA reflect that this notice provision will serve an important role in obtaining and maintaining contractor compliance with the Executive order.

Subpart D—Enforcement

Section 5 of Executive Order 14026, titled ''Enforcement,'' grants the Secretary ''authority for investigating potential violations of and obtaining compliance with th[e] order.'' 86 FR 22836. Section 4(c) of the order directs that the regulations issued by the Secretary should, to the extent practicable, incorporate existing definitions, principles, procedures, remedies, and enforcement processes under the FLSA, SCA, DBA, Executive Order 13658, and the regulations issued to implement Executive Order 13658. *Id.*

In accordance with these requirements, subpart D of part 23 is consistent with the analogous subpart of the implementing regulations for Executive Order 13658, *see* 29 CFR 10.41 through 10.44, and incorporates FLSA, SCA, and DBA remedies, procedures, and enforcement processes that the Department believes will facilitate investigations of potential violations of the order, address and remedy violations of the order, and promote compliance with the order. Most of the proposed enforcement procedures and remedies contained in part 23 accordingly are based on the implementing regulations for Executive Order 13658, which in turn were based on the statutory text or implementing regulations of the FLSA, SCA, and DBA.

Section 23.410 Complaints

The Department proposes a procedure for filing complaints in § 23.410. Section 23.410(a) outlines the procedure to file a complaint with any office of the WHD. It additionally provides that a complaint may be filed orally or in writing and that the WHD will accept a complaint in any language. Section 23.410(b) states the well-established policy of the Department with respect to confidential sources. *See* 29 CFR 4.191(a); 29 CFR 5.6(a)(5).

Section 23.420 Wage and Hour Division Conciliation

The Department proposes in § 23.420 to establish an informal complaint resolution process for complaints filed with the WHD. The provision would allow WHD, after obtaining the necessary information from the complainant regarding the alleged violations, to contact the party against whom the complaint is lodged and attempt to reach an acceptable resolution through conciliation.

Section 23.430 Wage and Hour Division Investigation

Proposed § 23.430, which outlines WHD's investigative authority, would permit the Administrator to initiate an investigation either as the result of a complaint or at any time on his or her

own initiative. As part of the investigation, the Administrator would be able to inspect the relevant records of the applicable contractors (and make copies or transcriptions thereof) as well as interview the contractors. The Administrator would additionally be able to interview any of the contractors' workers at the worksite during normal work hours, and require the production of any documentary or other evidence deemed necessary for inspection to determine whether a violation of part 23 (including conduct warranting imposition of debarment) has occurred. The section would also require Federal agencies and contractors to cooperate with authorized representatives of the Department in the inspection of records, in interviews with workers, and in all aspects of investigations.

Section 23.440 Remedies and Sanctions

The Department proposes remedies and sanctions to assist in enforcement of the Executive order in § 23.440. Proposed § 23.440(a), provides that when the Administrator determines a contractor has failed to pay the Executive order's minimum wage to workers, the Administrator will notify the contractor and the applicable contracting agency of the violation and request the contractor to remedy the violation. It additionally states that if the contractor does not remedy the violation, the Administrator shall direct the contractor to pay all unpaid wages identified in the Administrator's investigative findings letter issued pursuant to proposed § 23.510. Proposed § 23.440(a) further provides that the Administrator could additionally direct that payments due on the contract or any other contract between the contractor and the Government be withheld as necessary to pay unpaid wages, and that, upon the final order of the Secretary that unpaid wages are due, the Administrator may direct the relevant contracting agency to transfer the withheld funds to the Department for disbursement. Proposed § 23.440(b), which the Department derived from the FLSA's antiretaliation provision set forth at 29 U.S.C. 215(a)(3), states that the Administrator can provide for any relief appropriate, including employment, reinstatement, promotion and payment of lost wages, when the Administrator determines that any person had discharged or in any other manner discriminated against a worker because such worker had filed any complaint or instituted or caused to be instituted any proceeding under or related to Executive Order 14026 or part 23, or had testified or was about to testify in any such proceeding. *See* 29 U.S.C. 215(a)(3), 216(b). As described in the preamble section for subpart A, the Department believes that such a provision will help ensure effective enforcement of Executive Order 14026. Consistent with the Supreme Court's observation in interpreting the scope of the FLSA's antiretaliation provision, enforcement of Executive Order 14026 will depend ''upon information and complaints received from employees seeking to vindicate rights claimed to have been denied.'' *Kasten,* 563 U.S. at 11 (internal quotation marks omitted). The Department believes that this antiretaliation provision will promote compliance with the Executive order.

Proposed § 23.440(c) provides that if the Secretary determines a contractor has disregarded its obligations to workers under the Executive order or part 23, a standard the Department derived from the DBA implementing regulations at 29 CFR 5.12(a)(2), the Secretary would order that the contractor and its responsible officers, and any firm, corporation, partnership, or association in which the contractor or responsible officers have an interest, will be ineligible to be awarded any contract or subcontract subject to the Executive order for a period of up to three years from the date of publication of the name of the contractor or responsible officer on the ineligible list. Proposed § 23.440(c) further provides that neither an order for debarment of any contractor or responsible officer from further Government contracts nor the inclusion of a contractor or its responsible officers on a published list of noncomplying contractors under this section will be carried out without affording the contractor or responsible officers an opportunity for a hearing before an Administrative Law Judge.

As the SCA, DBA, and the regulations implementing Executive Order 13658 contain debarment provisions, inclusion of a debarment provision reflects both the Executive order's instruction that the Department incorporate remedies from the FLSA, SCA, DBA, and the regulations implementing Executive Order 13658 to the extent practicable and the Executive order's conferral of authority on the Secretary to adopt an enforcement scheme that will both remedy violations and obtain compliance with the order. Debarment is a long-established remedy for a contractor's failure to fulfill its labor standard obligations under the SCA and the DBA. 41 U.S.C. 6706(b); 40 U.S.C. 3144(b); 29 CFR 4.188(a); 29 CFR 5.5(a)(7); 29 CFR 5.12(a)(2). The possibility that a contractor will be unable to obtain Government contracts for a fixed period of time due to debarment promotes contractor compliance with the SCA and DBA, and, as similarly expressed in the rulemaking implementing Executive Order 13658, the Department expects such a remedy will enhance contractor compliance with Executive Order 14026. Since debarment to promote contractor compliance is among the remedies in the Government contract statutes that the Executive order instructs the Department to incorporate, the Department has also included debarment as a remedy for certain violations of the Executive order by covered contractors.

As the Department explained in the regulations implementing Executive Order 13658, *see* 79 FR 60680, the Department originally derived the ''disregard of obligations'' standard from the DBA's implementing regulations. The Administrative Review Board (ARB) interprets this standard to require a level of culpability beyond mere negligence in order to justify debarment. *See, e.g., Thermodyn Mech. Contractors, Inc.,* ARB Case No. 96–116, 1996 WL 697838, at *4 (ARB Oct. 25, 1996) (notingthat ''[t]o support a debarment order, the evidence must establish a level of culpability beyond mere negligence''). The Department intends for the same standard to apply under this Executive order. The requirement to show some form of culpability beyond mere negligence confirms this debarment standard is not one involving strict liability. However, for example, a showing of ''knowing or reckless'' disregard of obligations is not necessary in order to justify a debarment. Adopting a ''knowing or reckless disregard'' standard would constitute a departure from the DBA's debarment standard as well as from the SCA's debarment standard (under which debarment is warranted for SCA violations unless the Secretary of Labor recommends otherwise because of ususual circumstances), and would therefore be inconsistent with the Executive order's directive to adopt remedies and enforcement processes from the FLSA, SCA, DBA, and the regulations implementing Executive Order 13658 to the extent practicable.

Proposed § 23.440(d), which is identical to 29 CFR 10.44(d), which the Department in turn derived from the SCA, 41 U.S.C. 6705(b)(2), would allow for initiation of an action, following a final order of the Secretary, against a contractor in any court of competent jurisdiction to collect underpayments when the amounts withheld under § 23.110(c) are insufficient to reimburse workers' lost wages. Proposed

§ 23.440(d) would also authorize initiation of an action, following the final order of the Secretary, in any court of competent jurisdiction when there are no payments available to withhold. This is particularly necessary because the Executive order covers concessions and other contracts under which the contractor may not receive payments from the Federal Government and in some instances, the Administrator may be unable to direct withholding of funds because at the time the Administrator discovers that a contractor owes wages to workers, it may be that no payments remain owing under the contract or another contract between the same contractor and the Federal Government. With respect to such contractors, there will be no funds to withhold. Proposed § 23.440(d) accordingly provides that the Department may pursue an action in any court of competent jurisdiction to collect underpayments against such contractors. Proposed § 23.440(d) additionally provides that any sums the Department recovers will be paid to affected workers to the extent possible, but that sums not paid to workers because of an inability to do so within three years will be transferred into the Treasury of the United States.

In proposed § 23.440(e), the Department addresses what remedy will be available when a contracting agency fails to include the contract clause in a contract subject to the Executive order. The section provides that the contracting agency will, on its own initiative or within 15 calendar days of notification by the Department, incorporate the clause retroactive to commencement of performance under the contract through the exercise of any and all authority necessary. This incorporation will provide the Administrator authority to collect underpayments on behalf of affected workers on the applicable contract retroactive to commencement of performance under the contract. The Administrator possesses comparable authority under the DBA, 29 CFR 1.6(f), and the Department believes a similar mechanism for addressing a failure to include the contract clause in a contract subject to the Executive order will further the interest in both remedying violations and obtaining compliance with the Executive order.

Proposed § 23.440(c) also reflects that a contractor is entitled to an adjustment when a contracting agency initially omits and then subsequently includes the contract clause in a covered contract. This approach, which is consistent with the SCA's implementing regulations, *see* 29 CFR 4.5(c), is therefore reflected in proposed § 23.440(e). The Department recognizes that the mechanics of effectuating such an adjustment may differ between covered procurement contracts and the non-procurement contracts that the Department's contract clause covers. With respect to covered non-procurement contracts, the Department believes that the authority conferred on agencies that enter into such contracts under section 4(b) of the Executive order includes the authority to provide such an adjustment.

The Department believes that the remedies it proposes here will be sufficient to obtain compliance with the Executive order.

The Department intends to follow the general practice of holding contractors responsible for compliance by any covered lower-tier subcontractor(s) with the Executive order minimum wage. In other words, a contractor's responsibility for compliance flows down to all covered lower-tier subcontractors. Thus, to the extent a lower-tier subcontractor fails to pay its workers the applicable Executive order minimum wage even though its subcontract contains the required contract clause, an upper-tier contractor may still be responsible for any back wages owed to the workers. Similarly, a contractor's failure to fulfill its responsibility for compliance by covered lower-tier subcontractors may warrant debarment if the contractor's failure constituted a disregard of obligations to workers and/or subcontractors. The Department notes that its general practice under the SCA and DBA is to seek payment of back wages from the subcontractor that directly committed the violation before seeking payment from the prime contractor or any other upper-tier subcontractors.

The Department's experience under the DBA, SCA, and Executive Order 13658 has demonstrated that the ''flow-down'' model is an effective means to obtain compliance. As the Executive order charges the Department with the obligation to adopt remedies and enforcement processes from the SCA, DBA, and Executive Order 13658's implementing regulations (and/or FLSA) to obtain compliance with the order, the proposed rule reflects the flow-down approach to compliance responsibility contained in the SCA, DBA, and Executive Order 13658 regulations.

Finally, as noted in the preamble section for subpart A, the Executive order covers certain non-procurement contracts. Because the FAR does not apply to all contracts covered by Executive Order 14026, there will be instances where, pursuant to section 4(b) of the Executive order, a contracting agency must take steps to the extent permitted by law, including but not limited to insertion of the contract clause set forth in appendix A, to exercise any applicable authority to ensure that covered contracts as described in sections 8(a)(i)(C) and (D) of the Executive order comply with the requirements set forth in sections 2 and 3 of the Executive order, including payment of the Executive order minimum wage. In such instances, the enforcement provisions contained in subpart D (as well as the remainder of part 23) fully apply to the covered contract, consistent with the Secretary's authority under section 5 of the Executive order to investigate potential violations of, and obtain compliance with, the order.

Subpart E—Administrative Proceedings

Section 5 of Executive Order 14026, titled ''Enforcement,'' grants the Secretary ''authority for investigating potential violations of and obtaining compliance with th[e] order.'' 86 FR 22836. Section 4(c) of the order directs that the regulations the Secretary issues should, to the extent practicable, incorporate existing definitions, principles, procedures, remedies, and enforcement processes under the FLSA, SCA, and DBA, and regulations issued to implement Executive Order 13658. *Id.*

Accordingly, subpart E of part 23 proposes to incorporate, to the extent practicable, the DBA and SCA administrative procedures that the regulations issued to implement Executive Order 13658 also incorporated, which are necessary to remedy potential violations and ensure compliance with the Executive order. Thus, the administrative procedures in this proposed subpart are identical to the administrative procedures in the regulations issued to implement Executive Order 13658. The administrative procedures included in this subpart also closely adhere to existing procedures of the Office of Administrative Law Judges and the Administrative Review Board.

Section 23.510 Disputes Concerning Contractor Compliance

Proposed § 23.510, which the Department derived primarily from 29 CFR 5.11, addresses how the Administrator will process disputes regarding a contractor's compliance with part 23. Proposed § 23.510(a) provides that the Administrator or a contractor may initiate a proceeding covered by § 23.510. Proposed

§ 23.510(b)(1) provides that when it appears that relevant facts are at issue in a dispute covered by § 23.510(a), the Administrator will notify the affected contractor (and the prime contractor, if different) of the investigation's findings by certified mail to the last known address. If the Administrator determines there are reasonable grounds to believe the contractor should be subject to debarment, the investigative findings letter will so indicate.

Proposed § 23.510(b)(2) provides that a contractor desiring a hearing concerning the investigative findings letter is required to request a hearing by letter postmarked within 30 calendar days of the date of the Administrator's letter. It further requires the request set forth those findings which are in dispute with respect to the violation(s) and/or debarment, as appropriate, and to explain how such findings are in dispute, including by reference to any applicable affirmative defenses.

Proposed § 23.510(b)(3) provides that the Administrator, upon receipt of a timely request for hearing, will refer the matter to the Chief Administrative Law Judge (ALJ) by Order of Reference for designation of an ALJ to conduct such hearings as may be necessary to resolve the disputed matter in accordance with the procedures set forth in 29 CFR part 6. It also requires the Administrator to attach a copy of the Administrator's letter, and the response thereto, to the Order of Reference that the Administrator sends to the Chief ALJ.

Proposed § 23.510(c)(1) would apply when it appears there are no relevant facts at issue and there was not at that time reasonable cause to institute debarment proceedings. It requires the Administrator to notify the contractor, by certified mail to the last known address, of the investigative findings and to issue a ruling on any issues of law known to be in dispute. Proposed § 23.510(c)(2)(i) would apply when a contractor disagrees with the Administrator's factual findings or believes there are relevant facts in dispute. It allows the contractor to advise the Administrator of such disagreement by letter postmarked within 30 calendar days of the date of the Administrator's letter, and requires that the response explain in detail the facts alleged to be in dispute and attach any supporting documentation.

Proposed § 23.510(c)(2)(ii) requires the Administrator to examine the information timely submitted in the response alleging the existence of a factual dispute. Where the Administrator determines there is a relevant issue of fact, the Administrator will refer the case to the Chief ALJ as under § 23.510(b)(3). If the Administrator determines there is no relevant issue of fact, the Administrator will so rule and advise the contractor(s) accordingly.

Proposed § 23.510(d) provides that the Administrator's investigative findings letter becomes the final order of the Secretary if a timely response to the letter was not made or a timely petition for review was not filed. It additionally provides that if a timely response or a timely petition for review was filed, the investigative findings letter would be inoperative unless and until the decision is upheld by the ALJ or the ARB, or the letter otherwise became a final order of the Secretary.

Section 23.520 Debarment Proceedings

Proposed § 23.520, which the Department primarily derived in the Executive Order 13658 rulemaking from 29 CFR 5.12, *see* 79 FR 60683, addresses debarment proceedings. Proposed § 23.520(a)(1) provides that whenever any contractor is found by the Administrator to have disregarded its obligations to workers or subcontractors under Executive Order 14026 or part 23, such contractor and its responsible officers, and/or any firm, corporation, partnership, or association in which such contractor or responsible officers have an interest, will be ineligible for a period of up to three years to receive any contracts or subcontracts subject to the Executive order from the date of publication of the name or names of the contractor or persons on the ineligible list.

Proposed § 23.520(b)(1) provides that where the Administrator finds reasonable cause to believe a contractor has committed a violation of the Executive order or part 23 that constitutes a disregard of its obligations to its workers or subcontractors, the Administrator will notify by certified mail to the last known address the contractor and its responsible officers (and/or any firms, corporations, partnerships, or associations in which the contractor or responsible officers are known to have an interest) of the finding. Pursuant to proposed § 23.520(b)(1), the Administrator will additionally furnish those notified a summary of the investigative findings and afford them an opportunity for a hearing regarding the debarment issue. Those notified must request a hearing on the debarment issue, if desired, by letter to the Administrator postmarked within 30 calendar days of the date of the letter from the Administrator. The letter requesting a hearing must set forth any findings which are in dispute and the reasons therefore, including any affirmative defenses to be raised. Proposed § 23.520(b)(1) also requires the Administrator, upon receipt of a timely request for hearing, to refer the matter to the Chief ALJ by Order of Reference, to which will be attached a copy of the Administrator's investigative findings letter and the response thereto, for designation of an ALJ to conduct such hearings as may be necessary to determine the matters in dispute. Proposed § 23.520(b)(2) provides that hearings under § 23.520 will be conducted in accordance with 29 CFR part 6. If no timely request for hearing is received, the Administrator's findings will become the final order of the Secretary.

Section 23.530 Referral to Chief Administrative Law Judge; Amendment of Pleadings

The Department derived proposed § 23.530 from the SCA and DBA rules of practice for administrative proceedings in 29 CFR part 6. Proposed § 23.530(a) provides that upon receipt of a timely request for a hearing under § 23.510 (where the Administrator has determined that relevant facts are in dispute) or § 23.520 (debarment), the Administrator will refer the case to the Chief ALJ by Order of Reference, to which will be attached a copy of the investigative findings letter from the Administrator and the response thereto, for designation of an ALJ to conduct such hearings as may be necessary to decide the disputed matters. It further provides that a copy of the Order of Reference and attachments thereto will be served upon the respondent and the investigative findings letter and the response thereto will be given the effect of a complaint and answer, respectively, for purposes of the administrative proceeding.

Proposed § 23.530(b) states that at any time prior to the closing of the hearing record, the complaint or answer may be amended with permission of the ALJ upon such terms as he/she shall approve, and that for proceedings initiated pursuant to § 23.510, such an amendment could include a statement that debarment action was warranted under § 23.520. It further provides that such amendments will be allowed when justice and the presentation of the merits are served thereby, provided there is no prejudice to the objecting party's presentation on the merits. It additionally states that when issues not raised by the pleadings are reasonably within the scope of the original complaint and are tried by express or implied consent of the parties, they will be treated as if they had been raised in the pleadings, and such amendments

may be made as necessary to make them conform to the evidence. Proposed § 23.530(b) further provides that the presiding ALJ can, upon reasonable notice and upon such terms as are just, permit supplemental pleadings setting forth transactions, occurrences, or events which had happened since the date of the pleadings and which are relevant to any of the issues involved. It also authorizes the ALJ to grant a continuance in the hearing, or leave the record open, to enable the new allegations to be addressed.

Section 23.540 Consent Findings and Order

Proposed § 23.540, which the Department derived from 29 CFR 6.18 and 6.32, provides a process whereby parties may at any time prior to the ALJ's receipt of evidence or, at the ALJ's discretion, at any time prior to issuance of a decision, agree to dispose of the matter, or any part thereof, by entering into consent findings and an order. Proposed § 23.540(b) identifies four requirements of any agreement containing consent findings and an order. Proposed § 23.540(c) provides that within 30 calendar days of receipt of any proposed consent findings and order, the ALJ will accept the agreement by issuing a decision based on the agreed findings and order, provided the ALJ is satisfied with the proposed agreement's form and substance.

Section 23.550 Proceedings of the Administrative Law Judge

Proposed § 23.550, which the Department primarily derived from 29 CFR 6.19 and 6.33, addresses the ALJ's proceedings and decision. Proposed § 23.550(a) provides that the Office of Administrative Law Judges has jurisdiction to hear and decide appeals concerning questions of law and fact from the Administrator's determinations issued under § 23.510 or § 23.520. It further provides that any party can, when requesting an appeal or during the pendency of a proceeding on appeal, timely move an ALJ to consolidate a proceeding initiated thereunder with a proceeding initiated under the SCA or DBA. The purpose of the proposed language is to allow the Office of Administrative Law Judges and interested parties to efficiently dispose of related proceedings arising out of the same contract with the Federal Government.

Proposed § 23.550(b) provides that each party may file with the ALJ proposed findings of fact, conclusions of law, and a proposed order, together with a brief, within 20 calendar days of filing of the transcript (or a longer period if the ALJ permits). It also provides that each party would serve such proposals and brief on all other parties.

Proposed § 23.550(c)(1) requires an ALJ to issue a decision within a reasonable period of time after receipt of the proposed findings of fact, conclusions of law, and order, or within 30 calendar days after receipt of an agreement containing consent findings and an order disposing of the matter in whole. It further provides that the decision must contain appropriate findings, conclusions of law, and an order and be served upon all parties to the proceeding. Proposed § 23.550(c)(2) provides that if the Administrator requested debarment, and the ALJ concludes the contractor has violated the Executive order or part 23, the ALJ will issue an order regarding whether the contractor is subject to the ineligible list that would include any findings related to the contractor's disregard of its obligations to workers or subcontractors under the Executive order or part 23.

Proposed § 23.550(d) provides that the Equal Access to Justice Act (EAJA), as amended, 5 U.S.C. 504, does not apply to proceedings under part 23. The proceedings proposed in subpart E are not required by an underlying statute to be determined on the record after an opportunity for an agency hearing. Therefore, an ALJ has no authority to award attorney's fees and/or other litigation expenses pursuant to the provisions of the EAJA for any proceeding under part 23.

Proposed § 23.550(e) provides that if the ALJ concludes a violation occurred, the final order will require action to correct the violation, including, but not limited to, monetary relief for unpaid wages. It also requires an ALJ to determine whether an order imposing debarment is appropriate, if the Administrator has sought debarment. Proposed § 23.550(f) provides that the ALJ's decision will become the final order of the Secretary, provided a party does not timely appeal the matter to the ARB.

Section 23.560 Petition for Review

Proposed § 23.560, which the Department derived from 29 CFR 6.20 and 6.34, describes the process to apply to petitions for review to the ARB from ALJ decisions. Proposed § 23.560(a) provides that within 30 calendar days after the date of the decision of the ALJ, or such additional time as the ARB granted, any party aggrieved thereby who desires review must file a petition for review with supporting reasons in writing to the ARB with a copy thereof to the Chief ALJ. It further requires that the petition refer to the specific findings of fact, conclusions of law, and order at issue and that a petition concerning a debarment decision state the disregard of obligations to workers and subcontractors, or lack thereof, as appropriate. It additionally requires a party to serve the petition for review, and all briefs, on all parties and on the Chief ALJ. It also states a party must timely serve copies of the petition and all briefs on the Administrator and the Associate Solicitor, Division of Fair Labor Standards, Office of the Solicitor, U.S. Department of Labor.

Proposed § 23.560(b) provides that if a party files a timely petition for review, the ALJ's decision will be inoperative unless and until the ARB issues an order affirming the letter or decision, or the letter or decision otherwise becomes a final order of the Secretary. It further provides that if a petition for review concerns only the imposition of debarment, the remainder of the decision will be effective immediately. Proposed § 23.560(b) additionally states that judicial review will not be available unless a timely petition for review to the ARB is first filed. Failure of the aggrieved party to file a petition for review with the ARB within 30 calendar days of the ALJ decision will render the decision final, without further opportunity for appeal.

Section 23.570 Administrative Review Board Proceedings

Proposed § 23.570, which the Department derived primarily from 29 CFR 10.57, outlines the ARB proceedings under the Executive order. Proposed § 23.570(a)(1) states the ARB has jurisdiction to hear and decide in its discretion appeals from the Administrator's investigative findings letters issued under § 23.510(c)(1) or (2), Administrator's rulings issued under § 23.580, and from ALJ decisions issued under § 23.550. Proposed § 23.570(a)(2) identifies the limitations on the ARB's scope of review, including a restriction on passing on the validity of any provision of part 23, a general prohibition on receiving new evidence in the record (because the ARB is an appellate body and must decide cases before it based on substantial evidence in the existing record), and a bar on granting attorney's fees or other litigation expenses under the EAJA.

Proposed § 23.570(b) requires the ARB to issue a final decision within a reasonable period of time following receipt of the petition for review and to serve the decision by mail on all parties at their last known address, and on the Chief ALJ, if the case involves an appeal from an ALJ's decision. Proposed

§ 23.570(c) requires the ARB's order to mandate action to remedy the violation, including, but not limited to, providing monetary relief for unpaid wages, if the ARB concludes a violation occurred. If the Administrator has sought debarment, the ARB must determine whether a debarment remedy is appropriate. Proposed § 23.570(c) also provides that the ARB's order is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020 or any successor to that order. See Secretary of Labor's Order, 01–2020 (Feb. 21, 2020), 85 FR 13186 (Mar. 6, 2020).

Finally, proposed § 23.570(d) provides that the ARB's decision will become the Secretary's final order in the matter in accordance with Secretary's Order 01–2020 (or any successor to that order), which provides for discretionary review of such orders by the Secretary. *See id.*

Section 23.580 Administrator Ruling

Proposed § 23.580 sets forth a procedure for addressing questions regarding the application and interpretation of the rules contained in part 23. Proposed § 23.580(a), which the Department derived primarily from 29 CFR 5.13, provides that such questions should be referred to the Administrator. It further provides that the Administrator will issue an appropriate ruling or interpretation related to the question. Requests for rulings under this section should be addressed to the Administrator, Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. Any interested party may, pursuant to § 23.580(b), appeal a final ruling of the Administrator issued pursuant to § 23.580(a) to the ARB.

Appendix A to Part 23 (Contract Clause)

Section 2 of Executive Order 14026 provides that executive departments and agencies, including independent establishments subject to the Federal Property and Administrative Services Act, must, to the extent permitted by law, ensure that new contracts, contract-like instruments, and solicitations include a clause, which the contractor and any covered subcontractors must incorporate into lower-tier subcontracts, specifying, as a condition of payment, the minimum wage to be paid to workers under the order. 86 FR 22835. Section 4 of the Executive order provides that the Secretary shall issue regulations by November 24, 2021, consistent with applicable law, to implement the requirements of the order. 86 FR 22836. Section 4 of the order also requires that, to the extent permitted by law, within 60 days of the Secretary issuing such regulations, the FARC shall amend regulations in the FAR to provide for inclusion of the contract clause in Federal procurement solicitations and contracts subject to the Executive order. *Id.* The order further specifies that any regulations issued pursuant to section 4 of the order should, to the extent practicable, incorporate existing definitions, principles, procedures, remedies, and enforcement processes under the FLSA, SCA, and DBA, Executive Order 13658, and regulations issued to implement Executive Order 13658. *Id.* Section 5 of the order grants authority to the Secretary to investigate potential violations of and obtain compliance with the order. *Id.* Because a contract clause is a requirement of the order, the Department sets forth the text of a proposed contract clause as appendix A. As required by the order, the proposed contract clause specifies the minimum wage to be paid to workers under the order. The Secretary possesses the authority to obtain compliance with the order, as well as the responsibility to issue regulations implementing the requirements of the order that incorporate, to the extent practicable, existing definitions, principles, procedures, remedies, and enforcement processes under the FLSA, SCA, DBA, Executive Order 13658, and the regulations issued to implement Executive Order 13658. Consistent with that authority and responsibility, the provisions of the proposed contract clause are based on the contract clause included in the Executive Order 13658 rulemaking, which was in turn based on the statutory text or implementing regulations of the FLSA, SCA, and DBA. *See* 79 FR 60685.

The first sentence of proposed § 23.110 requires that the contracting agency include the Executive order minimum wage contract clause set forth in appendix A in all covered contracts and solicitations for such contracts, as described in § 23.30, except for procurement contracts subject to the FAR. It further states that the required contract clause directs, as a condition of payment, that all workers performing on or in connection with covered contracts must be paid the applicable, currently effective minimum wage under Executive Order 14026 and § 23.50. It additionally provides that for procurement contracts subject to the FAR, contracting agencies shall use the clause set forth in the FAR developed to implement this rule and that such clause must both accomplish the same purposes as the clause set forth in appendix A and be consistent with the requirements set forth in this rule.

Paragraph (a) of the proposed contract clause set forth in appendix A provides that the contract in which the clause is included is subject to Executive Order 14026, the regulations issued by the Secretary of Labor at 29 CFR part 23 to implement the order's requirements, and all the provisions of the contract clause.

Paragraph (b) specifies the contractor's minimum wage obligations to workers pursuant to the Executive order. Paragraph (b)(1) stipulates that each worker, as defined in 29 CFR 23.20, employed in the performance of the contract by the prime contractor or any subcontractor, regardless of any contractual relationship that may be alleged to exist between the contractor and the worker, shall be paid not less than the Executive order's applicable minimum wage. The term *worker* includes any person engaged in performing work on or in connection with a contract covered by the Executive order whose wages under such contract are governed by the FLSA, the SCA, or the DBA, regardless of the contractual relationship alleged to exist between the individual and the contractor.

Paragraph (b)(2) provides that the minimum wage required to be paid to each worker performing work on or in connection with the contract between January 30, 2022, and December 31, 2022, is $15.00 per hour. It specifies that the applicable minimum wage required to be paid to each worker performing work on or in connection with the contract should thereafter be adjusted each time the Secretary's annual determination of the applicable minimum wage under section 2(a)(ii) of the Executive order results in a higher minimum wage. Section (b)(2) further provides that adjustments to the Executive order minimum wage will be effective January 1st of the following year, and will be published in the **Federal Register** no later than 90 days before such wage is to take effect. It also provides that the applicable minimum wage will be published on *https://alpha.sam.gov/content/wage-determinations* (or any successor website) and was incorporated by reference into the contract.

The effect of paragraphs (b)(1) and (2) will be to require the contractor to adjust the minimum wage of workers performing work on or in connection with a contract subject to the Executive order each time the Secretary's annual determination of the minimum wage results in a higher minimum wage than the previous year. For example, paragraph (b)(1) will require a

contractor on a contract subject to the Executive order in 2022 (beginning on January 30, 2022) to pay covered workers at least $15.00 per hour for work performed on or in connection with the contract. If workers continue to perform work on or in connection with the covered contract in 2023 and the Secretary determines the applicable minimum wage to be effective January 1, 2023, was $15.10 per hour, paragraphs (b)(1) and (2) will require the contractor to pay covered workers $15.10 for work performed on or in connection with the contract beginning January 1, 2023, thereby raising the wages of any workers paid $15.00 per hour prior to January 1, 2023.

The proposed contract clause also includes a provision that will require contracting agencies to ensure that contractors are compensated for any increase in labor costs resulting from the annual inflation increases in the Executive Order 14026 minimum wage beginning on January 1, 2023. The Department notes, however, that such compensation is only warranted ''if appropriate.'' For example, if the contracting agency and contractor have already anticipated an increase in labor costs in pricing the applicable contract, it would not be appropriate for a contractor to receive compensation in addition to whatever consideration it has already received for any increase in labor costs in the applicable contract. The Department further notes that contractors shall be compensated ''only for'' increases in labor costs resulting from operation of the annual inflation increases. Thus, contractors are entitled to be compensated under the provision only for any increases in labor costs directly resulting from the annual inflation increase. For example, contractors are not entitled to be compensated for labor costs they allege they incurred related to raising wages for non-covered workers due to operation of the annual inflation increase for covered workers. Compensation adjustments will necessarily be made on a contract-by-contract basis, and where any annual inflation increase does not increase labor costs because, for example, of the efficiency and other benefits resulting from the increase, the contractor will not ultimately receive additional compensation as a result of the annual inflation increase.

The Department recognizes that the mechanics of providing an adjustment to the economic terms of a covered contract likely differ between covered procurement and non-procurement contracts. With respect to covered non-procurement contracts subject to the Department's proposed contract clause, the Department believes that the authority conferred on agencies that enter into such contracts under section 4(b) of the Executive order includes the authority to provide the type of adjustment contained in the Department's contract clause.

As discussed elsewhere in this preamble, the Department intends to provide notice of the Executive order minimum wage on SCA and DBA wage determinations to help inform contractors and workers of their rights and obligations under the order. As discussed in more detail in the preamble section for subpart C, the Department has also developed a poster for contractors with FLSA-covered workers performing work on or in connection with a contract covered by the Executive order.

The Department derived paragraph (b)(3) from the contract clauses applicable to contracts subject to the SCA and the DBA, *see* 29 CFR 4.6(h) (SCA), 29 CFR 5.5(a)(1) (DBA), to ensure full payment of the applicable Executive order minimum wage to covered workers. Specifically, paragraph (b)(3) requires the contractor to pay unconditionally to each covered worker all wages due free and clear and without deduction (except as otherwise provided by § 23.230), rebate or kickback on any account. Paragraph (b)(3) further requires that wages shall be paid no later than one pay period following the end of the regular pay period in which such wages were earned or accrued. Paragraph (b)(3) also requires that a pay period under the Executive order may not be of any duration longer than semi-monthly (a duration permitted under the SCA, *see* 29 CFR 4.165(b)).

Paragraph (b)(4) of the proposed contract clause provides that the prime contractor and any upper-tier subcontractor(s) will be responsible for the compliance by any subcontractor or lower-tier covered subcontractor with the Executive order minimum wage requirements. Proposed paragraph (b)(4) also states that the contractor and any subcontractor(s) responsible therefore will be liable for unpaid wages in the event of any violation of the minimum wage obligation of these clauses. As discussed earlier, the Department has found this flow-down model of responsibility to be an effective method to obtain compliance with the DBA and SCA, and to ensure that covered workers receive the wages to which they are statutorily entitled even if, for example, the subcontractor that employed them is insolvent. The Department believes the flow-down model of responsibility will likewise prove an effective model to enforce the Executive order's obligations and ensure payment of wages to covered workers.

Proposed paragraph (b)(5) of the contract clause in appendix A states that workers with disabilities whose wages are calculated pursuant to special certificates issued under section 14(c) of the FLSA must be paid at least the Executive order minimum wage (or the applicable commensurate wage rate under the certificate, if such rate is higher than the Executive order minimum wage) for time spent performing work on or in connection with covered contracts.

The Department derived proposed paragraphs (c) and (d) of the contract clause, which specify remedies in the event of a determination of a violation of Executive Order 14026 or part 23, primarily from the contract clauses applicable to contracts subject to the SCA and the DBA, *see* 29 CFR 4.6(i) (SCA); 29 CFR 5.5(a)(2), (7) (DBA). Paragraph (c) provides that the agency head shall, upon its own action or upon written request of an authorized representative of the Department, withhold or cause to be withheld from the prime contractor under the contract or any other Federal contract with the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay workers the full amount of wages required by the Executive order. Consistent with withholding procedures under the SCA and the DBA, paragraph (c) would allow the contracting agency and the Department to effect withholding of funds from the prime contractor on not only the contract covered by the Executive order but also on any other contract that the prime contractor has entered into with the Federal Government.

Proposed paragraph (d) states the circumstances under which the contracting agency and/or the Department could suspend, terminate, or debar a contractor for violations of the Executive order. It provides that in the event of a failure to comply with any term or condition of the Executive order or 29 CFR part 23, including failure to pay any worker all or part of the wages due under the Executive order, the contracting agency could on its own action, or after authorization or by direction of the Department and written notification to the contractor, take action to cause suspension of any further payment, advance, or guarantee of funds until such violations have ceased. Paragraph (d) additionally provides that any failure to comply with the contract clause may constitute

grounds for termination of the right to proceed with the contract work and, in such event, for the Federal Government to enter into other contracts or arrangements for completion of the work, charging the contractor in default with any additional cost. Paragraph (d) also provides that a breach of the contract clause may be grounds to debar the contractor as provided in 29 CFR part 23.

Proposed paragraph (e) provides that contractors may not discharge any portion of their minimum wage obligation under the Executive order by furnishing fringe benefits, or with respect to workers whose wages are governed by the SCA, the cash equivalent thereof. As noted earlier, Executive Order 14026 increases ''the hourly minimum wage'' paid by contractors with the Federal Government. 86 FR 22835. By repeatedly stating that it is increasing the hourly minimum wage, without any reference to fringe benefits, the text of the Executive order makes clear that a contractor cannot discharge its minimum wage obligation by furnishing fringe benefits. This is consistent with the Department's interpretation in the regulations issued to implement Executive Order 13658, *see* 79 FR 60688, and the SCA, which does not permit a contractor to meet its minimum wage obligation through the furnishing of fringe benefits, but rather imposes distinct ''minimum wage'' and ''fringe benefit'' obligations on contractors. 41 U.S.C. 6703(1)-(2). Similarly, the FLSA does not allow a contractor to meet its minimum wage obligation through the furnishing of fringe benefits. Although the DBA specifically includes fringe benefits within its definition of minimum wage, thereby allowing a contractor to meet its minimum wage obligation, in part, through the furnishing of fringe benefits, 40 U.S.C. 3141(2), Executive Order 14026 contains no similar provision expressly authorizing a contractor to discharge its Executive order minimum wage obligation through the furnishing of fringe benefits. Consistent with the Executive order, paragraph (e) would accordingly preclude a contractor from discharging its minimum wage obligation by furnishing fringe benefits.

Proposed paragraph (e) also prohibits a contractor from discharging its minimum wage obligation to workers whose wages are governed by the SCA by providing the cash equivalent of fringe benefits, including vacation and holidays. As discussed above, the SCA imposes distinct ''minimum wage'' and ''fringe benefit'' obligations on contractors. 41 U.S.C. 6703(1)–(2). A contractor cannot satisfy any portion of its SCA minimum wage obligation through the provision of fringe benefit payments or cash equivalents furnished or paid pursuant to 41 U.S.C. 6703(2). 29 CFR 4.177(a). Consistent with the treatment of fringe benefit payments or their cash equivalents under the SCA, proposed paragraph (e) would not allow contractors to discharge any portion of their minimum wage obligation under the Executive order to workers whose wages are governed by the SCA through the provision of either fringe benefits or their cash equivalent.

Proposed paragraph (f) provides that nothing in the contract clause would relieve the contractor from compliance with a higher wage obligation to workers under any other Federal, State, or local law, or under contract, nor shall a lower prevailing wage under any such Federal, State, or local law, or under contract, entitle a contractor to pay less than the Executive order minimum wage. This provision would implement section 2(c) of the Executive order, which provides that nothing in the order excuses noncompliance with any applicable Federal or state prevailing wage law, or any applicable law or municipal ordinance establishing a minimum wage higher than the minimum wage established under the order. 86 FR 22836. For example, if a municipal law required a contractor to pay a worker $15.75 per hour on January 30, 2022, a contractor could not rely on the $15.00 Executive order minimum wage to pay the worker less than $15.75 per hour.

Proposed paragraph (g) sets forth recordkeeping and related obligations that are consistent with the Secretary's authority under section 5 of the order to obtain compliance with the order, and that the Department views as essential to determining whether the contractor has paid the Executive order minimum wage to covered workers. The obligations in paragraph (g) are identical to the obligations that the Department derived in the Executive Order 13658 rulemaking. *See* 79 FR 60689. The Department originally derived these obligations from the FLSA, SCA, and DBA. Paragraph (g)(1) lists specific payroll records obligations of contractors performing work subject to the Executive order, providing in particular that such contractors shall make and maintain for three years, work records containing the following information for each covered worker: name, address, and social security number; the worker's occupation(s) or classification(s); the rate or rates paid to the worker; the number of daily and weekly hours worked by each worker; any deductions made; and total wages paid. The records required to be kept by contractors pursuant to proposed paragraph (g)(1) are coextensive with recordkeeping requirements that already exist under, and are consistent across, the FLSA, SCA, and DBA; as a result, compliance by a covered contractor with the proposed payroll records obligations would not impose any obligations to which the contractor is not already subject under the FLSA, SCA, or DBA.

Paragraph (g)(1) further provides that the contractor performing work subject to the Executive order shall make such records available for inspection and transcription by authorized representatives of the WHD.

Proposed paragraph (g)(2) requires the contractor to make available a copy of the contract for inspection or transcription by authorized representatives of the WHD. Proposed paragraph (g)(3) provides that failure to make and maintain, or to make available to the WHD for transcription and inspection, the records identified in paragraph (g)(1) will be a violation of the regulations implementing Executive Order 14026 and the contract. Paragraph (g)(3) additionally provides that in the case of a failure to produce such records, the contracting officer, upon direction of the Department, or under their own action, shall take action to cause suspension of any further payment or advance of funds until such violation have ceased. Proposed paragraph (g)(4) requires the contractor to permit authorized representatives of the WHD to conduct the investigation, including interviewing workers at the worksite during normal working hours. Proposed paragraph (g)(5), provides that nothing in the contract clause will limit or otherwise modify a contractor's recordkeeping obligations, if any, under the FLSA, SCA, and DBA, and their implementing regulations, respectively. Thus, for example, a contractor subject to both Executive Order 14026 and the DBA with respect to a particular project would be required to comply with all recordkeeping requirements under the DBA and its implementing regulations.

Proposed paragraph (h) requires the contractor to both insert the contract clause in all its covered subcontracts and to require its subcontractors to include the clause in any lower–tiered subcontracts. Paragraph (h) further makes the prime contractor and any upper-tier contractor responsible for the compliance by any subcontractor or lower tier subcontractor with the contract clause.

Proposed paragraph (i), which the Department derived from the SCA

contract clause, 29 CFR 4.6(n), sets forth the certifications of eligibility the contractor makes by entering into the contract. Paragraph (i)(1) stipulates that by entering into the contract, the contractor and its officials will be certifying that neither the contractor, the certifying officials, nor any person or firm with an interest in the contractor's firm is a person or firm ineligible to be awarded Federal contracts pursuant to section 5 of the SCA, section 3(a) of the DBA, or 29 CFR 5.12(a)(1). Paragraph (i)(2) constitutes a certification that no part of the contract will be subcontracted to any person or firm ineligible to receive Federal contracts. Paragraph (i)(3) contains an acknowledgement by the contractor that the penalty for making false statements is prescribed in the U.S. Criminal Code at 18 U.S.C. 1001.

The Department based proposed paragraph (j) on section 3 of the Executive order. It addressed the employer's ability to use a partial wage credit based on tips received by a tipped employee (tip credit) to satisfy the wage payment obligation under the Executive order. The provision sets the requirements an employer must meet in order to claim a tip credit.

Proposed paragraph (k) establishes a prohibition on retaliation that the Department derived from the FLSA's antiretaliation provision that is consistent with the Secretary's authority under section 5 of the order to obtain compliance with the order. It prohibits any person from discharging or discriminating against a worker because such worker has filed any complaint or instituted or caused to be instituted any proceeding under or related to Executive Order 14026 or part 23, or has testified or is about to testify in any such proceeding. The Department proposes to interpret the prohibition on retaliation in paragraph (k) in accordance with its interpretation of the analogous FLSA provision.

Proposed paragraph (l) is based on section 5(b) of the Executive order. It accordingly provides that disputes related to the application of the Executive order to the contract will not be subject to the contract's general disputes clause. Instead, such disputes will be resolved in accordance with the dispute resolution process set forth in 29 CFR part 23. Paragraph (l) also provides that disputes within the meaning of the clause includes disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the workers or their representatives.

Proposed paragraph (m) relates to the contractor's responsibility in providing notice to workers of the applicable Executive order minimum wage. The methods of notice contained in proposed paragraph (m) reflect those contained in proposed § 23.290. A full discussion of the methods of notice contained in proposed paragraph (m), can accordingly be found in the preamble describing the operation of proposed § 23.290.

III. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* and its attendant regulations, 5 CFR part 1320, require the Department to consider the agency's need for its information collections, their practical utility, as well as the impact of paperwork and other information collection burdens imposed on the public, and how to minimize those burdens. The PRA typically requires an agency to provide notice and seek public comments on any proposed collection of information contained in a proposed rule. *See* 44 U.S.C. 3506(c)(2)(B); 5 CFR 1320.8.

This rulemaking would affect existing information collection requirements previously approved under Office of Management and Budget (OMB) control number 1235–0018 (Records to be Kept by Employers—Fair Labor Standards Act) and OMB control number 1235–0021 (Employment Information Form), to the extent that Executive Order 14026 and its higher wage requirements will supersede Executive Order 13658 for contracts entered into, renewed, or extended (pursuant to an option or otherwise) on or after January 30, 2022 that would otherwise be covered by Executive Order 13658, and newly cover contracts in connection with seasonal recreational services or seasonal recreational equipment rental offered for public use on Federal lands, which are presently exempt from Executive 13658 under Executive Order 13838. As required by the PRA, the Department has submitted information collection revisions to OMB for review to reflect changes that will result from the implementation of Executive Order 14026.

Summary: This rulemaking proposes to enact regulations implementing Executive Order 14026, which establishes a higher minimum wage requirement for certain Federal contracts beginning January 30, 2022 than would otherwise be required by Executive Order 13658. *See* 86 FR 22835. Specifically, Executive Order 14026 establishes an initial minimum wage requirement of $15.00 per hour and an initial minimum cash wage for tipped employees of $10.50 per hour, both of which the Department expects will be higher than the corresponding rates that will be in effect on January 30, 2022 under Executive Order 13658. *See* 86 FR 22835–36. Like Executive Order 13658, Executive Order 14026 requires the Department to update the order's minimum wage requirement each subsequent year to account for inflation. *Id.* However, Executive Order 14026 gradually phases out a contractor's ability to pay a subminimum cash wage for tipped employees under Executive Order 14026, raising the minimum cash wage for tipped employees to 85 percent of the order's applicable minimum wage on January 1, 2023, and to 100 percent of the order's applicable minimum wage on January 1, 2024. *See* 86 FR 22836.

Finally, effective January 30, 2022, section 6 of Executive Order 14026 revokes Executive Order 13838. *See* 86 FR 22836. Executive Order 13838 presently exempts contracts in connection with seasonal recreational services or seasonal recreational equipment rental offered for public use on Federal lands from the minimum wage requirements established under Executive Order 13658. Consequently, these contracts will become subject to the minimum wage requirements of either Executive Order 13658 or Executive Order 14026 as of January 30, 2022, depending on the date that the relevant contract was entered into, renewed, or extended.

Purpose and use: This proposed rule, which implements Executive Order 14026, contains several provisions that could be considered to entail collections of information: (1) The requirement in proposed § 23.210 for a contractor and its subcontractors to include the Executive Order 14026 minimum wage contract clause in any covered subcontract; (2) recordkeeping requirements for covered contractors described in proposed § 23.260(a); (3) the complaint process described in proposed § 23.410; and (4) the administrative proceedings described in proposed subpart E.

Proposed subpart C states compliance requirements for contractors covered by Executive Order 14026. Proposed § 23.210 states that the contractor and any subcontractor, as a condition of payment, must abide by the Executive order minimum wage contract clause and must include in any covered subcontracts the minimum wage contract clause in any lower-tier subcontracts. Proposed § 23.260 describes recordkeeping requirements for contractors subject to Executive Order 14026. Finally, proposed § 23.290 includes a notice requirement, requiring contractors to notify all workers performing work on or in connection

with a covered contract of the applicable minimum wage rate under Executive Order 14026.

The disclosure of information originally supplied by the Federal Government for the purpose of disclosure is not included within the definition of a collection of information subject to the PRA. *See* 5 CFR 1320.3(c)(2). The Department has thus determined that proposed §§ 23.210 and 23.290 do not include an information collection subject to the PRA. The Department also notes that the proposed recordkeeping requirements in proposed § 23.260 are requirements that contractors must already comply with under the FLSA, SCA, DBA, and/or Executive Order 13658 under an OMB-approved collection of information (OMB control number 1235–0018). The Department believes that the proposed rule does not impose any additional notice or recordkeeping requirements on contractors for PRA purposes. Therefore, the burden for complying with the recordkeeping requirements in this proposed rule is subsumed under the current approval. An information collection request (ICR), however, has been submitted to the OMB that would revise the existing PRA authorization for control number 1235–0018 to incorporate the recordkeeping regulatory citations in this proposed rule.

WHD obtains PRA clearance under control number 1235–0021 for an information collection covering complaints alleging violations of various labor standards that the agency administers and enforces. An ICR has been submitted to revise the approval to incorporate the regulatory citations in this proposed rule applicable to complaints and adjust burden estimates to reflect any increase in the number of complaints filed against contractors who fail to comply with Executive Order 14026's higher minimum wage requirement.

Proposed subpart E establishes administrative proceedings to resolve investigation findings. Particularly with respect to hearings, the rule imposes information collection requirements. The Department notes that information exchanged between the target of a civil or an administrative action and the agency in order to resolve the action would be exempt from PRA requirements. *See* 44 U.S.C. 3518(c)(1)(B); 5 CFR 1320.4(a)(2). This exemption applies throughout the civil or administrative action (such as an investigation and any related administrative hearings). Therefore, the Department has determined the administrative requirements contained in subpart E of this proposed rule are exempt from needing OMB approval under the PRA.

Information and technology: There is no particular order or form of records prescribed by the proposed regulations. A contractor may meet the requirements of this proposed rule using paper or electronic means. WHD, in order to reduce burden caused by the filing of complaints that are not actionable by the agency, uses a complaint filing process in which complainants discuss their concerns with WHD professional staff. This process allows agency staff to refer complainants raising concerns that are not actionable under wage and hour laws and regulations to an agency that may be able to offer assistance.

Public comments: The Department seeks comments on its analysis that this NPRM creates a slight increase in paperwork burden associated with ICR 1235–0021 but does not create a paperwork burden on the regulated community of the information collection provisions contained in ICR 1235–0018. Commenters may send their views on the Department's PRA analysis in the same way they send comments in response to the NPRM as a whole (*e.g.,* through the *www.regulations.gov* website), including as part of a comment responding to the broader NPRM. Alternatively, commenters may submit a comment specific to this PRA analysis by sending an email to *WHDPRAComments@dol.gov.* While much of the information provided to OMB in support of the information collection request appears in the preamble, interested parties may obtain a copy of the full recordkeeping and complaint process supporting statements by sending a written request to the mail address shown in the **ADDRESSES** section at the beginning of this preamble. Alternatively, a copy of the recordkeeping ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* website. Similarly, the complaint process ICR is available by visiting *http://www.reginfo.gov/public/do/PRAMain* website. As previously indicated, written comments directed to the Department may be submitted within 30 days of publication of this notification.

The OMB and the Department are particularly interested in comments that:

- Evaluate whether the proposed collections of information are 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.

Total burden for the recordkeeping and complaint process information collections, including the burdens that will be unaffected by this proposed rule and any changes are summarized as follows:

Type of review: Revisions to currently approved information collections.

Agency: Wage and Hour Division, Department of Labor.

Title: Employment Information Form.

OMB Control Number: 1235–0021.

Affected public: Private sector, businesses or other for-profits and Individuals or Households.

Estimated number of respondents: 38,240 (165 from this rulemaking).

Estimated number of responses: 38,240 (165 from this rulemaking).

Frequency of response: On occasion.

Estimated annual burden hours: 12,747 (55 burden hours due to this NPRM).

Estimated annual burden costs: $0 ($0 from this rulemaking).

Title: Records to be kept by Employers.

OMB Control Number: 1235–0018.

Affected public: Private sector, businesses or other for-profits and Individuals or Households.

Estimated number of respondents: 5,621,961 (0 from this rulemaking).

Estimated number of responses: 47,118,160 (0 from this rulemaking).

Frequency of response: Various.

Estimated annual burden hours: 3,626,426 (0 from this rulemaking).

Estimated annual burden costs: 0.

IV. Executive Orders 12866 and 13563

Under Executive Order 12866, OMB's Office of Information and Regulatory Affairs (OIRA) determines whether a regulatory action is significant and, therefore, subject to the requirements of the Executive order and OMB review.[13] Section 3(f) of Executive Order 12866

[13] *See* 58 FR 51735, 51741 (Oct. 4, 1993).

defines a ''significant regulatory action'' as a regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities (also referred to as economically significant); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order. OIRA has determined that this proposed rule is economically significant under section 3(f) of Executive Order 12866.

Executive Order 13563 directs agencies to, among other things, propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; that it is tailored to impose the least burden on society, consistent with obtaining the regulatory objectives; and that, in choosing among alternative regulatory approaches, the agency has selected those approaches that maximize net benefits. Executive Order 13563 recognizes that some costs and benefits are difficult to quantify and provides that, when appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts. The analysis below outlines the impacts that the Department anticipates may result from this proposed rule and was prepared pursuant to the above-mentioned Executive orders.

A. Introduction

1. Background

This proposed rulemaking implements Executive Order 14026, ''Increasing the Minimum Wage for Federal Contractors.'' This Executive order seeks to promote ''economy and efficiency'' in Federal procurement by increasing the hourly minimum wage paid by the parties that contract with the Federal Government to $15.00 for those workers working on or in connection with a covered Federal contract beginning January 30, 2022. For covered tipped workers, the minimum required cash wage will be $10.50 per hour beginning January 30, 2022, gradually rising to the full Executive Order 14026 minimum wage on January 1, 2024. The Executive order states that raising the minimum wage enhances worker productivity and generates higher-quality work by boosting workers' health, morale, and effort; reducing absenteeism and turnover; and lowering supervisory and training costs. Executive Order 14026 supersedes Executive Order 13658, which established a lower minimum wage for contractors, to the extent that the orders are inconsistent. Finally, effective January 30, 2022, Executive Order 14026 will revoke Executive Order 13838, which presently exempts contracts entered into with the Federal Government in connection with seasonal recreational services or seasonal recreational equipment rental for the general public on Federal lands from coverage of Executive Order 13658.

2. Summary of Affected Employees, Costs, Transfers, and Benefits

The Department estimated the number of employees who would, as a result of the Executive order and this proposed rule, see an increase in their hourly wage, *i.e.,* ''affected employees.'' The Department estimates there will be 327,300 affected employees in the first year of implementation (Table 1).[14] During the first 10 years the rule is in effect, average annualized direct employer costs are estimated to be $2.4 million (Table 1) assuming a 7 percent real discount rate (hereafter, unless otherwise specified, average annualized values will be presented using a 7 percent real discount rate). This estimated annualized cost includes $1.9 million for regulatory familiarization and $538,500 for implementation costs. Other potential costs are discussed qualitatively.

The direct transfer payments associated with this rule are transfers of income from employers to employees in the form of higher wage rates.[15] Estimated average annualized transfer payments are $1.5 billion per year over 10 years. This transfer estimate may be an underestimate because it does not capture workers already earning above $15.00 that may have their wages increased as well. Additionally, employers with Federal contracts may increase wages for their workers who are not working on the contract.

The Department expects that increasing the minimum wage of Federal contract workers will generate several important benefits. However, due to data limitations, these benefits are not monetized. As noted in the Executive order, this rule will ''promote economy and efficiency.'' Specifically, this proposed rule discusses benefits from improved government services, increased morale and productivity, reduced turnover, reduced absenteeism, and reduced poverty and income inequality for Federal contract workers.

Executive Order 14026 directs the Department to issue regulations to implement the order and also grants the Department exclusive enforcement authority over the order; the Department's regulations will therefore govern covered contracts. Because Executive Order 14026 also directs the FARC to amend the FAR to provide for inclusion of an implementing contract clause in covered procurement contracts and other agencies to take necessary steps to implement the order, the Department acknowledges that some impacts could be attributed to future rulemaking or other action by other agencies, such as the FARC. However, because such subsequent steps are dependent on the Department's rule and the Department's regulations will govern enforcement of this Executive order, the Department believes it is appropriate to attribute (on a shared basis, for effects associated with procurement contracts) the impacts discussed in this analysis to this NPRM.

[14] The estimate of affected employees represents the number of full-year employees working exclusively on covered contracts.

[15] These transfers may ultimately be passed on to the Federal Government and other entities, as discussed in section IV.C.2.c.ii.

Table 1: Summary of Affected Employees, Regulatory Costs, and Transfers

	Year 1	Future Years		Average Annualized Value	
		Year 2	Year 10	3% Real Rate	7% Real Rate
Affected employees (1,000s)	327.3	329.3	345.6	--	--
Direct employer costs (million)	$17.1	$0	$0	$2.0	$2.4
Regulatory familiarization	$13.4	$0	$0	$1.6	$1.9
Implementation	$3.8	$0	$0	$0.4	$0.5
Transfers (millions)	$1,466	$1,474	$1,548	$1,504	$1,501

B. Number of Affected Firms and Employees

1. Overview and Data

This section explains the Department's methodology to estimate the number of affected firms and employees. The number of firms is estimated primarily from the General Services Administration's (GSA) System for Award Management (SAM). This is supplemented with a variety of other data sources. There are no government data on the number of employees working on Federal contracts; therefore, to estimate the number of Federal contract employees, the Department employed the approach used in two previous Executive order rulemakings, the 2016 rule implementing Executive Order 13706, ''Establishing Paid Sick Leave for Federal Contractors,'' which was an updated version of the methodology used in the 2014 rulemaking implementing Executive Order 13658.[16] This approach uses data from *USASpending.gov*, a database of Government contracts from the Federal Procurement Data System–Next Generation (FPDS–NG). Although more recent data is available, the Department generally used data from 2019 to avoid any shifts in the data associated with the COVID–19 pandemic in 2020. Any long-run impacts of COVID–19 are speculative because this is an unprecedented situation, so using data from 2019 is the best approximation the Department has for future impacts. The pandemic could cause structural changes to the economy, resulting in shifts in industry employment and wages. The transfers to employees associated with this rule could be an underestimate or an overestimate, depending on how employment and wages have changed in the industries affected by this rule.

After approximating the total number of Federal contract employees, the Department estimated the share who would receive an increase in earnings (*i.e.,* affected employees). Specifically, the Department used 2019 data from the Current Population Survey (CPS) to identify the share of workers, by industry, who earned between the 2019 minimum wage for Federal contract employees, $7.40 per hour for tipped employees and $10.60 per hour for non-tipped employees, and $15 per hour.[17] This ratio was then applied to the population of Federal contract employees.

2. Number of Affected Firms

The main data source used to estimate the number of affected firms is SAM. All entities bidding on Federal procurement contracts or grants must register in SAM. Using May 2021 SAM data, the Department estimated there are 428,300 registered firms.[18] The Department excluded firms with expired registrations, firms only applying for grants,[19] government entities (such as city or county governments), foreign organizations, and companies that only sell products and do not provide services. SAM provides the primary North American Industry Classification System (NAICS) for all companies.[20]

SAM includes all prime contractors and some subcontractors (those who are also prime contractors or who have otherwise registered in SAM). However, the Department is unable to determine the number of subcontractors who are not in the SAM database. Therefore, the Department examined five years of USASpending data (2015 through 2019)[21] and found 33,500 unique subcontractors who did not hold contracts as primes in 2019 (and thus may not be included in SAM), and added these firms to the total from SAM (Table 2). Adding these 33,500 firms to the number of firms in SAM, results in 461,800 potentially affected firms that may hold Federal contracts.

In addition, some entities operating on nonprocurement contracts are covered by the E.O. Estimating the number of covered contracts involves many data sources and assumptions.[22] There are seven types of contracts included in this analysis of nonprocurement contracts (Table 3):

[16] *See* 81 FR 9591, 9636–40 (analysis of workers affected by Executive Order 13706) and 79 FR 60634, 60693–95 (analysis of workers affected by Executive Order 13658).

[17] Before doing this calculation, the Department first dropped those earning less than $10.60 (and tipped workers earning less than $7.40), so this estimate is the share of workers who are already earning at least $7.40 for tipped workers and $10.60 for non-tipped workers.

[18] Data released in monthly files. Available at: *https://www.sam.gov/SAM/pages/public/extracts/samPublicAccessData.jsf.*

[19] Entities registering in SAM are asked if they wish to bid on contracts. If the firm answers ''yes,'' then they are included as ''All Awards'' in the ''Purpose of Registration'' column in the SAM data. The Department included only firms with a value of ''Z2,'' which denotes ''All Awards.''

[20] In some instances the primary NAICS was listed as Public Administration, which is excluded from the analysis because it is not available for other data sources required (see section B.iii.). Therefore, these companies are redistributed to other NAICS based on the current distribution.

[21] The Department identified subawardees from the *USASpending.gov* data who did not perform work as a prime during 2019. The Department included subcontractors from five years of data to compensate for lower-tier subcontractors that may not be included in USASpending.gov. The Department believes this is a reasonable approximation of the number of subcontractors.

[22] Those estimates primarily capture those covered contracts for concessions and contracts in connection with Federal property or lands and relating to services for Federal employees, their dependents, or the general public that are nonprocurement in nature, such that the contracting entities are not necessarily listed in SAM. However, the estimates will additionally capture some SCA-covered contracts because SCA-covered contracts, contracts for concessions and contracts in connection with Federal property or lands are to some degree overlapping categories of contracts (*e.g.,* at least some concessions contracts and contracts in connection with Federal property or lands are covered by the SCA, *see, e.g., Cradle of Forestry in America Interpretive Association,* ARB Case No. 99–035, 2001 WL 328132 (ARB March 30, 2001)).

1. National Park Service (NPS) concessions contracts.
2. NPS Commercial Use Authorizations (CUAs).
3. Forest Service Special Use Authorizations (SUAs).
4. NPS special use permits.
5. Bureau of Land Management (BLM) special recreation permits.
6. Retail and concession leases in federally owned buildings.
7. Operations and concessions on military bases.

First, the Department estimated the number of contractors with NPS concessions contracts. The NPS website contains a list of entities operating under concessions contracts on NPS lands.[23] The Department downloaded all 441 records contained on the website, identified unique firms by name, and assigned them to industries based on the first type of ''service'' listed. This results in 401 unique entities operating under concessions contracts on NPS lands.

Second, the Department estimated the number of NPS CUAs. The Department informally consulted with the NPS and learned that the NPS had approximately 5,900 CUAs in FY2015. An NPS CUA is a written authorization to provide services to park area visitors. See 36 CFR 18.2(c). The Department has assumed, solely for purposes of the economic analysis, that all NPS CUAs are contracts covered by the Executive order. Because the number of CUAs does not take into account that one firm may hold multiple authorizations, the Department multiplied the total number of CUAs by the ratio of unique firms holding NPS concessions contracts to total NPS concessions contracts to estimate the number of contractors with CUAs (401 divided by 441 = 91 percent) for an estimated 5,340 unique firms with CUAs. The Department used the industry distribution from NPS concessions contracts to assign CUA permit holders to industries because industry information was not available.

Third, the Department estimated the number of U.S. Forest Service (FS) SUAs. The Department informally consulted the FS, which informed the Department that 77,353 SUAs were in effect in FY 2015. FY 2015 data were the latest year of data available to DOL. Based on further informal consultations with the FS, the Department estimates that approximately 36 percent of these SUAs may be covered contracts.[24] No data are available to determine whether a contractor holds more than one permit; therefore, the Department used the NPS ratio of unique concessions contract holders to total concessions contract holders to estimate the number of unique contractors with FS permits (91 percent). This leaves 25,076 unique firms that may be affected. The Department used its best professional judgement to determine the relevant industry for each type of permit because data were not available.

Fourth, the Department estimated the number of affected NPS special use permits. During informal discussions with DOL, NPS officials estimated that it issued 33,735 special use permits in FY 2015.[25] FY 2015 data were the latest year of data available to DOL. It is likely that many of these permits will not be covered by the rulemaking, but the Department has no method for directly determining the number of such permits that might be covered. Therefore, the Department assumed, solely for purposes of the economic analysis, that the E.O. would cover 36 percent of NPS special use permits (the ratio of FS SUAs that are covered) and that 91 percent of the permits are held by unique contract holders (based on NPS data for CUAs). Therefore, the Department estimates that 10,936 entities holding special use permits will be covered by the rule. These permit holders were assigned to the ''arts, entertainment, and recreation'' industry.

Fifth, BLM reports 4,737 special recreation permits in FY2019.[26] The Department again relied on the FS data to assume that 36 percent of these permits will be covered, and the NPS data to assume that 91 percent will be held by unique contractors.[27] This results in 1,536 entities holding BLM special recreation permits. The Department assumed that these are in the ''arts, entertainment, and recreation'' industry. These estimates for the NPS, FS, and BLM do not account for the possibility that the same firms may hold concessions contracts with more than one agency.

Sixth, the Department estimated the number of retail and concession leases in federally owned buildings. Data are not available on the prevalence of these contracts, but during the 2016 rulemaking implementing Executive Order 13706's paid sick leave requirements that covered a similar population, the Department estimated there were a total of 1,120 entities (1,232 entities times 91 percent assumed to be held by unique contractors). To account for blind vendors who enter into operating agreements with states who obtain contracts or permits from Federal agencies to operate vending facilities on Federal property under the Randolph-Sheppard Act, the Department has added 767 contractors to its estimate.[28] However, the Department notes that some of these vendors may already be counted in the 1,120 estimate. The Department assumes these entities are in the ''retail trade'' and ''accommodation and food services'' industries.

Seventh, to account for operations and concessions on military bases, the Department identified that the Army and Air Force, the Navy, the Marine Corps, and the Coast Guard also have bases with retail and concessions contracts. These include both the military Exchanges and private companies with concessions contracts to operate on base. The Department counted each of the branch's Exchange organizations as one firm. Based on general information about services on bases, the Department assumes these entities are in the ''retail trade'' and ''accommodation and food services'' industries. According to Exchange and Commissary News (a business magazine), the Army & Air Force Exchange Service (AAFES) has 586 concessions contracts.[29] The Department assumes each is with a unique firm and that these entities are not listed in SAM. The Department also assumes that 68 percent of these concessions contracts are domestic, resulting in an estimated 401 concessions contracts.[30]

[23] Available at: *https://www.nps.gov/subjects/concessions/concessioners-search.htm.* The Department has assumed all NPS concessions contracts are covered by the E.O., solely for purposes of this economic analysis, primarily because the E.O. itself specifically covers concessions contracts.

[24] For each Forest Service ''use code'' (*e.g.,* ''111 boat dock and wharf''), the Department determined whether the authorizations are for commercial companies.

[25] According to NPS, activities that may require a special use permit include (but are not limited to) weddings, memorial services, special assemblies, and First Amendment activities. *See https://www.nps.gov/ever/learn/management/specialuse.htm.*

[26] U.S. Department of the Interior, Bureau of Land Management. (2020). Public Land Statistics 2019. *https://www.blm.gov/sites/blm.gov/files/PublicLandStatistics2019.pdf.*

[27] The Department believes it is reasonable to apply the 36 percent coverage estimates to NPS special use permits and BLM special recreation permits because it understands that these permits are likely for sufficiently similar purposes and entered into with sufficiently similar individuals and entities as the FS SUAs.

[28] DOL communications with the Department of Education.

[29] Exchange and Commissary News. (2017). Exchange QSR Clicks with Customers. *http://www.ebmpubs.com/ECN_pdfs/ecn0517_AAFESQSRNBFF.pdf.*

[30] This is the share of AAFES net sales that occur domestically. AAFES Annual Report 2019. *https://publicaffairs-sme.com/Community/wp-content/uploads/2020/06/2019AnnualReportDigi.pdf.*

Data are not available on the number of concessions contracts for other branches of the military. However, data are available on the number of name-brand fast-food establishments at AAFES, Navy Exchange Service Command (NEXCOM), and the Marine Corps Exchange (MCX). The Department assumes the distribution of fast-food establishments across branches is similar to the distribution of total concessions contracts. The Department calculated the ratio of the number at NEXCOM or MCX fast-food establishments relative to AAFES and then multiplied that ratio by the 401 AAFES concessions contracts.[31] In total, the Department estimates 553 concessions contracts (401 for AAFES, 119 for NEXCOM, and 33 for MCX).

In total, this proposed rule estimates 507,200 potentially affected firms. Table 2 summarizes the estimated number of affected contractors by contract nexus and industry used in this rulemaking. The Department believes this is likely an upper bound on the number of affected firms because some of these firms may not have Federal contracts and even some of those with contracts may not have workers earning below $15. The Department also used USASpending.gov data to estimate the number of contractors with SCA and DBA contracts. In 2019, there were 88,800 prime contractors with potentially affected employees from USASpending. This is significantly lower than the 428,300 firms registered in SAM and used in this analysis. The Department chose to use the data from SAM to ensure the entire population of potentially affected firms is captured. Additionally, firms without active contracts may incur some regulatory familiarization costs if they plan to bid on future Federal contracting work.

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Table 2: Number of Potentially Affected Contractors

Industry	NAICS	Total Potentially Affected Firms	Firms From SAM	Subcon-tractors	Federal Prop. and Lands
Agriculture, forestry, fishing & hunting	11	5,895	5,808	1	86
Mining	21	1,209	1,100	44	65
Utilities	22	5,144	2,613	52	2,479
Construction	23	60,316	52,149	7,941	226
Manufacturing	31-33	55,731	47,283	8,417	31
Wholesale trade	42	20,335	19,686	649	0
Retail trade	44-45	10,683	8,292	31	1,833
Transportation and warehousing	48-49	22,194	15,897	401	5,896
Information	51	19,601	13,400	329	5,872
Finance and insurance	52	3,713	3,665	48	0
Real estate and rental and leasing	53	20,318	20,317	1	0
Professional, scientific, and technical	54	119,543	107,411	11,622	510
Management of companies & enterprises	55	551	551	0	0
Administrative and waste services	56	39,433	35,203	3,581	649
Educational services	61	17,210	16,889	250	71
Health care and social assistance	62	36,676	36,629	17	30
Arts, entertainment, and recreation	71	29,209	4,911	0	24,298
Accommodation and food services	72	16,149	12,474	7	3,141
Other services	81	24,366	24,005	94	267
Total private	**--**	**508,276**	**428,283**	**33,485**	**45,454**

[31] Exchange and Commissary News. (2014). Military Exchange Name-Brand Fast Food Portfolios. *http://www.ebmpubs.com/ECN_pdfs/ecn0714_NBFF.pdf.*

Table 3: Number of Potentially Affected Firms on Federal Properties and Lands

NAICS	NPS Concess-ions	NPS CUAs	NPS Special Use Permits	Forest Service SUAs	BLM Special Recreation Permits	Public Buildings	Federal Bases
11	0	0	0	86	0	0	0
21	0	0	0	65	0	0	0
22	0	0	0	2,479	0	0	0
23	0	0	0	226	0	0	0
31-33	0	0	0	31	0	0	0
42	0	0	0	0	0	0	0
44-45	50	666	0	35	0	944	139
48-49	142	1,891	0	3,863	0	0	0
51	1	13	0	5,858	0	0	0
52	0	0	0	0	0	0	0
53	0	0	0	0	0	0	0
54	0	0	0	510	0	0	0
55	0	0	0	0	0	0	0
56	28	373	0	248	0	0	0
61	0	0	0	71	0	0	0
62	2	27	0	2	0	0	0
71	113	1,505	10,936	10,209	1,536	0	0
72	63	839	0	1,157	0	944	139
81	2	27	0	238	0	0	0
--	**401**	**5,340**	**10,936**	**25,076**	**1,536**	**1,887**	**278**

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3. Number of Potentially Affected Employees

There are no Government data on the number of employees working on Federal contracts; therefore, to estimate the number of Federal contract employees, the Department employed the approach used in the 2016 rulemaking implementing Executive Order 13706's paid sick leave requirements, which was an updated version of the methodology used in the 2014 rulemaking for Executive Order 13658.[32] The Department estimated the number of employees who work on Federal contracts that will be covered by Executive Order 14026, representing the number of ''potentially affected employees.'' Additionally, the Department estimated the share of potentially affected employees who will receive wage increases as a result of the Executive order. These employees are referred to as ''affected.''

The Department estimated the number of potentially affected employees in three parts. First, the Department estimated employees and self-employed workers working on SCA and DBA procurement contracts in the 50 States and Washington, DC Second, the Department estimated the number of employees and self-employed workers working on SCA and DBA procurement contracts in the U.S. territories. Third, the Department estimated the number of potentially affected employees on nonprocurement concessions contracts and contracts on Federal property or lands (some of which would also be SCA-covered).

a. SCA and DBA Procurement Contracts in the 50 States and Washington, DC

SCA and DBA contract employees on covered procurement contracts were estimated by taking the ratio of Federal contracting expenditures (''Exp'') to total output (Y), by industry. Total output is the market value of the goods and services produced by an industry. This ratio is then applied to total private employment in that industry (''Emp'') (Table 4). This analysis was conducted at the 2-digit NAICS level.[33]

$$Potentially\ Affected\ Emp_i = \frac{Exp_i}{Y_i}\ x\ Emp_i$$

Where i = 2-digit NAICS

The Department used Federal contracting expenditures from *USASpending.gov* data, which tabulates data on Federal contracting through the

[32] *See* 81 FR 9591, 9591–9671 and 79 FR 60634–60733.

[33] The North American Industry Classification System is a method by which Federal statistical agencies classify business establishments in order to collect, analyze, and publish data about certain industries. Each industry is categorized by a sequence of codes ranging from 2 digits (most aggregated level) to 6 digits (most granular level). *https://www.census.gov/naics/.*

FPDS–NG. According to the data, the government spent $312 billion on service contracts in 2019 with a place of performance in the 50 States or Washington, DC This excludes (1) financial assistance such as direct payments, loans, and insurance; (2) contracts performed outside the U.S. because the proposed rule only covers contracts performed in the U.S.; and (3) expenditures on goods purchased by the Federal government because the proposed rule does not apply to contracts for the manufacturing and furnishing of materials and supplies.[34]

To determine the share of all output associated with Government contracts, the Department divided industry-level contracting expenditures by that industry's gross output.[35] For example, in the information industry, $10.1 billion in contracting expenditures was divided by $1.9 trillion in total output, resulting in an estimate that covered Government contracts comprise 0.52 percent of every dollar of output in the information industry.

The Department then multiplied the ratio of covered-to-gross output by private sector employment to estimate the share of employees working on covered contracts for each 2-digit NAICS industry. Private sector employment is from the May 2019 Occupational Employment and Wage Statistics (OEWS), formerly the Occupational Employment Statistics.[36] [37] All workers performing services on or in connection with a covered contract are covered by the Executive order and this proposed rule, however, unincorporated self-employed workers are excluded from the OEWS. Thus, the OEWS data are supplemented with data from the 2019 Current Population Survey Merged Outgoing Rotation Group (CPS MORG) to include unincorporated self-employed in the estimate of covered workers. To demonstrate, in the information industry, there were approximately 3.0 million private sector employees in 2019 and covered Government contracts comprise 0.52 percent of every dollar of gross output. The Department multiplied 3.0 million by 0.52 percent to estimate that the Executive order will potentially affect 15,400 employees on covered procurement contracts in the information industry.[38]

This methodology represents the number of year-round equivalent potentially affected employees who work exclusively on covered Federal contracts. Thus, when the Department refers to potentially affected employees in this analysis, the Department is referring to this illustrative number of employees who work exclusively on covered Government contracts. The number of employees who will experience wage increases will likely exceed this number since all affected workers may not work exclusively on Federal contracts. Implications of this for costs and transfers are discussed in the relevant sections.

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[34] For example, the government purchases pencils; however, a contract solely to purchase pencils would not be covered by the Executive order. Contracts for goods were identified in the *USASpending.gov* data if the product or service code begins with a number (services begin with a letter).

[35] Bureau of Economic Analysis. (2020). Table 8. Gross Output by Industry Group. *https://www.bea.gov/news/2020/gross-domestic-product-industry-fourth-quarter-and-year-2019.* ''Gross output of an industry is the market value of the goods and services produced by an industry, including commodity taxes. The components of gross output include sales or receipts and other operating income, commodity taxes, plus inventory change. Gross output differs from value added, which measures the contribution of the industry's labor and capital to its gross output.''

[36] Bureau of Labor Statistics. Occupational Employment and Wage Statistics. May 2019. Available at: *http://www.bls.gov/oes/.*

[37] Some adjustments were made to the OEWS employment estimates to make the population more consistent with BEA's gross output and better reflect private employment. The Department excluded Federal U.S. Postal service employees, employees of government hospitals, and employees of government educational institutions.

[38] Note that the number of employees aggregated across industries does not match the total number of employees derived using totals due to the order of operations of multiplying and summing (*i.e.,* the sum of the products is not equal to the product of the sums).

Table 4: Number of Potentially Affected Employees in the 50 States and D.C.

NAICS	Private Employees (1,000s) [a]	Total Private Output (Billions) [b]	Covered Contracting Output (Millions) [c]	Share Output from Covered Contracting	Employees on SCA and DBA Contracts (1,000s) [d]	Employees on Federal Lands and Concessions (1,000s) [e]	Total Contract Employees (1,000s)
11	1,168	$450	$408	0.09%	1	0	1.1
21	699	$577	$103	0.02%	0	0	0.2
22	547	$498	$2,399	0.48%	3	4	6.7
23	9,100	$1,662	$35,692	2.15%	195	3	197.9
31-33	12,958	$6,266	$28,603	0.46%	59	0	59.3
42	5,955	$2,098	$161	0.01%	0	0	0.5
44-45	16,488	$1,929	$327	0.02%	3	37	39.4
48-49	6,215	$1,289	$14,217	1.10%	69	119	187.2
51	2,971	$1,942	$10,076	0.52%	15.4	23	38.2
52	6,180	$3,161	$12,482	0.39%	24	0	24.4
53	2,699	$4,143	$931	0.02%	1	0	0.6
54	10,581	$2,487	$150,888	6.07%	642	9	650.6
55	2,470	$675	$0	0.00%	0	0	0.0
56	10,158	$1,141	$36,313	3.18%	323	14	337.3
61	3,271	$381	$4,250	1.11%	36	1	37.2
62	20,791	$2,648	$11,099	0.42%	87	0	87.5
71	2,949	$382	$81	0.02%	1	17	17.4
72	14,303	$1,192	$1,018	0.09%	12	33	45.6
81	5,260	$772	$2,686	0.35%	18	1	18.9
Total	**134,761**	**$33,691**	**$311,733**	**0.93%**	**1,491**	**266**	**1,750**

[a] OEWS May 2019. Excludes Federal U.S. Postal service employees, employees of government hospitals, and employees of government educational institutions. Added to the OEWS employee estimates were unincorporated self-employed workers from the 2019 CPS MORG data.
[b] Bureau of Economic Analysis, national income and product account (NIPA) Tables, Gross output. 2019.
[c] USASpending.gov. Contracting expenditures for covered contracts in 2019.
[d] Assumes share of expenditures on contracting is same as share of employment. Assumes employees work exclusively, year-round on Federal contracts. Thus, this may be an underestimate if some employees are not working entirely on Federal contracts.
[e] Calculated by multiplying the number of firms by the average employees per firm.

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b. SCA and DBA Procurement Contracts in the U.S. Territories

The methodology to estimate potentially affected workers in the U.S. territories is similar to the methodology above. The primary difference is that data on gross output in the territories are not available, and so the Department had to make some assumptions. Federal contracting expenditures from USASpending.gov data show that the Government spent $1.8 billion on service contracts in 2019 in Puerto Rico, Guam, and the U.S. Virgin Islands. Other territories were excluded because employment data are not available.[39] The Department approximated gross output in these three territories by calculating the ratio of the Gross Domestic Product (GDP) to total gross output for the U.S., then applying that ratio to GDP in each territory to estimate total gross output. For example, the Department estimated that Puerto Rico's gross output totaled $140.5 billion.[40]

The rest of the methodology follows the methodology for the fifty states and Washington, DC. To determine the share of all output associated with Government contracts, the Department divided contracting expenditures by gross output. The Department then multiplied the ratio of covered contract spending to gross output by private sector employment to estimate the share of employees working on covered contracts.[41] This analysis was not conducted at the industry level because the number of observations in some industries is very small, making estimates imprecise. The Department estimated 11,800 employees will be potentially affected in Puerto Rico, Guam, and the U.S. Virgin Islands.

c. Nonprocurement Concessions Contracts and Contracts on Federal Properties or Lands

The above analysis found 1.5 million potentially affected employees on SCA and DBA contracts. However, the employees of entities operating under covered nonprocurement contracts on Federal property or lands may not be included in that total. To account for these employees, the Department used a variety of sources. First, the Department estimated the number of entities operating under covered nonprocurement contracts on Federal property or lands (section V.B.ii.). Then the Department multiplied the number of contracting firms by the number of potentially affected employees per contracting firm, by industry. This ratio was calculated by dividing the potentially affected employees on direct contracts by the number of contractors (prime and subcontractors) with potentially affected employees from USASpending. For example, in the information industry, there are 15,400 potentially affected workers in 4,000 entities, for an average of 3.9 potentially affected workers per firm. This estimate of potentially affected workers per firm is multiplied by the estimated 5,872 entities in the information industry operating under covered nonprocurement contracts on Federal property or lands, resulting in 22,800 potentially affected employees in these firms.

The exception to the above methodology is for employees of military Exchanges. These 41,500 employees are directly included because Exchanges are very large employers and using the ratio method above would underestimate employment.[42] The AAFES employs 35,000 employees,[43] NEXCOM employs 13,000 associates,[44] and MSX employs 12,000 workers.[45] Data on employment for the Coast Guard Exchange (CGX) was not available and so the Department estimated there are 614 employees.[46] These numbers were then reduced by 32 percent to remove employees stationed overseas, based on the share of AAFES net sales that occur outside the continental U.S.[47] Summing these calculations over all industries results in an additional 259,300 covered employees for a total of 1.8 million potentially affected employees.

d. Additional Considerations

Because the Executive order's requirements only apply to ''new contracts'' as defined in the NPRM, some of these potentially affected workers may not be impacted in the first year after implementation. However, the Department believes the majority will be impacted in Year 1. For example, section 9(c) of the Executive order ''strongly encourage[s]'' agencies administering existing contracts ''to ensure that the hourly wages paid under such contracts or contract-like instruments are consistent with the minimum wages specified [under the order].'' Additionally, if workers are staffed on more than one contract, their hourly wage rate may increase for all contracts as soon as any one of the contracts is impacted. Lastly, rather than increasing pay for only a subset of their workers, some employers may increase wages for all potentially affected workers earning less than $15 per hour at the time their first contract is affected (rather than paying different wage rates to employees working on new contracts and employees working on existing contracts). For these reasons, the Department included all workers in the analysis of Year 1 impacts. This assumption may result in an overestimate of Year 1 impacts, but the Department believes it is preferable to overestimate transfers in Year 1 than to underestimate transfers because of uncertainty when contractors will be affected.

While some SCA contracts are for terms of more than a year (and hence may not be covered by this E.O. for several years if the contract was entered into in the last year or two), many consist of a base term of one year followed by a series of 1-year option periods. Executing a new option year under such a contract will trigger the E.O.'s provisions. It is reasonable to assume that many such contracts (whether base or option period) will be entered into during 2021.

The Department notes that at first glance the estimated number of affected firms (507,200) and potentially affected employees (1.8 million) may seem inconsistent because this is an average

[39] The other territories comprise a very small share of Federal contracting expenditure and thus the impact of their exclusion is expected to be very small (0.1 percent of all Federal contracting expenditures in 2019). This includes American Samoa and the Commonwealth of the Northern Mariana Islands. Other territories do not have any Federal expenditures in USASpending.

[40] In the U.S. the sum of personal consumption expenditures and gross private domestic investment (the relevant components of GDP) was $17.6 trillion in 2018, while gross output totaled $33.7 trillion. In Puerto Rico, personal consumption expenditures plus gross private domestic investment in 2018 (most recent data available) equaled $73.4 billion. Therefore, Puerto Rico gross output was calculated as $73.4 billion × ($33.7 trillion/$17.6 trillion).

[41] For the U.S. territories, the unincorporated self-employed are excluded because CPS data are not available on the number of unincorporated self-employed workers in U.S. territories.

[42] Many of these employees are Federal employees, but because it may include some contractors, the Department has chosen to include these workers in the analysis.

[43] AAFES. (2019). *Exchange Fact Sheet 2019. https://www.aafes.com/Images/AboutExchange/factsheet2017b.pdf.*

[44] Navy Supply Systems Command. (2020). *2019 Navy Exchange Service Command Annual Report. https://www.mynavyexchange.com/assets/Static/NEXCOMEnterpriseInfo/AR19.pdf.*

[45] Marine Corps Community Services. (n.d.). *About Us. https://usmc-mccs.org/about/.*

[46] Calculated by taking the ratio of CGX facilities to MSX facilities (5 percent) and multiplying by the number of Marine Corps employees (12,000).

[47] AAFES. (2020). *2019 Mission Report. https://publicaffairs-sme.com/Community/wp-content/uploads/2020/06/2019AnnualReportDigi.pdf*).

of only 3.5 potentially affected employees per contracting firm. This perceived inconsistency is partially due to the two separate data sources used (SAM and USAspending) and the fact that the number of affected firms is likely overestimated to ensure costs are not underestimated. For example, the number of affected firms includes firms without active contracts and potentially some firms that only supply products. If the number of firms in USASpending is used instead of SAM, the Department estimates that there are 167,800 firms (88,800 prime contractors in USASpending, 33,500 subcontractors from USASpending, and 45,500 entities with contracts on Federal property or lands) with 10.5 potentially affected employees per firm. Additionally, it is helpful to recall that the estimate of potentially affected employees represents employees working exclusively and year-round on covered contracts. This may only be a segment of a contracting firm's workforce.

4. Number of Affected Employees

a. Affected Workers in the Fifty States and Washington, DC

The Department used the 2019 Current Population Survey Merged Outgoing Rotation Groups (CPS MORG) to estimate the percentage of workers in the fifty states and Washington, DC earning between the applicable 2019 minimum wage and $15.[48] [49] In 2019, the applicable minimum wages were $10.60 for non-tipped workers covered by Executive Order 13658 and $7.40 for tipped workers covered by Executive Order 13658 in 2019. The Department used 2019 CPS MORG data due to concerns that because of effects attributable to the COVID–19 pandemic, 2020 data may not accurately reflect the affected workforce.

The Department limited its analysis to employed individuals in the private sector (with a class of worker of ''private, for profit'' or ''private, nonprofit''). Earnings for self-employed workers are not included in the CPS MORG; therefore, the Department assumed the wage distribution for self-employed workers was similar to that for employees. The Department used the hourly rate of pay variable for hourly workers [50] and calculated an hourly rate based on usual weekly earnings and usual hours worked per week for non-hourly workers.[51] [52] The Department excluded workers with unlikely wages or earnings: Those reporting usually earning less than $50 per week (including overtime, tips, and commissions) and workers with an hourly rate of pay less than $1 or more than $1,000.

Some non-hourly workers had missing hourly wage rates, primarily because they respond that usual hours per week vary.[53] The Department distributed the weights of the non-hourly workers with missing hourly rates to non-hourly workers with valid hourly wage rates, then dropped the workers with missing hourly rates.

To ensure the appropriate denominator for the percentage of workers earning an hourly rate in the affected range, the Department dropped workers earning less than the 2019 rate required by Executive Order 13658. First, the Department defined tipped workers as those in occupations of ''Waiters and waitresses'' or ''Bartenders'' and in the ''Restaurants and other food services'' or ''Drinking places, alcoholic beverages'' industries.[54] The Department dropped tipped workers earning less than $7.40 per hour and non-tipped workers earning less than $10.60 per hour. Lastly, the Department calculated the share of workers earning less than $15 per hour by 2-digit NAICS code industry (see Table 5).

This method assumes that the distribution of wages is similar between Federal Government contract employees and the broader workforce, as there is not a reputable source for data on wages paid to Federal contract employees. Therefore, the Department assumed the wage distribution mirrors that of the entire workforce. If covered workers' wages are higher, then this will result in an overestimate of transfers. The Department welcomes comments and data on the earnings of Federal Government contract employees.

The methodology to estimate potentially affected workers captures tipped workers. However, the transfer calculation assumes all affected workers will make $15 in 2022 even if they receive tips. The rule requires tipped workers to be paid a minimum cash wage of $10.50 in 2022, with incremental increases until parity with non-tipped workers is reached on January 1, 2024. Therefore, the Department may overestimate transfers for tipped workers in the first two years of this rulemaking taking effect.[55] The Department believes this is a reasonable approach because contractors on the most commonly occurring DBA- and SCA-covered contracts rarely engage tipped employees on or in connection with such contracts. Additionally, during the 2014 rulemaking implementing Executive Order 13658, the Department received no data from interested commenters indicating that a significant number of tipped employees would be covered by that Executive order. *See* 79 FR 60696.

Multiplying these shares of workers earning below $15 per hour by the estimated number of employees covered by this rule yields an estimated 320,100 affected employees in Year 1 (Table 5). Although employees on some covered contracts may not be affected in Year 1,

[48] The Department used the CPS file compiled by the National Bureau of Economic Research, available at *https://data.nber.org/morg/annual/*.

[49] Although a rate of $15 per hour will not be required for new contracts until January 30, 2022, the Department chose to use $15 in the 2019 CPS MORG data because of the uncertainty of the appropriate deflator to apply to identify workers in the affected range of wage rates. The Department used $15, which likely contributes to an overestimate of the number of affected workers.

[50] This variable excludes overtime pay, tips, and commissions. Commissions can count towards the $15 per hour minimum wage and therefore, excluding these will result in an overestimate of affected workers and consequently transfer payments. The impact of excluding tips is discussed below.

[51] For non-hourly workers who usually work more than 40 hours per week, the Department calculated an hourly rate based on these workers being paid the overtime premium for hours worked per week above 40. For example, the Department calculated an hourly rate of $20 for a non-hourly worker who reported usually earning $950 per week and usually working 45 hours per week (($20 × 40 hours) + ($20 × 1.5 × 5 hours) = $950). This assumes that none of these non-hourly workers are exempt from the overtime provision of FLSA.

[52] As explained earlier, proposed §§ 23.20 and 23.40 would exclude workers employed in a bona fide executive, administrative, or professional (EAP) capacity, as those terms are defined in 29 CFR part 541, from the requirements of Executive Order 14026. Among other requirements, these workers generally must be paid, on a salary or fee basis, a certain minimum amount, which increased from $455 per week to $684 per week on January 1, 2020. *See* 29 CFR 541.600 through 541.606; 84 FR 51230 (increasing the standard salary level generally required to exempt a worker as an EAP from $455 per week to $684 per week). However, due to uncertainties regarding whether and to what extent non-hourly workers earning at or below the equivalent of $15 per hour perform the requisite job duties to qualify as bona fide EAPs, the Department has not accounted for EAPs in its estimate of affected workers. The Department estimated that by assuming all non-hourly workers who earned at least $455 per week in 2019 are exempt, the number of affected workers would decrease by 18 percent. Using the current salary level of $684 per week as the threshold for the EAP exemption would reduce the number of affected workers by 7 percent.

[53] The other reason the imputed hourly wage rate may be missing is if usual hours worked per week is zero, but this accounts for less than one percent of workers with missing hourly rates.

[54] To the extent that there are tipped workers in other industries, the Department may have excluded some tipped workers earning between $7.40 and $10.60 per hour. However, the Department believes that there are few tipped employees working on Federal contracts who would be covered by this proposed rule.

[55] The CPS does not provide data separately for the amount of tips received, rather this is lumped into a total amount of overtime pay, tips, and commissions. Additionally, this amount is only provided for hourly workers.

the Department assumes all are affected to ensure impacts are not underestimated (see section IV.B.3. for a discussion on this assumption).

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Table 5: Employees with Hourly Wages in the Affected Range, by Industry

NAICS	Total Employees (1,000s)	Share Below $15	Affected Employees (1,000s)
11	1.10	48%	0.5
21	0.18	9%	0.0
22	6.67	7%	0.4
23	197.94	15%	30.0
31-33	59.29	17%	10.3
42	0.46	17%	0.1
44-45	39.38	39%	15.2
48-49	187.20	23%	42.3
51	38.18	13%	4.9
52	24.41	10%	2.4
53	0.61	18%	0.1
54	650.64	7%	48.1
55	0.00	19%	0.0
56	337.31	31%	104.5
61	37.18	16%	6.1
62	87.52	21%	18.8
71	17.38	33%	5.6
72	45.57	55%	25.1
81	18.91	29%	5.5
Sum across NAICS	**1,749.91**	**N/A**	**320.1**
Territories	11.80	61%	7.2
Total	**1,761.7**	**N/A**	**327.3**

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Executive Order 13838 presently exempts contracts entered into with the Federal Government in connection with seasonal recreational services and also seasonal recreational equipment rental for the general public on Federal lands from coverage of Executive Order 13658.[56] Executive Order 14026 will revoke Executive Order 13838 as of January 30, 2022. The Department believes these currently exempt workers are already captured in the number of potentially affected workers. However, the methodology to estimate affected workers may not adequately capture these workers because their wages may not be between $10.60 and $15 per hour (*i.e.,* they may earn as low as $7.25 per hour). The Department believes that the number of workers potentially missing is very small. In the final rule implementing Executive Order 13838, the Department estimated there were 1,191 affected employees (*i.e.,* exempt workers earning between $7.25 and $10.30 per hour).[57] A similar number is likely missing from the current analysis because they earn less than $10.60 per hour.

b. Affected Workers in U.S. Territories

Because the CPS MORG does not include the U.S. territories, the Department used the May 2019 OEWS data to estimate the percentage of workers in Puerto Rico, Guam, and the U.S. Virgin Islands who earn less than $15 per hour.

The OEWS reports wage percentiles for Puerto Rico, Guam, and the U.S. Virgin Islands. The Department used these percentiles and a uniform distribution to infer the percentile associated with $15 per hour. The Department then applied this percentile to the population of potentially affected workers. For example, in Puerto Rico, the Department estimated that 71 percent of the 4,500 potentially affected employees (3,200 workers) earn less

[56] Establishing a Minimum Wage for Contractors, Notice of Rate Change in Effect as of January 1, 2019. 83 FR 44906.

[57] Executive Order 13838 generally exempted from the requirements of Executive Order 13658 contracts with the Federal Government in connection with seasonal recreational services or seasonal recreational equipment rental on Federal lands.

than $15 per hour. In total, the Department estimated 7,200 workers are affected in these three U.S. territories.

c. Affected Worker Projections

To estimate the number of affected employees in later years, the Department first considered whether workers affected in Year 1 would continue to experience wage increases as a result of this NPRM in Years 2 through 10; the Department assumes they will. In the absence of this NPRM, the Department assumes affected workers' wages would increase at the rate required under Executive Order 13658. Therefore, workers affected in Year 1 would continue to experience a higher wage rate than they otherwise would in Years 2 through 10. However, if affected workers' wages are growing at a faster rate than the annual increases under Executive Order 13658, then the number of affected workers would decrease each year. The Department believes this assumption may result in a slight overestimate of the number of affected workers in future years.

In addition, the Department accounted for employment growth by using the compounded annual growth rate based on the ten-year employment projection for 2019 to 2029 from the Bureau of Labor Statistics' (BLS') Employment Projections program.[58] In Year 10, there are 345,600 affected workers. The number of affected workers in Year 1 implicitly takes into account current state minimum wages by looking at the distribution of wage rates paid. If states increase their minimum wages in the future, and the current method is applied to those future years, then affected workers could be somewhat lower than estimated. The Department requests comments on whether there are state minimum wage increases that have been announced but not yet implemented that should be factored into this analysis.

5. Demographics of Employees in the Affected Wage Rate Ranges

This section presents demographic and employment characteristics of the general population of workers in the affected wage rate ranges. The Department notes that the demographic characteristics of Federal contractors may differ from the general population in the affected hourly wage rate ranges; however, data on the demographics of only affected workers are not available.

[58] BLS, Employment Projections. (2021). Table 2.1 Employment by Major Industry Sector. *https://www.bls.gov/emp/tables.htm.*

These tables include the distribution of workers who earn in the affected wage rate range. The tables also show the distribution of the general workforce. This could be used to identify whether a certain group is more or less likely to be impacted by this proposed rule. For example, if the percentage reported in column 3 is higher than the percentage reported in column 2, then workers in that group are overrepresented.

Table 6 presents the occupation and geographic location of workers currently earning in the affected wage rate range. The Department found that workers in management, business, and financial occupations are less likely to earn in the wage range potentially impacted by this Executive order (5.1 percent of workers in the affected range are in this occupation compared to 16.1 percent of the general population), while workers in service occupations are significantly more likely to earn in the affected wage range. Workers in the Northeast and Midwest are somewhat less likely to earn in the affected wage range, and workers in the West and South are somewhat more likely to earn in the affected range, but the variation is small. Workers in non-metropolitan areas are more likely to earn in the affected range.

Table 6: Occupation and Geographic Location of Workers who Earn in the Affected Wage Rate Range

	Distribution of All Workers	Distribution of Workers with Wages in the Affected Range
By Occupation		
Management, business, & financial	16.1%	5.1%
Professional & related	13.9%	5.7%
Services	23.7%	33.9%
Sales and related	10.9%	14.3%
Office & administrative support	12.1%	15.4%
Farming, fishing, & forestry	0.8%	1.9%
Construction & extraction	5.3%	4.1%
Installation, maintenance, & repair	3.4%	2.2%
Production	6.7%	8.4%
Transportation & material moving	7.0%	9.0%
By Region / Division		
Northeast	18.1%	16.6%
New England	5.1%	4.7%
Middle Atlantic	12.9%	11.9%
Midwest	21.8%	21.2%
East North Central	15.0%	14.3%
West North Central	6.9%	7.0%
South	36.8%	37.2%
South Atlantic	19.3%	19.5%
East South Central	5.5%	5.6%
West South Central	12.0%	12.0%
West	23.3%	25.0%
Mountain	7.4%	8.1%
Pacific	15.8%	16.9%
By Metropolitan Status		
Metropolitan	88.7%	86.5%
Non-metropolitan	10.7%	12.6%
Not identified	0.6%	0.9%

Note: CPS data for 2019.

Table 7 displays the demographics of workers who currently earn in the affected wage rate range. The Department found that women, Black workers, and Hispanic workers are more likely to earn in the wage range impacted by this proposed rule. Additionally, workers 16 to 25 and workers without any college education are more likely to earn in that range.

Table 7: Demographics of Workers who Earn in the Affected Wage Rate Range

	Distribution of All Workers	Distribution of Workers with Wages in the Affected Range and Currently Covered
By Sex		
Male	53.3%	45.6%
Female	46.7%	54.4%
By Race		
White only	77.1%	74.5%
Black only	12.4%	15.7%
All others	10.5%	9.8%
By Ethnicity		
Hispanic	18.1%	25.7%
Not Hispanic	81.9%	74.3%
By Age		
16-25	16.7%	29.5%
26-35	24.5%	23.7%
36-45	20.7%	15.8%
46-55	19.2%	14.6%
56+	19.0%	16.4%
By Education		
No degree	8.9%	14.7%
High school diploma	45.2%	60.8%
Associate's degree	10.7%	10.4%
Bachelor's degree	23.7%	11.1%
Master's degree	8.5%	2.2%
Professional degree	1.3%	0.4%
PhD	1.8%	0.4%

Note: CPS data for 2019.

C. Impacts of Proposed Rule

1. Overview

This section quantifies direct employer costs and transfer payments associated with the proposed rule. These impacts were projected for 10 years. The Department estimated average annualized direct employer costs of $2.4 million and transfer payments of $1.5 billion. As these numbers demonstrate, the largest quantified impact of the proposed rule will be the transfer of income from employers to employees. The Department also discusses the many benefits of this rule qualitatively and how they will outweigh any direct employer costs.

2. Costs

The Department quantified two direct employer costs: (1) Regulatory familiarization costs and (2) implementation costs. Other employer costs are considered qualitatively.

a. Regulatory Familiarization Costs

The proposed rule will impose direct costs on covered contractors by requiring them to review the regulations. The Department believes that all Federal contracting firms that have or expect to have covered contracts will incur regulatory familiarization costs because all firms will need to determine whether they are in compliance. The Department assumed that on average, one half-hour of a human resources manager's time will be spent reviewing the rulemaking. During the 2014 rulemaking implementing Executive Order 13658's minimum wage requirements, the Department used one hour of time. The Department has used a smaller time estimate here because most of the affected firms will already be familiar with the previous

requirements and will only have to familiarize themselves with the parts that have changed (predominantly the level of the minimum wage). Additionally, this is the average amount of time spent. The Department believes that many of the potentially affected firms will have little to no regulatory familiarization costs because they are not practically affected (*e.g.,* they do not hold active government contracts or all their workers already earn at least $15 per hour.)

However, if review of regulations occurs at the establishment level, the Department's regulatory familiarization costs may be underestimated. The Department welcomes comments on the estimated time spent on regulatory familiarization and the level at which the regulatory familiarization occurs.

The cost of this time is the median loaded wage for a Compensation, Benefits, and Job Analysis Specialist of $52.65 per hour.[59] Therefore, the Department has estimated regulatory familiarization costs to be $13.4 million ($52.65 per hour × 0.5 hours × 507,200 contractors) (Table 8). The Department has included all regulatory familiarization costs in Year 1. The Department believes firms will need to familiarize themselves with the rule in Year 1 in order to identify whether any contracts will be covered in Year 1. It is possible a contractor will postpone the familiarization effort until it is poised to have a covered contract; however, since many contractors will have at least one new contract in Year 1, and the Department has no data on when contractors will first be affected, the Department has included all regulatory familiarization costs in Year 1. Average annualized regulatory familiarization costs over ten years, using a 7 percent discount rate, is $1.9 million.

Table 8: Year 1 Costs

Variable	Regulatory Famil-iarization Costs	Implementation Costs		
		Human Resources Time	Manage-ment Time	Total
Hours per potentially affected contractor	0.5	N/A	N/A	-
Potentially affected contractors	507,222	N/A	N/A	-
Hours per employee	N/A	0.08	0.08	-
Affected employees	N/A	327,310	327,310	-
Loaded wage rate	$52.65	$52.65	$86.02	-
Base wage	*$32.30*	*$32.30*	*$52.77*	-
Benefits and overhead adj. factor [a]	*1.63*	*1.63*	*1.63*	-
Cost ($1,000s)	$13,352	$1,436	$2,346	$3,782
Average annualized cost ($1,000s)				
3% discount rate	$1,565	$168	$275	$443
7% discount rate	$1,901	$204	$334	$538

[a] Ratio of loaded wage to unloaded wage from the 2020 ECEC (46 percent) plus 17 percent for overhead.

b. Implementation Costs

The Department believes firms will incur costs associated with implementing this rule. There will be costs to adjust the pay rate in the records and tell the affected employees, among other minimal staffing changes and considerations made by managers. The Department assumed that firms would spend ten minutes on implementation costs per newly affected employee. This estimate was chosen because for most affected workers management decisions will be negligible and the time to adjust the systems is very small.

Implementation time will be spread across both human resource workers who will implement the changes and managers who may need to assess whether to adjust their schedule. The Department splits the time between a Compensation, Benefits, and Job Analysis Specialist and a Manager. Compensation, Benefits, and Job Analysis Specialists earn a loaded hourly wage of $52.65 per hour.[60] Workers in Management Occupations earn a loaded hourly wage of $86.02 per hour.[61] The estimated number of newly affected employees in Year 1 is 327,300 (Table 8). Therefore, total Year 1 implementation costs were estimated to equal $3.8 million ([$52.65 × 5 minutes × 327,300 employees] + [$86.02 × 5 minutes × 327,300 employees]).

The Department believes implementation costs will generally be a function of the number of affected employees in Year 1. The Department believes there will be no

[59] This includes the median base wage of $32.30 from the Occupational Employment and Wage Statistics (OEWS) plus benefits paid at a rate of 46 percent of the base wage, as estimated from the BLS's Employer Costs for Employee Compensation (ECEC) data, and overhead costs of 17 percent. OEWS data available at: *http://www.bls.gov/oes/current/oes131141.htm.*

[60] OEWS May 2020 reports a median base wage of $32.30 for Compensation, Benefits, and Job Analysis Specialists. The Department supplemented this base wage with benefits paid at a rate of 46 percent of the base wage, as estimated from the BLS's ECEC data, and overhead costs of 17 percent. OEWS data available at: *http://www.bls.gov/oes/current/oes131141.htm.*

[61] OEWS May 2020 reports a median base wage of $52.77 for Management Occupations. The Department supplemented this base wage with benefits paid at a rate of 46 percent of the base wage, as estimated from the BLS's ECEC data, and overhead costs of 17 percent. OEWS data available at: *https://www.bls.gov/oes/current/oes110000.htm.*

implementation costs for new hires in later years because the cost to set wages would be similar for new hires under the baseline scenario and this proposed rule. The Department believes new hires would have a starting pay rate of at least $15 per hour, rather than starting slightly below and then receiving a raise when the contract is renewed. Assuming all costs are in Year 1, the average annualized implementation costs over ten years, using a 7 percent discount rate, is $538,500.

Finally, the actual number of affected employees may be underestimated because the analysis assumes workers are working exclusively on Federal contracts. The Department tried to take this into account when it estimated the amount of time per affected employee. If this has not been adequately reflected in the time cost estimates, then the total costs may be underestimated.

c. Other Potential Costs and Eventual Bearers of Transfers

In addition to the costs discussed above, there may be additional costs that have not been quantified. These include compliance costs, increased consumer costs, and reduced profits. The latter two hinge on the belief that employers' costs will increase by more than the associated productivity gains and cost-savings. The Department believes the benefits to firms will outweigh the costs and hence adverse impacts to prices or profits are unlikely. These are discussed here for completeness.

i. Compliance Costs

This proposed rule requires Federal executive departments and agencies to include a contract clause in any contract covered by the Executive order. The clause describes the requirement to pay all workers performing work on or in connection with covered contracts at least the Executive order minimum wage. Contractors and their subcontractors will need to incorporate the contract clause into covered lower-tier subcontracts. The Department believes that the compliance cost of incorporating the contract clause will be negligible for contractors and subcontractors. Contractors subject to the SCA and/or DBA have long had a comparable flow-down obligation for the compliance of subcontractors by operation of the SCA and DBA. Thus, upper-tier contractors' flow-down responsibility, and lower-tier subcontractors' need to comply with prevailing wage-related legal requirements so that upper-tier contractors do not incur flow-down liability, are well understood concepts to SCA and DBA contractors. *See* 29 CFR 5.5(a)(6) and 4.114(b). While the flow-down structure may be less familiar to some sub-set of contractors subject to the Executive order, this will substantially reduce the number of contractors with no familiarity with flow-down liability.

ii. Consumer Costs

In general, the relevant consumer is the Federal Government. If the rulemaking increases employers' costs (once offsetting productivity gains and cost-savings), and contractors pass along part or all of the increased cost to the government in the form of higher contract prices, then Government expenditures may rise (though, as discussed later, benefits of the Executive order are expected to accompany any such increase in expenditures). Because direct costs to employers and transfers are relatively small compared to Federal covered contract expenditures, the Department believes that any potential increase in contract prices will be negligible (less than 0.4 percent of contracting revenue, see section IV.C.vi.).

In some instances, such as concessions contracts, increased contractor costs may be passed along to the public in the form of higher prices. However, because employer costs are relatively small, any pass-through to prices will be small. The literature tends to find that minimum wages result in increased prices, but that the size of that increase can vary substantially. Ashenfelter and Jurajda (2021)[62] found that wage increases resulted in ''full or near-full price pass-through'' to the cost of a Big Mac, estimated to be about 70 percent. Basker and Khan (2016) note that, ''[e]ven with full price pass-through, the income effect of [a] price increase is likely to be very small. The average price of a burger in 2014, according to the C2ER data used in this paper, was approximately $3.77. [Thus, for example, a] 3 [percent] increase in this price amounts to only about 10 cents.''[63] Echoing the minimal anticipated price increase, Lemos (2008) found that an increase in the minimum wage of 10 percent raises food prices by no more than 4 percent, and overall prices by no more than 0.4 percent.[64]

iii. Reduced Profits

If employer costs outweigh productivity and cost-savings gains, then companies will either pass these additional costs on to consumers (discussed above) or incur smaller profits. There is very little literature showing a link between minimum wages and profits. One paper by Draca et al. (2011) did find a substantial negative link between minimum wages and profits in the United Kingdom.[65] However, because the increase in gross costs is such a small share of contracting revenue (less than 0.4 percent, see section IV.C.5.) in this case, the average impact on profits will be negligible. Impacts to profits may be larger for firms that pay lower wages, for firms with more affected workers, and for firms that cannot pass increased costs onto the government or the consumer.

3. Transfer Payments

The Department estimated transfer payments to workers in the form of higher wages. Directly, these are transfers from employers to the employees; however, ultimately these transfer costs to firms may be offset by higher productivity, cost-savings, or cost pass-throughs to the government and consumers. The Department believes negative impacts on employment or benefits will be small to negligible. Additionally, some workers currently earning at least $15 per hour may also receive pay raises due to spill-over effects. This is also discussed qualitatively.

Many papers have found increased earnings for low-wage workers associated with a minimum wage increase. The Congressional Budget Office's (CBO's) 2019 paper provides an overview of this literature.[66] Based on this research, economists have continually found that increasing the minimum wage can, under certain conditions, increase earnings and alleviate poverty. The CBO (2019) estimates a national $15 per hour minimum wage, implemented by 2025, could raise earnings for 27 million

[62] Ashenfelter, O., & Jurajda, S. (2021). Wages, Minimum Wages, and Price Pass-Through: The Case of McDonald's Restaurants. IRS Working Papers, Report No. 646. *https://dataspace.princeton.edu/bitstream/88435/dsp01sb397c318/4/646.pdf.*

[63] Basker, E., & Khan, M.T. (2016). Does the Minimum Wage Bite into Fast-Food Prices? Industrial Organization: Empirical Studies of Firms & Markets eJournal. *https://dx.doi.org/10.2139/ssrn.2326659.*

[64] Lemos, S. (2008). A Survey of the Effects of the Minimum Wage on Prices. Journal of Economic Surveys, 22(1), 187–212. *https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1467-6419.2007.00532.x.*

[65] Draca, M., Machin, S., & Van Reenen, J. (2011). Minimum Wages and Firm Profitability. American Economic Journal: Applied 3(1), 129–151. doi: 10.1257/app.3.1.129.

[66] CBO. (2019, July). The Effects on Employment and Family Income of Increasing the Federal Minimum Wage (Publication No. 55410). *https://www.cbo.gov/publication/55410.*

workers, 17 million of whom would have their rate increased to the new minimum wage and ten million of whom may receive spillover effects. Increasing the wage less, such as twelve dollars an hour or ten dollars an hour over the same time frame has commensurately smaller impacts on earnings.

a. Calculating Transfer Payments

To estimate transfers, the Department used the population of affected workers estimated in section IV.B.4 and the CPS data.

Hourly transfers are estimated as the difference between the average current hourly wage of workers with wages in the affected wage rate range and $15.[67] [68] Hourly transfers are then multiplied by average weekly hours in the industry and 52 weeks. Using wage data by industry results in Year 1 transfer payments $1.5 billion in 2020 dollars (Table 9). 2019 transfers were inflated to 2020 dollars using the GDP deflator.[69]

There are several reasons Year 1 transfers may be over- or underestimated, but the Department believes the net effect is an overestimation. First, as noted in section IV.B.3., the Department assumed all workers would be affected in Year 1, whereas in reality some will not receive transfers until later years. Second, some workers will not be impacted until partway through 2022. For example, many contracts may not be impacted until the beginning of the fiscal year on October 1, 2022. Therefore, annualizing Year 1 transfers for a full 52 weeks should result in an overestimate. Conversely, transfers may be underestimated because the Department did not account for higher overtime pay premiums due to an increase in the regular rate of pay.

[67] The Department notes that the minimum wage will be $15 in 2022, and thus could be deflated to be the comparable amount in 2019. The appropriate measure to use to deflate this wage is ambiguous; the Department used $15, which may overestimate the number of affected workers.

[68] For covered tipped workers, the $15 minimum wage will be phased-in through 2024. However, the Department uses the full $15 in Year 1. Calculating transfers based on a rate of $15 in 2022 will overestimate the transfers for tipped workers in Year 1. However, the Department believes there are few tipped workers covered by Federal contracts, so the overestimate is likely small relative to total transfers.

[69] Bureau of Economic Analysis. (2021). Table 1.1.9. Implicit Price Deflators for Gross Domestic Product. *https://www.bea.gov/data/prices-inflation/gdp-price-deflator.*

Table 9: Transfer Payment Calculation, Year 1

NAICS	Affected Employees (1,000s)	Mean Base Wage [a]	Hourly Wage Increase	Average Weekly Hours	Transfers (Millions)	Transfers in 2020$ (Millions) [c]
11	0.5	$12.53	$2.47	42	$2.8	$2.9
21	0.0	$13.16	$1.84	47	$0.1	$0.1
22	0.4	$12.98	$2.02	44	$2.0	$2.0
23	30.0	$12.85	$2.15	39	$131.0	$132.6
31-33	10.3	$12.88	$2.12	40	$45.0	$45.5
42	0.1	$12.72	$2.28	40	$0.4	$0.4
44-45	15.2	$12.49	$2.51	34	$66.7	$67.5
48-49	42.3	$12.84	$2.16	39	$187.1	$189.3
51	4.9	$12.74	$2.26	37	$21.0	$21.3
52	2.4	$12.90	$2.10	39	$10.2	$10.4
53	0.1	$12.87	$2.13	37	$0.5	$0.5
54	48.1	$12.94	$2.06	38	$193.6	$196.0
55	0.0	$12.35	$2.65	37	$0.0	$0.0
56	104.5	$12.67	$2.33	37	$473.9	$479.7
61	6.1	$12.69	$2.31	33	$23.9	$24.2
62	18.8	$12.74	$2.26	36	$79.6	$80.6
71	5.6	$12.49	$2.51	31	$23.1	$23.3
72	25.1	$11.88	$3.12	32	$131.1	$132.7
81	5.5	$12.59	$2.41	34	$23.6	$23.9
Territories [c]	7.2	$12.57	$2.43	36	$32.5	$32.9
Total	**327.3**	**N/A**	**N/A**	**N/A**	**$1,448.1**	**$1,465.7**

[a] CPS MORG 2019. Mean wage for workers earning between $10.60 ($7.40 for tipped workers) and $15 per hour.

[b] Inflated to 2020$ using GDP Deflator.

[c] Mean wage and hours among workers earning at least $15 per hour is unavailable for territories; therefore, the Department used 2019 CPS MORG data from the fifty states and Washington, D.C.

As discussed in section IV.B.4., the number of affected workers may exclude some seasonal recreation workers currently exempt under Executive Order 13838 (approximately 1,200 employees as estimated as affected by E.O. 13838). Excluding these workers may result in a slight underestimate of transfers. However, some of these currently exempt workers, those earning between $10.60 and $15 per hour, are captured in the analysis. And for these workers, transfers may be somewhat overestimated because we have applied weekly transfers to all 52 weeks. As seasonal employees, the applicable number of work weeks would be lower.

For longer-run projected transfers, the Department employed the same method used for Year 1 but used the projected number of employees. The Department applied an employment growth rate that is the compounded annual growth rate based on the ten-year projected growth. The Department assumed that wage growth will be similar to growth in the Federal contractor minimum wage (which is indexed annually based on the CPI–W).[70] Therefore, the number of affected workers in Year 1 would also apply in future years. Due to employment growth, transfers increase slightly each year, reaching $1.55 billion in Year 10 (up from $1.47 billion in Year 1). Average annualized transfers over these ten years, using both the 3 percent and 7 percent discount rates, are $1.5 billion. Year 1 transfers implicitly account for current state minimum wages through the distribution of wage rates paid.[71] If states increase their

[70] Wage growth tends to outpace the CPI–W. However, the Department assumes current wages (in the absence of this proposed minimum wage regulation) and the Federal contractor minimum wage in this proposed regulation will grow at roughly the same rate. If workers' wages grow faster than the CPI–W, then transfers could be slightly overestimated.

[71] In using the CPS MORG data to estimate the percentage of workers earning a wage rate in the affected range, the Department did not drop

Continued

minimum wages in the future, and the current method is applied to those future years, then estimated transfers might be somewhat lower.

This rule would also increase payroll taxes and workers' compensation insurance premiums in addition to the increase in wage payments because these are calculated as a percentage of the wage payment. The Department recognizes that it will be incumbent upon contractors to pay the applicable percentage increase in payroll and unemployment taxes. The Department has not factored these costs into its analysis, but requests comment that may facilitate quantification in the final regulatory impact analysis.

b. Spillover Effects

Employees earning above $15 per hour, at affected firms, may also see wage increases. Employers often increase earnings of workers earning above the minimum wage to prevent wage compression. Consider a scenario where a supervisor makes $15 per hour and now his or her supervisees receive pay increases to $15 per hour. The supervisor will likely receive a pay increase to maintain a premium over the workers reporting to them. Ashenfelter and Juraida (2012) find evidence of this spillover effect as a method to retain workers in limited-function restaurants.[72] Cengiz et al. (2019) also found modest spillover effects up to $3 over the new minimum wage, even at higher levels of minimum wages.[73] Nguyen (2018) estimates that by increasing the Federal minimum wage from $7.25 to $10.10 ''up to a third of the work force other than minimum wage earners would also see their earnings increase, such as supervisors who had earned $10.10 and now would see an increase in salary.'' [74] Dube and Lindner (2021) find spillover effects up to about the 30th percentile of the wage distributions.[75]

The Department agrees with this literature that there will likely be wage increases for some workers earning about $15 per hour. However, the Department has not quantified this change.

c. Disemployment

The Department next reviews evidence relevant to this proposed rule's potential to have disemployment effects. Disemployment of low-wage workers occurs when employers substitute capital or fewer more productive higher-wage workers to perform work previously performed by larger numbers of low-wage workers. Although economists have studied the size of this potential disemployment effect of increased minimum wages for decades, the consensus among a substantial body of research is that disemployment effects can be small or non-existent.[76] Therefore, the Department believes this proposed rule would result in negligible or no disemployment effects.

Manning (2020) found no significant impact of increased minimum wages on employment through comprehensive literature reviews.[77] Wolfson and Belman's (2019) conclusion as a result of a meta-analysis of 37 studies found a small disemployment effect, but the effect has decreased over time.[78] Some authors even found positive effects on employment as a result of minimum wage increases (Ahn, Arcidiacono and Wessels, 2011).[79]

Ashenfelter and Jurajda (2021) found that increased minimum wages does not inherently facilitate automation in low-wage, low skill jobs, though this research only studied limited-service restaurants.[80] Lordan and Neumark (2018)[81] found that low-skilled workers were more likely to lose their jobs to automation because of minimum wage increases, and workers are able and likely to shift sectors to retail or service as a result. Meanwhile, higher-skilled workers saw increased job opportunities with minimum wage increases.

The Department welcomes comment on whether there are any additional papers in the employment effects literature that could be helpful to review in a qualitative discussion of the potential for disemployment effects and whether extrapolations might vary across affected contracts (procurement and non-procurement).

d. Reduction in Benefits or Bonuses

Increased wage rates could potentially be offset by reductions in fringe benefits, bonuses, or training. The Department believes these impacts will be small. First, service employees on SCA-covered contracts generally are entitled to be paid pre-determined fringe benefit amounts. Second, the increased costs to employers are very small as a share of contracting revenues (less than 0.4 percent, see section IV.C.5.).

4. Benefits

The Department did not quantify benefits of this rulemaking due to uncertainty and data limitations. However, the Department discusses many benefits qualitatively as indicators of the efficiency and economy gained in government procurement. These include improved government services, increased morale and productivity, reduced turnover, reduced absenteeism, increased equity, and reduced poverty and income inequality for Federal contract workers. The Department notes that the literature cited in this section does not directly consider a change in the minimum wage equivalent to this proposed rulemaking (*e.g.,* for non-tipped workers from $10.60 to $15). Additionally, much of the literature is based on voluntary changes made by firms. However, the Department believes the general findings are still applicable although the impacts are likely smaller than those measured in these studies. The Department welcomes comments and data on the benefits of increasing the minimum wage specifically for Federal contract workers.

workers reporting wages that were less than the state minimum wage. However, state minimum wages are reflected in the Department's estimate of workers earning wage rates in the affected range because workers in those states generally report earning at least the state minimum wage.

[72] Ashenfelter, O., & Jurajda, S. (2021). Wages, Minimum Wages, and Price Pass-Through: The Case of McDonald's Restaurants. IRS Working Papers, Report No. 646. *https://dataspace.princeton.edu/bitstream/88435/dsp01sb397c318/4/646.pdf*.

[73] Cengiz, D., Dube, A., Lindner, A., & Zipperer, B. (2019). The Effect of Minimum Wages on Low-Wage Jobs. The Quarterly Journal of Economics, 134(3), 1405–1454. doi:10.1093/qje/qjz014.

[74] Nguyen, L. C. (2018). The Minimum Wage Increase: Will This Social Innovation Backfire? Social Work, 63(4), 367–369. doi: 10.1093/sw/swy040.

[75] Dube, A., & Lindner, A. (2021). City Limits: What Do Local-Area Minimum Wage Do? Journal of Economic Perspectives, 35(1), 27–50. doi:10.1257/jep.35.1.27.

[76] Dube, A. (2019). Impacts of Minimum Wages: Review of the International Evidence. *https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/844350/impacts_of_minimum_wages_review_of_the_international_evidence_Arindrajit_Dube_web.pdf.*

[77] Manning, A. (2020). The Elusive Employment Effect of the Minimum Wage. Journal of Economic Perspectives, 35(1), 1–26. doi:10.1257/jep.35.1.3.

[78] Wolfson, P., & Belman, D. (2019). 15 Years of Research on US Employment and the Minimum Wage. Labour Review of Labour Economics and Industrial Relations 33(4), 488–506. *https://doi.org/10.1111/labr.12162.*

[79] Ahn, T., Arcidiacono, P., & Wessels, W. (2011). The Distributional Impacts of Minimum Wage Increases When Both Labor Supply and Labor Demand Are Endogenous. Journal of Business & Economic Statistics 29(1), 12–23. *https://econpapers.repec.org/article/besjnlbes/v_3a29_3ai_3a1_3ay_3a2011_3ap_3a12-23.htm.*

[80] Ashenfelter, O., & Jurajda, S. (2021). Wages, Minimum Wages, and Price Pass-Through: The Case of McDonald's Restaurants. IRS Working Papers, Report No. 646. *https://dataspace.princeton.edu/bitstream/88435/dsp01sb397c318/4/646.pdf.*

[81] Lordan, G., & Neumark, D. (2018). People Versus Machine: The Impact of Minimum Wages on Automatable Jobs. Labour Economics 52(3), 40–53. *https://doi.org/10.1016/j.labeco.2018.03.006.*

a. Improved Government Services

The Department expects the quality of government services to improve when the minimum wage of Federal contract workers is raised. In some cases, higher-paying contractors may be able to attract higher quality workers who are able to provide higher quality services, thereby improving the experience of citizens who engage with these government contractors. For example, a study by Reich, Hall, and Jacobs (2003) found that increased wages paid to workers at the San Francisco airport increased productivity and shortened airport lines.[82] In addition, higher wages can be associated with a higher number of bidders for Government contracts, which can be expected to generate greater competition and an improved pool of contractors. Multiple studies have shown that the bidding for municipal contracts remained competitive or even improved when living wage ordinances were implemented (Thompson and Chapman, 2006).[83]

b. Increased Morale and Productivity

Increased productivity could occur through numerous channels, such as employee retention and level of effort. A strand of economic research, commonly referred to as ''efficiency wage'' theory, considers how an increase in compensation may be met with greater productivity.[84] Efficiency wages may elicit greater effort on the part of workers, making them more effective on the job.[85] Increases in the minimum wage has also been shown to increase worker morale and consequently productivity. Kim and Jang (2019) showed that wage raises increase productivity for up to two years after the wage increase.[86] They found that in both full and limited-service restaurants productivity increased due to improved worker morale after a wage increase. Potentially, higher morale leading to increased productivity can also lead to additional productivity gains. Mas and Moretti (2009) found that the presence of high-productivity grocery store cashiers was an implicit social pressure that encouraged low-productivity grocery store cashiers to perform better, especially those nearest and within line of sight of the high productivity employee.[87] Taken together, these publications provide evidence that increasing the minimum wage increases morale and productivity directly. Furthermore, as morale directly increases productivity for some workers, this may lead to increased productivity in others. The Department believes that this proposed rule could increase productivity for the Federal contracting community as well.

c. Reduced Turnover

An increase in the minimum wage has been shown to decrease both turnover rates and the rate of worker separation (Dube, Lester and Reich, 2011; Liu, Hyclak and Regmi, 2015; Jardim et al., 2018).[88] This decrease in turnover and worker separation can lead to an increase in the profits of firms, as the hiring process can be both expensive and time consuming. A review of 27 case studies found that the median cost of replacing an employee was 21 percent of the employee's annual salary.[89] One manager of a fast-food restaurant (Hirsch, Kaufman and Zelenska, 2011)[90] when interviewed, estimated that each turnover cost $300–$400. Fairris et al. (2005)[91] found the cost reduction due to lower turnover rates ranges from $137 to $638 for each worker. Managers of various traditionally low-wage firms explained that in nearly all instances, increased wages led to both a decrease in turnover and an increase in profits. Howes (2005) discovered that as San Francisco increased the city-wide minimum wage to $10 between 1997 and 2001 ($4.85 above the then Federal minimum of $5.15) the turnover rate fell 31 percent for all healthcare providers and 57 percent for new healthcare providers.[92]

Although the impacts cited here are not limited to Federal contracting, because data specific to Federal contracting and turnover are not available, the Department believes that a reduction in turnover could be observed in among workers on Federal contracts following this proposed rule. The potential reduction in turnover is a function of several variables: The current wage, hours worked, turnover rate, industry, and occupation. Therefore, the Department has not quantified the impacts of potential reduction in turnover for Federal contracts.

d. Reduced Absenteeism

Studies on absenteeism have demonstrated that there is a negative effect on firm productivity as absentee rates increase.[93] Zhang et al., in their study of linked employer-employee data in Canada, found that a 1 percent decline in the attendance rate reduces productivity by 0.44 percent.[94] Allen (1983) similarly noted that a 10-percentage point increase in the absenteeism corresponds to a decrease of 1.6 percent in productivity.[95] Fairris et al. (2005) demonstrated that as a worker's wage increases there is a reduction in unscheduled absenteeism.[96] They attribute this to workers standing to lose more if forced to look for new employment and an

[82] Reich, M., P. Hall, and K. Jacobs. (2003). ''Living Wages and Economic Performance: The San Francisco Airport Model,'' Institute of Industrial Relations, University of California, Berkeley.

[83] Thompson, J. and J. Chapman. (2006). ''The Economic Impact of Local Living Wages,'' Economic Policy Institute, Briefing Paper #170, 2006.

[84] Akerlof, G.A. (1982). Labor Contracts as Partial Gift Exchange. *The Quarterly Journal of Economics,* 97(4), 543–569.

[85] Another model of efficiency wages, which is less applicable here, is the adverse selection model in which higher wages raise the quality of the pool of applicants.

[86] Kim, H.S., & Jang, S. (2019). Minimum Wage Increase and Firm Productivity: Evidence from the Restaurant Industry. Tourism Management 71, 378–388. *https://doi.org/10.1016/j.tourman.2018.10.029.*

[87] Mas, A., & Moretti, E. (2009). Peers at Work. American Economic Review 99(1), 112–45. *https://www.aeaweb.org/articles?id=10.1257/aer.99.1.112.*

[88] Dube, A., Lester, T.W., & Reich, M. (2011). *Do Frictions Matter in the Labor Market? Accessions, Separations, and Minimum Wage Effects. (Discussion Paper No. 5811).* IZA. *https://www.iza.org/publications/dp/5811/do-frictions-matter-in-the-labor-market-accessions-separations-and-minimum-wage-effects.*

Liu, S., Hyclak, T.J., & Regmi, K. (2015). Impact of the Minimum Wage on Youth Labor Markets. *Labour 29*(4). doi: 10.1111/labr.12071.

Jardim, E., Long, M.C., Plotnick, R., van Inwegen, E., Vigdor, J., & Wething, H. (2018, October). *Minimum Wage Increases and Individual Employment Trajectories* (Working paper No. 25182). NBER. doi:10.3386/w25182.

[89] Boushey, H. and Glynn, S. (2012). There are Significant Business Costs to Replacing Employees. Center for American Progress. Available at: *http://www.americanprogress.org/wp-content/uploads/2012/11/CostofTurnover.pdf.*

[90] Hirsch, B.T., Kaufman, B.E., & Zelenska, T. (2011). *Minimum Wage Channels of Adjustment. (Discussion Paper No. 6132).* IZA. *https://www.iza.org/publications/dp/6132/minimum-wage-channels-of-adjustment.*

[91] Fairris, D., Runstein, D., Briones, C., & Goodheart, J. (2005). *Examining the Evidence: The Impact of the Los Angeles Living Wage Ordinance on Workers and Businesses.* LAANE. *https://laane.org/downloads/Examinig_the_Evidence.pdf.*

[92] Howes, C. (2005). Living Wages and Retention of Homecare Workers in San Francisco. *Industrial Relations 44*(1), 139–163. *https://onlinelibrary.wiley.com/doi/abs/10.1111/j.0019-8676.2004.00376.x.*

[93] Allen, S. G. (1983). How Much Does Absenteeism Cost? *Journal of Human Resources, 18*(3), 379–393. *https://www.jstor.org/stable/145207?seq=1.*

[94] Zhang, W., Sun, H., Woodcock, S., & Anis, A. (2013). Valuing Productivity Loss Due to Absenteeism: Firm-level Evidence from a Canadian Linked Employer-Employee Data. *Health Economics Review, 7*(3). *https://healtheconomicsreview.biomedcentral.com/articles/10.1186/s13561-016-0138-y.*

[95] Allen, S. G. (1983). How Much Does Absenteeism Cost? *Journal of Human Resources, 18*(3), 379–393. *https://www.jstor.org/stable/145207?seq=1.*

[96] Fairris, D., Runstein, D., Briones, C., & Goodheart, J. (2005). *Examining the Evidence: The Impact of the Los Angeles Living Wage Ordinance on Workers and Businesses.* LAANE. *https://laane.org/downloads/Examinig_the_Evidence.pdf.*

increase in pay paralleling an increase in access to paid time off. Pfeifer's (2010) study of German companies provides similar results, indicating a reduction in absenteeism if workers experience an overall increase in pay.[97] Conversely, Dionne and Dostie (2007) attribute a decrease in absenteeism to mechanisms of the firm other than an increase in worker pay, specifically scheduling that provides both the option to work-at-home and for fewer compressed work weeks.[98] The Department believes both the connection between minimum wages and absenteeism, and the connection between absenteeism and productivity are well enough established that this is a feasible benefit of the proposed rule.

e. Reduced Poverty and Income Inequality

Raises in the minimum wage have been shown to reduce the level of poverty among the entire population, and specifically among children, within high impact areas.[99] Himmelstein and Venkataramani (2019) estimate that nearly 5 percent of people living in poverty are healthcare workers, and that a $15 per hour minimum wage increase would lead to 215,476 workers and 163,472 children lifted above the poverty line.[100] Reducing poverty will benefit historically marginalized communities, as they have the highest poverty rates. The CBO estimates that a $15 per hour minimum wage would alleviate poverty for 1.3 million Americans.[101] Although a reduction in poverty would be smaller for Federal contract workers to the extent that they are already earning at least $10.95 in 2021, the Department nonetheless believes that this proposed rule could alleviate poverty for some Federal contract workers. If a Federal contract worker works full time (40 hours per week for 52 weeks a year) at $10.95, their annual salary would be $22,776, which is below the 2020 Census Poverty Threshold for a family of four or more.[102]

Not only does a wage increase elevate earnings for the lowest earners working for Federal contractors, studies show that minimum wage increases can also reduce the income differential between the lowest earners and the highest earners, as well as between the lowest earners and the middle wage workers (Mishel 2014).[103] Income inequality is reduced with respect to all low-wage earners, but reduced income inequality across gender and race are additionally valuable considerations. Oka and Yamada (2019) found that increases in the minimum wage increased real wages for women, less educated, and younger workers.[104] Increasing the minimum wage has the potential to drastically aid those living in poverty, and as a disproportionate number of people of color are those currently impoverished (Creamer 2020),[105] increasing the minimum wage will aid in reducing racial income inequality.

Reducing poverty for Federal contract workers could lead to increased productivity and efficiency, because it could increase worker morale and decrease absenteeism, as discussed above.

5. Impacts by Industry

This section analyzes the costs and transfers by industry relative to government contracting expenditures, revenues, and payroll. This analysis excludes territories because revenue and payroll data are not available for territories. The Department used Year 1 impacts rather than average annualized impacts to demonstrate the size of the impacts in the year where costs are largest. The Department considers total employer costs (direct costs and transfers) here because those are the relevant costs to businesses. The Department also limited the analysis to firms actively holding government contracts (*e.g.,* firms in USASpending in 2019 rather than all firms in SAM) to better approximate costs for firms with potentially affected employees. Including all firms would underestimate costs among truly affected firms.

Across all industries, total employer costs are less than 0.4 percent of government contracting revenues (Table 10). Contracting revenue represents the revenue obtained by these firms specifically for work performed on Federal contracts. This measure may be most appropriate when considering cost pass-throughs to the Federal Government in the form of higher contract prices. Since many covered contractors garner revenue from non-Federal contracts, the transfer payment estimate is almost certainly a lower percentage of their total revenues. See section IV.B.3. for details on how Federal contracting expenditures are calculated. This analysis only includes employer costs associated with firms holding active SCA or DBA contracts (121,200). It excludes firms holding nonprocurement contracts because the Department believes these firms are not included in the USASpending data on Federal contracting revenues (*i.e.,* the denominator). Using this methodology, the industry where costs and transfers are estimated to be the largest share of contracting revenue is the accommodation and food services industry, where employer costs are 3.5 percent of Federal contracting revenues.

The Department also compared employer costs to estimated revenues and payrolls using the 2017 Statistics of U.S. Businesses (SUSB). Total revenues and payroll from SUSB were adjusted to reflect the share of businesses impacted by this rulemaking and estimated to have affected employees (166,700).[106] Total employer costs were then compared to these revenues and payrolls. This analysis includes both Federal contractors and firms holding nonprocurement contracts. Using this methodology, employer costs are less than 0.2 percent of revenues and less than 0.6 percent of payroll on average. The industry where costs and transfers are estimated to be the largest share of revenue is accommodation and food services (1.2 percent) and of payroll is retail trade (4.3percent).

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[97] Pfeifer, C. (2010). Impact of Wages and Job Levels on Worker Absenteeism. *International Journal of Manpower 31*(1), 59–72. *https://doi.org/10.1108/01437721011031694.*

[98] Dionne, G., & Dostie, B. (2007). New Evidence on the Determinants of Absenteeism Using Linked Employer-Employee Data. *Industrial and Labor Relations Review 61*(1), 108–120. *https://journals.sagepub.com/doi/abs/10.1177/001979390706100106.*

[99] Godoey, A., & Reich, M. (2021). Are Minimum Wage Effects Greater in Low-Wage Areas? *Industrial Relations A Journal of Economy and Society, 60*(1), 36–83. *https://doi.org/10.1111/irel.12267.*

[100] Himmelstein, K. E. W., & Venkataramani, A. S. (2019). Economic Vulnerability Among US Female Health Care Workers: Potential Impact of a $15-per-Hour Minimum Wage. *American Journal of Public Health 109*(2), 198–205. doi:10.2105/AJPH.2018.304801.

[101] CBO. (2019, July). The Effects on Employment and Family Income of Increasing the Federal Minimum Wage (Publication No. 55410). *https://www.cbo.gov/publication/55410.*

[102] U.S. Census Bureau. Poverty Thresholds. *https://www.census.gov/data/tables/time-series/demo/income-poverty/historical-poverty-thresholds.html.*

[103] Mishel, L. (2014). The Tight Link Between the Minimum Wage and Wage Inequality. Economic Policy Institute. *https://www.epi.org/blog/tight-link-minimum-wage-wage-inequality/.*

[104] Oka, T., & Yamada, K. (2019, July). Heterogeneous Impact of the Minimum Wage: Implications for Changes in Between- and Within-group Inequality. arXiv. *https://arxiv.org/pdf/1903.03925.pdf.*

[105] Creamer, J. (2020). Poverty Rates for Blacks and Hispanics Reached Historic Lows in 2019. U.S. Census Bureau. *https://www.census.gov/library/stories/2020/09/poverty-rates-for-blacks-and-hispanics-reached-historic-lows-in-2019.html.*

[106] This includes 121,200 contractors from USASpending and 45,500 contractors operating on Federal properties or lands.

Table 10: Costs and Transfer Payments in Year 1, Firms with Affected Workers, as Share of Covered Contracting Revenue (2020$)

NAICS	Employer Costs and Transfers ($1,000s)	Covered Contracting Revenue (Millions) [a]	Employer Costs and Transfers as Share of Contracting Revenue
11	$2,846	$413	0.69%
21	$54	$104	0.05%
22	$850	$2,428	0.03%
23	$131,715	$36,124	0.36%
31-33	$45,884	$28,950	0.16%
42	$406	$163	0.25%
44-45	$4,811	$331	1.45%
48-49	$69,625	$14,389	0.48%
51	$8,724	$10,198	0.09%
52	$10,403	$12,633	0.08%
53	$542	$942	0.06%
54	$194,888	$152,717	0.13%
55	$1	$0	0.39%
56	$461,251	$36,754	1.25%
61	$23,856	$4,301	0.55%
62	$80,650	$11,233	0.72%
71	$868	$82	1.06%
72	$35,724	$1,030	3.47%
81	$23,391	$2,718	0.86%
--	**$1,096,487**	**$315,512**	**0.35%**

[a] USASpending.gov 2019. Contracting expenditures for covered procurement contracts. Inflated to 2020$ using the GDP deflator.

Table 11: Costs and Transfer Payments in Year 1, Firms with Affected Workers, as Share of Firm Revenue and Payroll (2020$)

NAICS	Employer Costs and Transfers ($1,000s)	Revenue (Millions) [a]	Employer Costs and Transfers as Share of Revenue	Payroll (Millions) [a]	Employer Costs and Transfers as Share of Payroll
11	$2,949	$4,167	0.071%	$809	0.365%
21	$79	$4,494	0.002%	$564	0.014%
22	$2,152	$411,211	0.001%	$48,815	0.004%
23	$133,412	$52,328	0.255%	$10,458	1.276%
31-33	$45,992	$312,190	0.015%	$38,312	0.120%
42	$406	$34,114	0.001%	$1,741	0.023%
44-45	$67,706	$17,090	0.396%	$1,556	4.350%
48-49	$190,078	$49,210	0.386%	$12,921	1.471%
51	$21,602	$206,290	0.010%	$46,393	0.047%
52	$10,403	$9,096	0.114%	$1,359	0.766%
53	$542	$6,212	0.009%	$1,073	0.050%
54	$197,526	$92,801	0.213%	$36,934	0.535%
55	$1	$23	0.005%	$58	0.002%
56	$481,297	$47,639	1.010%	$22,553	2.134%
61	$24,322	$17,564	0.138%	$5,931	0.410%
62	$81,000	$28,422	0.285%	$11,158	0.726%
71	$24,067	$54,885	0.044%	$17,194	0.140%
72	$133,183	$11,440	1.164%	$3,294	4.043%
81	$24,158	$9,186	0.263%	$2,273	1.063%
--	**$1,473,765**	**$1,368,361**	**0.108%**	**$263,395**	**0.560%**

[a] SUSB 2017. Inflated to 2020$ using the GDP deflator.

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6. Regulatory Alternatives

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives. Executive Order 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; tailor the regulation to impose the least burden on society, consistent with achieving the regulatory objectives; and in choosing among alternative regulatory approaches, select those approaches that maximize net benefits. Executive Order 13563 further recognizes that some benefits are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify.

The Department notes that due to the prescriptive nature of Executive Order 14026, the Department does not have the discretion to implement alternatives that would violate the text of the Executive order, such as the adoption of a higher or lower minimum wage rate. However, the Department considered several alternatives to discretionary proposals set forth in this NPRM.

First, as explained above, the Department has proposed to define the term *United States,* when used in a geographic sense, to mean the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf lands as defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Wake Island, and Johnston Island. This proposed definition would confer broader geographic scope of Executive Order 14026 than did the Department's prior rulemaking implementing Executive Order 13658, which the Department interpreted to only apply to contracts performed in the 50 States and the District of Columbia.

The Department considered defining the term *United States* to exclude contracts performed in the territories listed above, consistent with the discretionary decision made in the Department's prior rulemaking implementing Executive Order 13658. Such an alternative would result in fewer contracts covered by Executive Order 14026 and fewer workers entitled to an initial $15 hourly minimum wage for work performed on or in connection with such contracts. This would result in a smaller income transfer to workers. The Department rejected this alternative

because, as discussed more fully above in the preamble and as reflected in the RIA, the Department has further examined the issue since its prior rulemaking in 2014 and consequently determined that the Federal Government's procurement interests in economy and efficiency would be promoted by extending the Executive Order 14026 minimum wage to workers performing on or in connection with covered contracts in Puerto Rico, the Virgin Islands, Outer Continental Shelf lands as defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Wake Island, and Johnston Island.

The Department also rejected this alternative of excluding the territories from coverage of Executive Order 14026 because each of the territories listed above is covered by both the SCA, *see* 29 CFR 4.112(a), and the FLSA, *see, e.g.,* 29 U.S.C. 213(f); 29 CFR 776.7; Fair Minimum Wage Act of 2007, Public Law 110–28, 121 Stat. 112 (2007). Because contractors operating in those territories will generally have familiarity with many of the requirements set forth in part 23 based on their coverage under the SCA and/or the FLSA, the Department does not believe that the proposed extension of Executive Order 14026 and part 23 to such contractors will impose a significant burden.

Second, pursuant to the Department's authority to adopt, ''as appropriate, exclusions from the requirements of [the order],'' 86 FR 22836, the Department is proposing to include in this NPRM, as it did in the regulations implementing Executive Order 13658, an exclusion from coverage for FLSA-covered workers who spend less than 20 percent of their work hours in a workweek performing ''in connection with'' covered contracts. This proposed exclusion does not apply to any worker performing ''on'' a covered contract whose wages are governed by the FLSA, SCA, or DBA. The proposed exclusion, which appears in § 23.40(f), is explained in greater detail in the discussion of the Exclusions section of this NPRM. The Department considered alternatives related to this proposed exclusion.

As the first alternative related to this exclusion, the Department considered eliminating the exclusion for FLSA-covered workers performing in connection with covered contracts for less than 20 percent of their workhours in a given workweek. The Department considered the elimination of this exclusion as an alternative, in part because Executive Order 14026 expressly states that its minimum wage protections apply to ''workers working on or in connection with'' covered contracts. 86 FR 22835.

As the second alternative pertaining to this exclusion, the Department considered raising the 20 percent threshold for this exclusion for FLSA-covered workers performing in connection with covered contracts. The Department assessed raising the threshold but does not have the discretion to entirely exclude these workers because the Executive order itself directs that they be generally covered.

The Department lacks data on how much time FLSA-covered workers spend in connection with covered contracts and is therefore unable to identify how many FLSA-covered workers perform services in connection with covered contracts for less than 20 percent of their work hours in a workweek. As a result, the Department provides a qualitative discussion of the alternatives.

If the Department were to omit this exclusion, more workers would be covered by the rule, and contractors would be required to pay more workers the applicable minimum wage rate (initially $15 per hour) for time spent performing in connection with covered contracts. This would result in greater income transfers to workers. Conversely, if the Department were to raise the 20 percent threshold, fewer workers would be covered by the rule, resulting in a smaller income transfer to workers.

The Department rejected these regulatory alternatives because having an exclusion for FLSA-covered workers performing in connection with covered contracts based on a 20 percent of hours worked in a week standard is a reasonable interpretation. The proposed exclusion ensures the broad coverage of workers performing on or in connection with covered contracts directed by Executive Order 14026 while also acknowledging the administrative challenges imposed by such broad coverage as expressed by contractors during the Executive Order 13658 rulemaking. The Department believes that the exclusion, as proposed, will assist both contractors and workers in adjusting to the requirements of Executive Order 14026 and reduce costs while ensuring broad application of the Executive order minimum wage.

V. Initial Regulatory Flexibility Analysis (IRFA)

The Regulatory Flexibility Act of 1980 (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), hereafter jointly referred to as the RFA, requires agencies to prepare regulatory flexibility analyses when they propose regulations that will have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 603. This rule is expected to have a significant economic impact, and thus the Department has prepared an RFA.

The RFA defines a ''small entity'' as a (1) small not-for-profit organization, (2) small governmental jurisdiction, or (3) small business. SBA establishes separate standards for each 6-digit NAICS industry code, and standard cutoffs are typically based on either the average annual number of employees or average annual receipts. For example, businesses may be defined as small if employing fewer than 100 to 1,500 employees, depending on the NAICS. In other industries, firms are small if annual receipts are less than $1 million to $41.5 million.[107]

A. Number of Affected Small Entities and Employees

The total number of potentially affected firms (507,200) is explained in section IV.B.2. This section describes how the Department determined that 385,100 of those firms are small businesses. The Department used three methods to identify small firms based on the data source:

1. For firms identified in SAM, the Department identified small contractors based on the six-digit NAICS code listed as their primary NAICS and whether SAM flagged the firm as small in that NAICS.[108] Of the 418,300 firms in SAM, 327,900 are small firms. The data in SAM is self-reported, so firms may not always indicate if they are small, or may not update their data, which may result in firms being listed as small when they no longer are. As a result, it is uncertain whether the number of small firms in SAM may be an under- or over-estimate.

2. Because some subcontractors may not be in SAM, the Department supplemented the SAM data with USAspending data (see section IV.B.2). To identify small subcontractors in the USASpending data, the Department searched for keywords ''Small'' or ''SBA'' in the business type field. Of the 33,500 subcontractors identified, 12,200 are small firms.

[107] The most recent SBA size definitions were set in August 2019. *See https://www.sba.gov/document/support--table-size-standards.* However, some exceptions do exist, for example, depository institutions (including credit unions, commercial banks, and non-commercial banks) are classified by total assets.

[108] The ''NAICS CODE STRING'' variable (column 33) and the ''PRIMARY NAICS'' variable (column 31) were the specific variables used. If the primary NAICS value contained a ''Y'' at the end when listed in the ''NAICS CODE STRING'' column, the firm was identified as small.

3. For entities operating under covered contracts on Federal properties or lands (see section IV.B.2), the Department applied the national ratio of businesses with less than 500 employees to total businesses, by industry, from the 2017 Statistics of U.S. Businesses (SUSB) data. The Department used businesses with fewer than 500 employees as a rough approximation for small businesses.[109] Of the 46,500 firms identified, 46,100 are small firms.

4. For territories, the Department used the ''Contracting Officer's Determination of Business Size'' in USASpending data. Of the 1,245 firms identified, 841 are small firms.

This estimated number of potentially affected small contractors includes some firms with no current Federal contracts covered by the Executive order. These firms may accrue regulatory familiarization costs despite not having employees affected, although their cost will be minimal. However, these firms should be removed when we consider costs per establishment with affected employees. Information was not available to eliminate these firms from the SAM database. Thus, the Department used data from USASpending to estimate a more appropriate number of small contractors with affected employees. Using the 2019 USASpending database, the Department found 64,500 private small prime contracting firms.[110] [111] Adding in the small subcontractors and the small entities operating under covered contracts on Federal properties or lands, yields an estimated 121,700 small contractors with active contracts in Year 1.[112]

The number of employees in small contracting firms is unknown. The Department estimated the share of total Federal contracting expenditures in the USASpending data associated with contractors labeled as small, by industry. The Department then applied these shares to all affected employees to estimate the share of affected employees in small entities by industry, then summed over all industries, to find that 97,900 employees of small contractors would be affected by the rule in Year 1 (Table 12).

In industries where the number of affected employees is smaller than the number of affected firms, the Department reduced the number of affected firms to the number of affected employees. This results in an estimated 67,700 small contractors with affected employees in Year 1. The calculations of direct costs and transfers per small contractor with affected employees, shown in Table 14 and Table 15, include only these 67,700 small firms.

[109] As noted above, the SBA size standard definitions vary by industry, but the Department believes businesses with less than 500 employees is a transparent method that provides a reasonable approximation of the number of firms SBA defines as small businesses. Additionally, to apply the separate definitions by NAICS codes, the most recent data available with the information needed is the 2012 SUSB.

[110] In the USASpending data, small contractors were identified based on the ''contractingofficerbusinesssizedetermination'' variable. The description of this variable in the *USASpending.gov* Data Dictionary is: ''The Contracting Officer's determination of whether the selected contractor meets the small business size standard for award to a small business for the NAICS code that is applicable to the contract.'' The Data Dictionary is available at: *https://www.usaspending.gov/data-dictionary.*

[111] This number is smaller than the number of small firms listed in SAM because it only includes firms with active covered contracts.

[112] See Table 14, footnote [b] for information about subcontractors.

Table 12: Small Federal Contracting Firms and Their Employees

NAICS	Contractors [a]		% of Expenditure in Small Contracting Firms [c]	% of Affected Employees in Small Contracting Firms	Affected Employees	
	Total	Small [b]			Total	Small
11	5,891	4,215	79.8%	79.8%	530	423
21	1,209	1,067	27.7%	27.7%	16	4
22	5,136	4,148	10.9%	10.9%	437	48
23	59,968	47,996	44.0%	44.0%	30,028	13,200
31-33	55,688	42,481	11.2%	11.2%	10,291	1,157
42	20,324	17,252	66.7%	66.7%	78	52
44-45	10,150	9,116	37.1%	37.1%	15,225	5,652
48-49	22,145	19,387	21.2%	21.2%	42,284	8,976
51	19,571	17,191	22.8%	22.8%	4,884	1,112
52	3,713	2,382	3.0%	3.0%	2,428	73
53	20,247	8,012	58.0%	58.0%	112	65
54	119,289	93,513	31.4%	31.4%	48,126	15,093
55	551	259	0.0%	0.0%	0	0
56	39,261	32,615	27.7%	27.7%	104,544	28,979
61	17,188	11,717	33.9%	33.9%	6,119	2,074
62	36,587	16,916	21.3%	21.3%	18,808	4,013
71	29,195	27,654	65.5%	65.5%	5,648	3,697
72	15,587	13,186	37.7%	37.7%	25,060	9,444
81	24,277	15,143	25.5%	25.5%	5,505	1,402
Sum	**505,977**	**384,252**	**28.3%**	**28.3%**	**320,124**	**95,465**
Territories	1,245	841	33.6%	33.6%	7,186	2,412
Total	**507,222**	**385,093**	**28.4%**	**28.4%**	**327,310**	**97,877**

[a] Source: SAM May 2021. Companies with a missing primary NAICS code or a code of 92 are distributed proportionately amongst all industries. All firms are assumed to be potentially affected. Includes 33,485 additional subcontractors identified in USASpending.gov from 2015-2019 and includes 45,454 firms with operations on Federal properties or lands. For territories, data from USASpending.gov 2019. These firms in territories are then subtracted from the SAM firm counts by NAICS to avoid double-counting.
[b] Includes 12,151 additional subcontractors identified in USASpending.gov as small and 45,016 firms with operations on Federal land or property as small.
[c] Source: USASpending.gov. Percentage of contracting expenditures for covered contracts in small businesses in 2019.

B. Small Entity Costs of the Proposed Rule

Small entities will have regulatory familiarization, implementation, and payroll costs (*i.e.,* transfers). These are discussed in detail in section IV.C.2. and summarized below. Total direct costs (*i.e.,* excluding transfers) to small contractors in Year 1 were estimated to be $11.3 million (Table 13). This is 66 percent of total direct costs, among all firms, in Year 1 (compared with 30 percent of affected employees in small contracting firms). Calculation of these costs is discussed in the following paragraphs.

Regulatory familiarization costs apply to all small firms that potentially hold covered contracts (385,100). Regulatory familiarization costs were assumed to

take one half hour of time per firm. This is an average across potentially affected contractors of all sizes and those with and without affected employees. An hour of a Compensation, Benefits, and Job Analysis Specialist's time is valued at $52.65 per hour.[113] [114]

Contractors with affected employees will experience implementation costs. For each affected employee, a worker will have to implement the changes and a manager will need to make minimal staffing changes and considerations. There will be costs to adjust the pay rate in the records and tell the affected employees, among other minimal staffing changes and considerations made by managers The Department splits a total implementation time of 10 minutes per affected employee between a Compensation, Benefits, and Job Analysis Specialist and a manager. Because of this component, costs vary with contractor size. Compensation, Benefits, and Job Analysis Specialists earn a loaded hourly wage of $52.64 per hour.[115] Workers in management occupations earn a loaded hourly wage of $86.02 per hour.[116] The estimated number of newly affected employees in Year 1 is 97,900 (Table 12). Therefore, total Year 1 implementation costs were estimated to equal $1.1 million ([$52.64 × 5 minutes × 97,900 employees] + [$86.02 × 5 minutes × 97,900 employees]).

To calculate payroll costs, the Department began with total transfers estimated in section IV.C.3. and multiplied this by the ratio of affected employees in small contracting firms to all affected employees. This yields the share of transfers occurring in small Federal contracting firms, $439.1 million in Year 1 (Table 13), which is 30 percent of total transfers for all contracting firms in Year 1.

Table 13: Costs and Transfers to Small Contractors in Year 1 (2020$)

NAICS	Direct Employer Costs ($1,000s)			Transfers in 2020$ ($1,000s)
	Regulatory Familiarization	Implementation	Total	
11	$111	$5	$116	$2,298
21	$28	$0	$28	$20
22	$109	$1	$110	$223
23	$1,263	$153	$1,416	$58,295
31-33	$1,118	$13	$1,132	$5,119
42	$454	$1	$455	$250
44-45	$240	$65	$305	$25,049
48-49	$510	$104	$614	$40,193
51	$453	$13	$465	$4,848
52	$63	$1	$64	$309
53	$211	$1	$212	$272
54	$2,462	$174	$2,636	$61,460
55	$7	$0	$7	$0
56	$859	$335	$1,193	$132,966
61	$308	$24	$332	$8,188
62	$445	$46	$492	$17,197
71	$728	$43	$771	$15,276
72	$347	$109	$456	$50,019
81	$399	$16	$415	$6,079
Sum	**$10,115**	**$1,103**	**$11,218**	**$428,062**
Territories	$22	$28	$50	$11,041
Total	**$10,137**	**$1,131**	**$11,268**	**$439,103**

[113] This includes the mean base wage of $32.30 from the OEWS plus benefits paid at a rate of 46 percent of the base wage, as estimated from the BLS's ECEC data, plus 17 percent for overhead. OEWS data available at: *https://www.bls.gov/oes/current/oes131141.htm.*

[114] Time and wage estimates for small establishments are the same as those used in the analysis for all contractors. The Department has not tailored these to small businesses due to lack of data.

[115] OEWS May 2020 reports a median base wage of $32.30 for compensation, benefits, and job analysis specialist. The Department supplemented this base wage with benefits paid at a rate of 46 percent of the base wage, as estimated from the BLS's ECEC data, and overhead costs of 17 percent. OEWS data available at: *http://www.bls.gov/oes/current/oes131141.htm.*

[116] OEWS May 2020 reports a median base wage of $52.77 for management occupations. The Department supplemented this base wage with benefits paid at a rate of 46 percent of the base wage, as estimated from the BLS's ECEC data, and overhead costs of 17 percent. OEWS data available at: *https://www.bls.gov/oes/current/oes110000.htm.*

To assess the impact on small contracting firms with affected employees, the Department assumed that affected employees would be distributed uniformly over small contracting firms within each industry. In an industry with fewer affected employees than firms, the Department assumed one affected employee would be in each firm with affected employees. For example, in NAICS 11, there are 423 affected workers and 2,199 small contractors with potentially affected workers. The Department assumed that 423 of the 2,199 firms would each have one affected worker. In industries in which the number of affected workers exceeds the number of small contractors, the Department divided the number of affected workers by the number of small contractors. For example, in NAICS 44–45, the Department assumed each of the 2,032 small firms had 2.8 affected workers per firm (5,652 affected workers divided by 2,032 small firms). Table 14 contains the average costs and transfers per small contractor with affected employees by industry. Average Year 1 costs and transfers per small contractor with affected employees range from $3,978 to $12,558 by industry.

Table 14: Average Costs and Transfers per Small Contractor with Affected Employees in Year 1 (2020$)

NAICS [a]	Small Contractors with Potentially Affected Employees [b]	Small Contractors with Affected Employees	Direct Employer Costs per Small Contractor	Transfers per Small Contractor	Total Costs and Transfers per Small Contractor
11	2,199	423	$30.71	$5,431	$5,462
21	155	4	$30.71	$4,535	$4,566
22	2,757	48	$30.71	$4,664	$4,694
23	11,923	11,923	$31.18	$4,889	$4,920
31-33	5,910	1,157	$30.71	$4,424	$4,454
42	443	52	$30.71	$4,793	$4,824
44-45	2,032	2,032	$38.53	$12,328	$12,367
48-49	7,908	7,908	$31.30	$5,082	$5,114
51	8,073	1,112	$30.71	$4,359	$4,389
52	181	73	$30.71	$4,267	$4,298
53	1,995	65	$30.71	$4,190	$4,221
54	24,733	15,093	$30.71	$4,072	$4,103
55	0	0	N/A	N/A	N/A
56	10,621	10,621	$38.30	$12,520	$12,558
61	2,275	2,074	$30.71	$3,947	$3,978
62	4,035	4,013	$30.71	$4,286	$4,316
71	24,677	3,697	$30.71	$4,132	$4,163
72	5,205	5,205	$34.28	$9,610	$9,644
81	5,710	1,402	$30.71	$4,337	$4,368
Sum	**120,834**	**66,903**	**N/A**	**N/A**	**N/A**
Territories	841	841	$38.91	$13,129	$13,168
Total	**121,675**	**67,744**	**N/A**	**N/A**	**N/A**

[a] 11=Agriculture, forestry, fishing and hunting; 21=Mining; 22=Utilities; 23=Construction; 31-33=Manufacturing; 42=Wholesale trade; 44-45=Retail trade; 48-49=Transportation and warehousing; 51=Information; 52=Finance and insurance; 53=Real estate and rental and leasing; 54=Professional, scientific, and technical services; 55=Management of companies and enterprises; 56=Administrative and waste services; 61=Educational services; 62=Health care and social assistance; 71=Arts, entertainment, and recreation; 72=Accommodation and food services; 81=Other services.
[b] Source: USASpending.gov 2019. Firms with contracting revenue, excluding contracts only for goods. Also includes 12,151 additional subcontractors identified in USASpending.gov from 2015-2019 and 45,016 firms with operations on Federal properties or lands.

To estimate whether these costs and transfers will have a substantial impact on these small entities with affected employees, they are compared to total revenues for these firms. Based on SUSB data, small Federal contractors with

affected employees had total annual revenues of $115.1 billion from all sources (Table 15).[117] Transfers from small contractors and costs to small contractors in Year 1 ($430.2 million) are less than 0.4 percent of revenues on average and exceed 1.0 percent in only the administrative and waste services industry (1.0 percent). Additionally, much of this cost will either be reimbursed by the Federal Government or offset by productivity gains and cost-savings. Therefore, the Department believes this proposed rule will not have a significant impact on small businesses.

Table 15: Costs and Transfers as Share of Revenue in Small Contracting Firms in Year 1 [a]

NAICS	Total Costs and Transfers ($1,000s)	Small Contracting Firm Revenues (Billions) [b]	Total as Share of Revenues
11	$2,311	$0.6	0.386%
21	$20	$0.0	0.072%
22	$224	$0.9	0.024%
23	$58,667	$27.1	0.217%
31-33	$5,155	$6.6	0.078%
42	$252	$0.5	0.047%
44-45	$25,127	$6.4	0.391%
48-49	$40,440	$15.2	0.266%
51	$4,883	$3.7	0.132%
52	$312	$0.2	0.149%
53	$274	$0.1	0.309%
54	$61,923	$20.0	0.310%
55	N/A	$0.0	N/A
56	$133,372	$13.1	1.015%
61	$8,252	$3.3	0.252%
62	$17,321	$5.9	0.294%
71	$15,390	$4.7	0.325%
72	$50,198	$5.5	0.912%
81	$6,122	$1.3	0.487%
--	**$430,242**	**$115.1**	**0.374%**

[a] Excludes U.S. territories because SUSB does not include territories.

[b] Source: Total revenue for firms with less than 500 employees from 2017 SUSB, inflated to 2020$ using the GDP Deflator. Revenues for small contractors calculated by multiplying total revenue by the ratio of small contracting firms to total number of small firms (approximated by those with less than 500 employees in the 2017 SUSB).

To estimate average annualized costs to small contracting firms the Department projected small business costs and transfers forward 9 years. To do this, the Department calculated the ratio of affected employees in small contracting firms to all affected employees in Year 1, then multiplied this ratio by the 10-year projections of

[117] Total revenue for small firms from 2017 SUSB; inflated to 2020$ using the GDP deflator. Revenues for small contractors calculated by multiplying total revenue by the ratio of contracting firms that are small.

national costs and transfers (*see* section IV.C.). This yields the share of projected costs and transfers attributable to small businesses (Table 16).

Table 16: Projected Costs to Small Businesses (Millions of 2020$)

Year/Discount Rate	Direct Employer Costs	Transfers	Total
Years 1 Through 10			
Year 1	$11.3	$439.1	$450.4
Year 2	$0.0	$441.7	$441.7
Year 3	$0.0	$444.4	$444.4
Year 4	$0.0	$447.1	$447.1
Year 5	$0.0	$449.8	$449.8
Year 6	$0.0	$452.5	$452.5
Year 7	$0.0	$455.3	$455.3
Year 8	$0.0	$458.0	$458.0
Year 9	$0.0	$460.8	$460.8
Year 10	$0.0	$463.6	$463.6
Average Annualized Amounts			
3% discount rate	$1.3	$450.6	$451.9
7% discount rate	$1.5	$449.7	$451.2

C. Relevant Federal Rules Duplicating, Overlapping, or Conflicting with the Rule

C. Relevant Federal Rules Duplicating, Overlapping, or Conflicting With the Rule

Section 4(a) of the Executive order requires the FARC to issue regulations to provide for inclusion of the applicable contract clause in Federal procurement solicitations and contracts subject to the order; thus, the contract clause and some requirements applicable to contracting agencies will appear in both part 23 and in the FARC regulations. The Department is not aware of any relevant Federal rules that conflict with this NPRM.

D. Alternatives to the Proposed Rule

Executive Order 14026 is prescriptive and does not authorize the Department to consider less burdensome alternatives for small businesses. However, if stakeholders can identify alternatives that would accomplish the stated objectives of Executive Order 14026 and minimize any significant economic impact of the proposed rule on small entities, the Department would welcome that feedback. Below, the Department considers the specific alternatives required by section 603(c) of the RFA.

E. Differing Compliance and Reporting Requirements for Small Entities

This NPRM provides for no differing compliance requirements and reporting requirements for small entities. The Department has strived to have this proposal implement the minimum wage requirements of Executive Order 14026 with the least possible burden for small entities. The NPRM provides a number of efficient and informal alternative dispute mechanisms to resolve concerns about contractor compliance, including having the contracting agency provide compliance assistance to the contractor about the minimum wage requirements, and allowing for the Department to attempt an informal conciliation of complaints instead of engaging in extensive investigations. These tools will provide contractors with an opportunity to resolve inadvertent errors rapidly and before significant liabilities develop.

F. Clarification, Consolidation, and Simplification of Compliance and Reporting Requirements for Small Entities

This proposed rule was drafted to clearly state the compliance requirements for all contractors subject to Executive Order 14026. The proposed rule does not contain any reporting requirements. The recordkeeping requirements imposed by this proposed rule are necessary for contractors to determine their compliance with the rule as well as for the Department and workers to determine the contractor's compliance with the law. The recordkeeping provisions apply generally to all businesses—large and small—covered by the Executive order; no rational basis exists for creating an exemption from compliance and recordkeeping requirements for small businesses. The Department makes available a variety of resources to employers for understanding their obligations and achieving compliance.

G. Use of Performance Rather Than Design Standards

This proposed rule was written to provide clear guidelines to ensure compliance with the Executive order minimum wage requirements. Under the proposed rule, contractors may achieve compliance through a variety of means. The Department makes available a variety of resources to contractors for understanding their obligations and achieving compliance.

H. Exemption From Coverage of the Rule for Small Entities

Executive Order 14026 establishes its own coverage and exemption requirements; therefore, the Department has no authority to exempt small businesses from the minimum wage requirements of the order.

VI. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1532, requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing any Federal mandate that may result in excess of $100 million (adjusted annually for inflation) in expenditures in any one year by state, local, and tribal governments in the aggregate, or by the private sector. This statement must: (1) Identify the authorizing legislation; (2) present the estimated costs and benefits of the rule and, to the extent that such estimates are feasible and relevant, its estimated effects on the national economy; (3) summarize and evaluate state, local, and Tribal government input; and (4) identify reasonable alternatives and select, or explain the non-selection, of the least costly, most cost-effective, or least burdensome alternative.

A. Authorizing Legislation

This proposed rule is issued in response to section 4 of Executive Order 14026, ''Increasing the Minimum Wage for Federal Contractors,'' which instructs the Department to ''issue regulations by November 24, 2021, to implement the requirements of this order.'' 86 FR 22836.

B. Assessment of Costs and Benefits

For purposes of the UMRA, this proposed rule includes a Federal mandate that would result in increased expenditures by the private sector of more than $158 million in at least one year, and could potentially result in increased expenditures by state and local governments that hold contracts with the Federal Government.[118] It will not result in increased expenditures by Tribal govenments because they are excluded from coverage under section 8(c) of the order. In the Department's experience, state and local governments are parties to a relatively small number of SCA- and DBA-covered contracts. Additionally, because costs are a small share of revenues, impacts to governments and tribes should be small.

The Department determined that the proposed rule would result in Year 1 direct employer costs to the private sector of $17.1 million, in regulatory familiarization and implementation costs. The proposed rule will also result in transfer payments for the private sector of $1.5 billion in Year 1, with an average annualized value of $1.5 billion over ten years.

UMRA requires agencies to estimate the effect of a regulation on the national economy if such estimates are reasonably feasible and the effect is relevant and material.[119] However, OMB guidance on this requirement notes that such macroeconomic effects tend to be measurable in nationwide econometric models only if the economic effect of the regulation reaches 0.25 percent to 0.5 percent of Gross Domestic Product (GDP), or in the range of $52.3 billion to $104.7 billion (using 2020 GDP).[120] A regulation with a smaller aggregate effect is not likely to have a measurable effect in macroeconomic terms, unless it is highly focused on a particular geographic region or economic sector, which is not the case with this rule.

The Department's RIA estimates that the total costs of the final rule will be $1.5 billion. Given OMB's guidance, the Department has determined that a full macroeconomic analysis is not likely to show that these costs would have any measurable effect on the economy.

VII. Executive Order 13132, Federalism

The Department has (1) reviewed this proposed rule in accordance with Executive Order 13132 regarding federalism and (2) determined that it does not have federalism implications. The proposed rule would not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

VIII. Executive Order 13175, Indian Tribal Governments

This proposed rule would not have tribal implications under Executive Order 13175 that would require a tribal summary impact statement. The proposed rule would not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

List of Subjects in 29 CFR Parts 10 and 23

Administrative practice and procedure, Construction, Government contracts, Law enforcement, Minimum wages, Reporting and recordkeeping requirements, Wages.

Jessica Looman,

Acting Administrator, Wage and Hour Division.

For the reasons set out in the preamble, the Department of Labor proposes to amend 29 CFR subtitle A as follows:

PART 10—ESTABLISHING A MINIMUM WAGE FOR CONTRACTORS

■ 1. The authority citation for part 10 is revised to read as follows:

Authority: 5 U.S.C. 301; section 4, E.O. 13658, 79 FR 9851, 3 CFR, 2014 Comp., p. 219; section 4, E.O. 14026, 86 FR 22835; Secretary of Labor's Order No. 01–2014, 79 FR 77527.

■ 2. Amend § 10.1 by adding paragraph (d) to read as follows:

§ 10.1 Purpose and scope.

* * * * *

(d) *Relation to Executive Order 14026.* As of January 30, 2022, Executive Order 13658 is superseded to the extent that it is inconsistent with Executive Order 14026 of April 27, 2021, ''Increasing the Minimum Wage for Federal Contractors,'' and its implementing regulations at 29 CFR part 23. A covered contract that is entered into on or after January 30, 2022, or that is renewed or extended (pursuant to an option or otherwise) on or after January 30, 2022, is generally subject to the higher minimum wage rate established by Executive Order 14026 and its regulations at 29 CFR part 23.

■ 3. Amend § 10.2 by revising the definition of ''New contract'' to read as follows:

§ 10.2 Definitions.

* * * * *

New contract means a contract that results from a solicitation issued on or between January 1, 2015 and January 29, 2022, or a contract that is awarded outside the solicitation process on or between January 1, 2015 and January 29, 2022. This term includes both new contracts and replacements for expiring contracts. It does not apply to the unilateral exercise of a pre-negotiated option to renew an existing contract by the Federal Government. For purposes of the Executive Order, a contract that is entered into prior to January 1, 2015

[118] Calculated using growth in the Gross Domestic Product deflator from 1995 to 2020. Bureau of Economic Analysis. Table 1.1.9. Implicit Price Deflators for Gross Domestic Product.

[119] *See* 2 U.S.C. 1532(a)(4).

[120] According to the Bureau of Economic Analysis, 2020 GDP was $20.9 trillion. *https://www.bea.gov/sites/default/files/2021-04/gdp1q21_adv.pdf.*

will constitute a new contract if, through bilateral negotiation, on or between January 1, 2015 and January 29, 2022:

(1) The contract is renewed;

(2) The contract is extended, unless the extension is made pursuant to a term in the contract as of December 31, 2014, providing for a short-term limited extension; or

(3) The contract is amended pursuant to a modification that is outside the scope of the contract.

* * * * *

§ 10.4 [Amended]

■ 4. Amend § 10.4 by removing paragraph (g).

■ 5. Amend § 10.5 by adding a sentence at the end of paragraph (c) to read as follows:

§ 10.5 Minimum wage for Federal contractors and subcontractors.

* * * * *

(c) * * * A covered contract that is entered into on or after January 30, 2022, or that is renewed or extended (pursuant to an option or otherwise) on or after January 30, 2022, is generally subject to the higher minimum wage rate established by Executive Order 14026 of April 27, 2021, ''Increasing the Minimum Wage for Federal Contractors,'' and its regulations at 29 CFR part 23.

■ 6. Add part 23 to read as follows:

PART 23—INCREASING THE MINIMUM WAGE FOR FEDERAL CONTRACTORS

Subpart A—General

Sec.
23.10 Purpose and scope.
23.20 Definitions.
23.30 Coverage.
23.40 Exclusions.
23.50 Minimum wage for Federal contractors and subcontractors.
23.60 Antiretaliation.
23.70 Waiver of rights.
23.80 Severability.

Subpart B—Federal Government Requirements

23.110 Contracting agency requirements.
23.120 Department of Labor requirements.

Subpart C—Contractor Requirements

23.210 Contract clause.
23.220 Rate of pay.
23.230 Deductions.
23.240 Overtime payments.
23.250 Frequency of pay.
23.260 Records to be kept by contractors.
23.270 Anti-kickback.
23.280 Tipped employees.
23.290 Notice.

Subpart D—Enforcement

23.410 Complaints.
23.420 Wage and Hour Division conciliation.
23.430 Wage and Hour Division investigation.
23.440 Remedies and sanctions.

Subpart E—Administrative Proceedings

23.510 Disputes concerning contractor compliance.
23.520 Debarment proceedings.
23.530 Referral to Chief Administrative Law Judge; amendment of pleadings.
23.540 Consent findings and order.
23.550 Proceedings of the Administrative Law Judge.
23.560 Petition for review.
23.570 Administrative Review Board proceedings.
23.580 Administrator ruling.
Appendix A to Part 23—Contract Clause

Authority: 5 U.S.C. 301; section 4, E.O. 14026, 86 FR 22835; Secretary's Order 01–2014, 79 FR 77527.

Subpart A—General

§ 23.10 Purpose and scope.

(a) *Purpose.* This part contains the Department of Labor's rules relating to the administration of Executive Order 14026 (Executive Order or the Order), ''Increasing the Minimum Wage for Federal Contractors,'' and implements the enforcement provisions of the Executive Order. The Executive Order assigns responsibility for investigating potential violations of and obtaining compliance with the Executive Order to the Department of Labor.

(b) *Policy.* Executive Order 14026 states that the Federal Government's procurement interests in economy and efficiency are promoted when the Federal Government contracts with sources that adequately compensate their workers. Specifically, the Order explains that raising the minimum wage enhances worker productivity and generates higher-quality work by boosting workers' health, morale, and effort; reducing absenteeism and turnover; and lowering supervisory and training costs. Accordingly, Executive Order 14026 sets forth a general position of the Federal Government that increasing the hourly minimum wage paid by Federal contractors to $15.00 beginning January 30, 2022, (with future annual increases based on inflation) will lead to improved economy and efficiency in Federal procurement. The Order provides that executive departments and agencies, including independent establishments subject to the Federal Property and Administrative Services Act, shall, to the extent permitted by law, ensure that new covered contracts, contract-like instruments, and solicitations (collectively referred to as ''contracts'') include a clause, which the contractor and any covered subcontractors shall incorporate into lower-tier subcontracts, specifying, as a condition of payment, that the minimum wage to be paid to workers, including workers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c), performing work on or in connection with the contract or any covered subcontract thereunder, shall be at least:

(1) $15.00 per hour beginning January 30, 2022; and

(2) Beginning January 1, 2023, and annually thereafter, an amount determined by the Secretary of Labor (the Secretary) pursuant to the Order. Nothing in Executive Order 14026 or this part shall excuse noncompliance with any applicable Federal or state prevailing wage law or any applicable law or municipal ordinance establishing a minimum wage higher than the minimum wage established under the Order.

(c) *Scope.* Neither Executive Order 14026 nor this part creates or changes any rights under the Contract Disputes Act, 41 U.S.C. 7101 *et seq.,* or any private right of action. The Executive Order provides that disputes regarding whether a contractor has paid the minimum wages prescribed by the Order, to the extent permitted by law, shall be disposed of only as provided by the Secretary in regulations issued under the Order. However, nothing in the Order or this part is intended to limit or preclude a civil action under the False Claims Act, 31 U.S.C. 3730, or criminal prosecution under 18 U.S.C. 1001. The Order similarly does not preclude judicial review of final decisions by the Secretary in accordance with the Administrative Procedure Act, 5 U.S.C. 701 *et seq.*

§ 23.20 Definitions.

For purposes of this part:

Administrative Review Board (ARB or Board) means the Administrative Review Board, U.S. Department of Labor.

Administrator means the Administrator of the Wage and Hour Division and includes any official of the Wage and Hour Division authorized to perform any of the functions of the Administrator under this part.

Agency head means the Secretary, Attorney General, Administrator, Governor, Chairperson, or other chief official of an executive agency, unless otherwise indicated, including any deputy or assistant chief official of an executive agency or any persons authorized to act on behalf of the agency head.

Concessions contract or *contract for concessions* means a contract under which the Federal Government grants a

right to use Federal property, including land or facilities, for furnishing services. The term *concessions contract* includes but is not limited to a contract the principal purpose of which is to furnish food, lodging, automobile fuel, souvenirs, newspaper stands, and/or recreational equipment, regardless of whether the services are of direct benefit to the Government, its personnel, or the general public.

Contract or *contract-like instrument* means an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law. This definition includes, but is not limited to, a mutually binding legal relationship obligating one party to furnish services (including construction) and another party to pay for them. The term *contract* includes all contracts and any subcontracts of any tier thereunder, whether negotiated or advertised, including any procurement actions, lease agreements, cooperative agreements, provider agreements, intergovernmental service agreements, service agreements, licenses, permits, or any other type of agreement, regardless of nomenclature, type, or particular form, and whether entered into verbally or in writing. The term *contract* shall be interpreted broadly as to include, but not be limited to, any contract within the definition provided in the Federal Acquisition Regulation (FAR) at 48 CFR chapter 1 or applicable Federal statutes. This definition includes, but is not limited to, any contract that may be covered under any Federal procurement statute. Contracts may be the result of competitive bidding or awarded to a single source under applicable authority to do so. In addition to bilateral instruments, contracts include, but are not limited to, awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; exercised contract options; and bilateral contract modifications. The term *contract* includes contracts covered by the Service Contract Act, contracts covered by the Davis-Bacon Act, concessions contracts not otherwise subject to the Service Contract Act, and contracts in connection with Federal property or land and related to offering services for Federal employees, their dependents, or the general public.

Contracting officer means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. This term includes certain authorized representatives of the contracting officer acting within the limits of their authority as delegated by the contracting officer.

Contractor means any individual or other legal entity that is awarded a Federal Government contract or subcontract under a Federal Government contract. The term *contractor* refers to both a prime contractor and all of its subcontractors of any tier on a contract with the Federal Government. The term *contractor* includes lessors and lessees, as well as employers of workers performing on or in connection with covered Federal contracts whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c). The term *employer* is used interchangeably with the terms *contractor* and *subcontractor* in various sections of this part. The U.S. Government, its agencies, and instrumentalities are not contractors, subcontractors, employers, or joint employers for purposes of compliance with the provisions of the Executive Order.

Davis-Bacon Act means the Davis-Bacon Act of 1931, as amended, 40 U.S.C. 3141 *et seq.,* and the implementing regulations in this chapter.

Executive departments and agencies means executive departments, military departments, or any independent establishments within the meaning of 5 U.S.C. 101, 102, and 104(1), respectively, and any wholly owned Government corporation within the meaning of 31 U.S.C. 9101.

Executive Order 13658 means Executive Order 13658 of February 12, 2014, ''Establishing a Minimum Wage for Contractors,'' 3 CFR, 2014 Comp., p. 219, and its implementing regulations at 29 CFR part 10.

Executive Order 14026 minimum wage means a wage that is at least:

(1) $15.00 per hour beginning January 30, 2022; and

(2) Beginning January 1, 2023, and annually thereafter, an amount determined by the Secretary pursuant to section 2 of the Executive Order.

Fair Labor Standards Act (FLSA) means the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 201 *et seq.,* and the implementing regulations in this chapter.

Federal Government means an agency or instrumentality of the United States that enters into a contract pursuant to authority derived from the Constitution or the laws of the United States. For purposes of the Executive Order and this part, this definition does not include the District of Columbia or any Territory or possession of the United States.

New contract means a contract that is entered into on or after January 30, 2022, or a contract that is renewed or extended (pursuant to an exercised option or otherwise) on or after January 30, 2022. For purposes of the Executive Order, a contract that is entered into prior to January 30, 2022 will constitute a *new contract* if, on or after January 30, 2022:

(1) The contract is renewed;

(2) The contract is extended; or

(3) An option on the contract is exercised.

Office of Administrative Law Judges means the Office of Administrative Law Judges, U.S. Department of Labor.

Option means a unilateral right in a contract by which, for a specified time, the Government may elect to purchase additional supplies or services called for by the contract, or may elect to extend the term of the contract.

Procurement contract for construction means a procurement contract for the construction, alteration, or repair (including painting and decorating) of public buildings or public works and which requires or involves the employment of mechanics or laborers, and any subcontract of any tier thereunder. The term *procurement contract for construction* includes any contract subject to the provisions of the Davis-Bacon Act, as amended, and the implementing regulations in this chapter.

Procurement contract for services means a procurement contract the principal purpose of which is to furnish services in the United States through the use of service employees, and any subcontract of any tier thereunder. The term *procurement contract for services* includes any contract subject to the provisions of the Service Contract Act, as amended, and the implementing regulations in this chapter.

Service Contract Act means the McNamara-O'Hara Service Contract Act of 1965, as amended, 41 U.S.C. 6701 *et seq.,* and the implementing regulations in this chapter.

Solicitation means any request to submit offers, bids, or quotations to the Federal Government.

Tipped employee means any employee engaged in an occupation in which the employee customarily and regularly receives more than $30 a month in tips. For purposes of the Executive Order, a worker performing on or in connection with a contract covered by the Executive Order who meets this definition is a tipped employee.

United States means the United States and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States, including corporations of which all or substantially all of the stock is owned by the United States, by the foregoing departments, establishments, agencies, instrumentalities, and including nonappropriated fund instrumentalities. When used in a geographic sense, the *United States* means the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf lands as defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Wake Island, and Johnston Island.

Wage and Hour Division means the Wage and Hour Division, U.S. Department of Labor.

Wage determination includes any determination of minimum hourly wage rates or fringe benefits made by the Secretary of Labor pursuant to the provisions of the Service Contract Act or the Davis-Bacon Act. This term includes the original determination and any subsequent determinations modifying, superseding, correcting, or otherwise changing the provisions of the original determination.

Worker means any person engaged in performing work on or in connection with a contract covered by the Executive Order, and whose wages under such contract are governed by the Fair Labor Standards Act, the Service Contract Act, or the Davis-Bacon Act, other than individuals employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 CFR part 541, regardless of the contractual relationship alleged to exist between the individual and the employer. The term *worker* includes workers performing on or in connection with a covered contract whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c), as well as any person working on or in connection with a covered contract and individually registered in a bona fide apprenticeship or training program registered with the U.S. Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship. A worker performs ''on'' a contract if the worker directly performs the specific services called for by the contract. A worker performs ''in connection with'' a contract if the worker's work activities are necessary to the performance of a contract but are not the specific services called for by the contract.

§ 23.30 Coverage.

(a) This part applies to any new contract, as defined in § 23.20, with the Federal Government, unless excluded by § 23.40, provided that:

(1)(i) It is a procurement contract for construction covered by the Davis-Bacon Act;

(ii) It is a contract for services covered by the Service Contract Act;

(iii) It is a contract for concessions, including any concessions contract excluded from coverage under the Service Contract Act by Department of Labor regulations at 29 CFR 4.133(b); or

(iv) It is a contract entered into with the Federal Government in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public; and

(2) The wages of workers under such contract are governed by the Fair Labor Standards Act, the Service Contract Act, or the Davis-Bacon Act.

(b) For contracts covered by the Service Contract Act or the Davis-Bacon Act, this part applies to prime contracts only at the thresholds specified in those statutes. For procurement contracts where workers' wages are governed by the Fair Labor Standards Act, this part applies when the prime contract exceeds the micro-purchase threshold, as defined in 41 U.S.C. 1902(a).

(c) This part only applies to contracts with the Federal Government requiring performance in whole or in part within the United States, which when used in a geographic sense in this part means the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf lands as defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Wake Island, and Johnston Island. If a contract with the Federal Government is to be performed in part within and in part outside the United States and is otherwise covered by the Executive Order and this part, the minimum wage requirements of the Order and this part would apply with respect to that part of the contract that is performed within the United States.

(d) This part does not apply to contracts for the manufacturing or furnishing of materials, supplies, articles, or equipment to the Federal Government, including those that are subject to the Walsh-Healey Public Contracts Act, 41 U.S.C. 6501 *et seq.*

§ 23.40 Exclusions.

(a) *Grants.* The requirements of this part do not apply to grants within the meaning of the Federal Grant and Cooperative Agreement Act, as amended, 31 U.S.C. 6301 *et seq.*

(b) *Contracts or agreements with Indian Tribes.* This part does not apply to contracts or agreements with Indian Tribes under the Indian Self-Determination and Education Assistance Act, as amended, 25 U.S.C. 5301 *et seq.*

(c) *Procurement contracts for construction that are excluded from coverage of the Davis-Bacon Act.* Procurement contracts for construction that are not covered by the Davis-Bacon Act are not subject to this part.

(d) *Contracts for services that are exempted from coverage under the Service Contract Act.* Service contracts, except for those expressly covered by § 23.30(a)(1)(iii) or (iv), that are exempt from coverage of the Service Contract Act pursuant to its statutory language at 41 U.S.C. 6702(b) or its implementing regulations, including those at 29 CFR 4.115 through 4.122 and 29 CFR 4.123(d) and (e), are not subject to this part.

(e) *Employees who are exempt from the minimum wage requirements of the Fair Labor Standards Act under 29 U.S.C. 213(a) and 214(a)–(b).* Except for workers who are otherwise covered by the Davis-Bacon Act or the Service Contract Act, this part does not apply to employees who are not entitled to the minimum wage set forth at 29 U.S.C. 206(a)(1) of the Fair Labor Standards Act pursuant to 29 U.S.C. 213(a) and 214(a)–(b). Pursuant to the exclusion in this paragraph (e), individuals that are not subject to the requirements of this part include but are not limited to:

(1) *Learners, apprentices, or messengers.* This part does not apply to learners, apprentices, or messengers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(a).

(2) *Students.* This part does not apply to student workers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(b).

(3) *Individuals employed in a bona fide executive, administrative, or professional capacity.* This part does not apply to workers who are employed by Federal contractors in a bona fide executive, administrative, or professional capacity, as those terms are defined and delimited in 29 CFR part 541.

(f) *FLSA-covered workers performing in connection with covered contracts for less than 20 percent of their work hours*

in a given workweek. This part does not apply to FLSA-covered workers performing in connection with covered contracts, *i.e.,* those workers who perform work duties necessary to the performance of the contract but who are not directly engaged in performing the specific work called for by the contract, that spend less than 20 percent of their hours worked in a particular workweek performing in connection with such contracts. The exclusion in this paragraph (f) is inapplicable to covered workers performing on covered contracts, *i.e.,* those workers directly engaged in performing the specific work called for by the contract.

(g) *Contracts that result from a solicitation issued before January 30, 2022, and that are entered into on or between January 30, 2022 and March 30, 2022.* This part does not apply to contracts that result from a solicitation issued prior to January 30, 2022 and that are entered into on or between January 30, 2022 and March 30, 2022. However, if such a contract is subsequently extended or renewed, or an option is subsequently exercised under that contract, the Executive Order and this part shall apply to that extension, renewal, or option.

§ 23.50 Minimum wage for Federal contractors and subcontractors.

(a) *General.* Pursuant to Executive Order 14026, the minimum hourly wage rate required to be paid to workers performing on or in connection with covered contracts with the Federal Government is at least:

(1) $15.00 per hour beginning January 30, 2022; and

(2) Beginning January 1, 2023, and annually thereafter, an amount determined by the Secretary pursuant to section 2 of Executive Order 14026. In accordance with section 2 of the Order, the Secretary will determine the applicable minimum wage rate to be paid to workers performing on or in connection with covered contracts on an annual basis beginning at least 90 days before any new minimum wage is to take effect.

(b) *Method for determining the applicable Executive Order minimum wage for workers.* The minimum wage to be paid to workers, including workers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c), in the performance of a covered contract shall be at least:

(1) $15.00 per hour beginning January 30, 2022; and

(2) An amount determined by the Secretary, beginning January 1, 2023, and annually thereafter. The applicable minimum wage determined for each calendar year by the Secretary shall be:

(i) Not less than the amount in effect on the date of such determination;

(ii) Increased from such amount by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (United States city average, all items, not seasonally adjusted), or its successor publication, as determined by the Bureau of Labor Statistics; and

(iii) Rounded to the nearest multiple of $0.05. In calculating the annual percentage increase in the Consumer Price Index for purposes of this section, the Secretary shall compare such Consumer Price Index for the most recent year available with the Consumer Price Index for the preceding year.

(c) *Relation to other laws.* Nothing in the Executive Order or this part shall excuse noncompliance with any applicable Federal or state prevailing wage law or any applicable law or municipal ordinance establishing a minimum wage higher than the minimum wage established under the Executive Order and this part.

(d) *Relation to Executive Order 13658.* As of January 30, 2022, Executive Order 13658 is superseded to the extent that it is inconsistent with Executive Order 14026 and this part. Unless otherwise excluded by § 23.40, workers performing on or in connection with a covered new contract, as defined in § 23.20, must be paid at least the minimum hourly wage rate established by Executive Order 14026 and this part rather than the lower hourly minimum wage rate established by Executive Order 13658 and its implementing regulations in 29 CFR part 10.

§ 23.60 Antiretaliation.

It shall be unlawful for any person to discharge or in any other manner discriminate against any worker because such worker has filed any complaint or instituted or caused to be instituted any proceeding under or related to Executive Order 14026 or this part, or has testified or is about to testify in any such proceeding.

§ 23.70 Waiver of rights.

Workers cannot waive, nor may contractors induce workers to waive, their rights under Executive Order 14026 or this part.

§ 23.80 Severability.

If any provision of this part is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, or stayed pending further agency action, the provision shall be construed so as to continue to give the maximum effect to the provision permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event the provision shall be severable from this part and shall not affect the remainder thereof.

Subpart B—Federal Government Requirements

§ 23.110 Contracting agency requirements.

(a) *Contract clause.* The contracting agency shall include the Executive Order minimum wage contract clause set forth in appendix A of this part in all covered contracts and solicitations for such contracts, as described in § 23.30, except for procurement contracts subject to the FAR. The required contract clause directs, as a condition of payment, that all workers performing work on or in connection with covered contracts must be paid the applicable, currently effective minimum wage under Executive Order 14026 and § 23.50. For procurement contracts subject to the FAR, contracting agencies must use the clause set forth in the FAR developed to implement this section. Such clause will accomplish the same purposes as the clause set forth in appendix A of this part and be consistent with the requirements set forth in this section.

(b) *Failure to include the contract clause.* Where the Department or the contracting agency discovers or determines, whether before or subsequent to a contract award, that a contracting agency made an erroneous determination that Executive Order 14026 or this part did not apply to a particular contract and/or failed to include the applicable contract clause in a contract to which the Executive Order applies, the contracting agency, on its own initiative or within 15 calendar days of notification by an authorized representative of the Department of Labor, shall incorporate the contract clause in the contract retroactive to commencement of performance under the contract through the exercise of any and all authority that may be needed (including, where necessary, its authority to negotiate or amend, its authority to pay any necessary additional costs, and its authority under any contract provision authorizing changes, cancellation and termination).

(c) *Withholding.* A contracting officer shall upon his or her own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the prime contractor under the covered contract or any other Federal contract with the same prime contractor,

so much of the accrued payments or advances as may be considered necessary to pay workers the full amount of wages required by the Executive Order. In the event of failure to pay any covered workers all or part of the wages due under Executive Order 14026, the agency may, after authorization or by direction of the Department of Labor and written notification to the contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of Executive Order 14026 may be grounds for termination of the right to proceed with the contract work. In such event, the contracting agency may enter into other contracts or arrangements for completion of the work, charging the contractor in default with any additional cost.

(d) *Actions on complaints*—(1) *Reporting*—(i) *Reporting time frame.* The contracting agency shall forward all information listed in paragraph (d)(1)(ii) of this section to the Division of Government Contracts Enforcement, Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210 within 14 calendar days of receipt of a complaint alleging contractor noncompliance with the Executive Order or this part or within 14 calendar days of being contacted by the Wage and Hour Division regarding any such complaint.

(ii) *Report contents.* The contracting agency shall forward to the Division of Government Contracts Enforcement, Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210 any:

(A) Complaint of contractor noncompliance with Executive Order 14026 or this part;

(B) Available statements by the worker, contractor, or any other person regarding the alleged violation;

(C) Evidence that the Executive Order minimum wage contract clause was included in the contract;

(D) Information concerning known settlement negotiations between the parties, if applicable; and

(E) Any other relevant facts known to the contracting agency or other information requested by the Wage and Hour Division.

(2) [Reserved]

§ 23.120 Department of Labor requirements.

(a) *In general.* The Executive Order minimum wage applicable from January 30, 2022 through December 31, 2022, is $15.00 per hour. The Secretary will determine the applicable minimum wage rate to be paid to workers performing work on or in connection with covered contracts on an annual basis, beginning January 1, 2023.

(b) *Method for determining the applicable Executive Order minimum wage.* The Secretary will determine the applicable minimum wage under the Executive Order, beginning January 1, 2023, by using the methodology set forth in § 23.50(b).

(c) *Notice*—(1) *Timing of notification.* The Administrator will notify the public of the applicable minimum wage rate to be paid to workers performing work on or in connection with covered contracts on an annual basis at least 90 days before any new minimum wage is to take effect.

(2) *Method of notification*—(i) **Federal Register**. The Administrator will publish a notice in the **Federal Register** stating the applicable minimum wage rate to be paid to workers performing work on or in connection with covered contracts on an annual basis at least 90 days before any new minimum wage is to take effect.

(ii) *Website.* The Administrator will publish and maintain on *https://alpha.sam.gov/content/wage-determinations,* or any successor site, the applicable minimum wage rate to be paid to workers performing work on or in connection with covered contracts.

(iii) *Wage determinations.* The Administrator will publish a prominent general notice on all wage determinations issued under the Davis-Bacon Act and the Service Contract Act stating the Executive Order minimum wage and that the Executive Order minimum wage applies to all workers performing on or in connection with such contracts whose wages are governed by the Fair Labor Standards Act, the Davis-Bacon Act, and the Service Contract Act. The Administrator will update this general notice on all such wage determinations annually.

(iv) *Other means as appropriate.* The Administrator may publish the applicable minimum wage rate to be paid to workers performing work on or in connection with covered contracts on an annual basis at least 90 days before any such new minimum wage is to take effect in any other media that the Administrator deems appropriate.

(d) *Notification to a contractor of the withholding of funds.* If the Administrator requests that a contracting agency withhold funds from a contractor pursuant to § 23.110(c), the Administrator and/or contracting agency shall notify the affected prime contractor of the Administrator's withholding request to the contracting agency.

Subpart C—Contractor Requirements

§ 23.210 Contract clause.

(a) *Contract clause.* The contractor, as a condition of payment, shall abide by the terms of the applicable Executive Order minimum wage contract clause referred to in § 23.110(a).

(b) *Flow-down requirement.* The contractor and any subcontractors shall include in any covered subcontracts the Executive Order minimum wage contract clause referred to in § 23.110(a) and shall require, as a condition of payment, that the subcontractor include the minimum wage contract clause in any lower-tier subcontracts. The prime contractor and any upper-tier contractor shall be responsible for the compliance by any subcontractor or lower-tier subcontractor with the Executive Order minimum wage requirements, whether or not the contract clause was included in the subcontract.

§ 23.220 Rate of pay.

(a) *General.* The contractor must pay each worker performing work on or in connection with a covered contract no less than the applicable Executive Order minimum wage for all hours worked on or in connection with the covered contract, unless such worker is exempt under § 23.40. In determining whether a worker is performing within the scope of a covered contract, all workers who are engaged in working on or in connection with the contract, either in performing the specific services called for by its terms or in performing other duties necessary to the performance of the contract, are thus subject to the Executive Order and this part unless a specific exemption is applicable. Nothing in the Executive Order or this part shall excuse noncompliance with any applicable Federal or state prevailing wage law or any applicable law or municipal ordinance establishing a minimum wage higher than the minimum wage established under Executive Order 14026.

(b) *Workers who receive fringe benefits.* The contractor may not discharge any part of its minimum wage obligation under the Executive Order by furnishing fringe benefits or, with respect to workers whose wages are governed by the Service Contract Act, the cash equivalent thereof.

(c) *Tipped employees.* The contractor may satisfy the wage payment obligation to a tipped employee under the Executive Order through a combination of an hourly cash wage and a credit based on tips received by such employee pursuant to the provisions in § 23.280.

§ 23.230 Deductions.

The contractor may make deductions that reduce a worker's wages below the Executive Order minimum wage rate only if such deduction qualifies as a:

(a) Deduction required by Federal, state, or local law, such as Federal or state withholding of income taxes;

(b) Deduction for payments made to third parties pursuant to court order;

(c) Deduction directed by a voluntary assignment of the worker or his or her authorized representative; or

(d) Deduction for the reasonable cost or fair value, as determined by the Administrator, of furnishing such worker with ''board, lodging, or other facilities,'' as defined in 29 U.S.C. 203(m)(1) and part 531 of this title.

§ 23.240 Overtime payments.

(a) *General.* The Fair Labor Standards Act and the Contract Work Hours and Safety Standards Act require overtime payment of not less than one and one-half times the regular rate of pay or basic rate of pay for all hours worked over 40 hours in a workweek to covered workers. The regular rate of pay under the Fair Labor Standards Act is generally determined by dividing the worker's total earnings in any workweek by the total number of hours actually worked by the worker in that workweek for which such compensation was paid.

(b) *Tipped employees.* When overtime is worked by tipped employees who are entitled to overtime pay under the Fair Labor Standards Act and/or the Contract Work Hours and Safety Standards Act, the employees' regular rate of pay includes both the cash wages paid by the employer (*see* §§ 23.220(a) and 23.280(a)(1)) and the amount of any tip credit taken (*see* § 23.280(a)(2)). (*See* part 778 of this title for a detailed discussion of overtime compensation under the Fair Labor Standards Act.) Any tips received by the employee in excess of the tip credit are not included in the regular rate.

§ 23.250 Frequency of pay.

Wage payments to workers shall be made no later than one pay period following the end of the regular pay period in which such wages were earned or accrued. A pay period under Executive Order 14026 may not be of any duration longer than semi-monthly.

§ 23.260 Records to be kept by contractors.

(a) *Records.* The contractor and each subcontractor performing work subject to Executive Order 14026 shall make and maintain, for three years, records containing the information specified in paragraphs (a)(1) through (6) of this section for each worker and shall make them available for inspection and transcription by authorized representatives of the Wage and Hour Division of the U.S. Department of Labor:

(1) Name, address, and social security number of each worker;

(2) The worker's occupation(s) or classification(s);

(3) The rate or rates of wages paid;

(4) The number of daily and weekly hours worked by each worker;

(5) Any deductions made; and

(6) The total wages paid.

(b) *Interviews.* The contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with workers at the worksite during normal working hours.

(c) *Other recordkeeping obligations.* Nothing in this part limits or otherwise modifies the contractor's recordkeeping obligations, if any, under the Davis-Bacon Act, the Service Contract Act, or the Fair Labor Standards Act, or their implementing regulations in this chapter.

§ 23.270 Anti-kickback.

All wages paid to workers performing on or in connection with covered contracts must be paid free and clear and without subsequent deduction (except as set forth in § 23.230), rebate, or kickback on any account. Kickbacks directly or indirectly to the employer or to another person for the employer's benefit for the whole or part of the wage are prohibited.

§ 23.280 Tipped employees.

(a) *Payment of wages to tipped employees.* With respect to workers who are tipped employees as defined in § 23.20 and this section, the amount of wages paid to such employee by the employee's employer shall be equal to:

(1) An hourly cash wage of at least:

(i) $10.50 an hour beginning on January 30, 2022;

(ii) Beginning January 1, 2023, 85 percent of the wage in effect under section 2 of the Executive Order, rounded to the nearest multiple of $0.05;

(iii) Beginning January 1, 2024, and for each subsequent year, 100 percent of the wage in effect under section 2 of the Executive Order; and

(2) An additional amount on account of the tips received by such employee (tip credit) which amount is equal to the difference between the hourly cash wage in paragraph (a)(1) of this section and the wage in effect under section 2 of the Executive Order. Where tipped employees do not receive a sufficient amount of tips in the workweek to equal the amount of the tip credit, the employer must increase the cash wage paid for the workweek under paragraph (a)(1) of this section so that the amount of the cash wage paid and the tips received by the employee equal the minimum wage under section 2 of the Executive Order.

(3) An employer may pay a higher cash wage than required by paragraph (a)(1) of this section and take a lower tip credit but may not pay a lower cash wage than required by paragraph (a)(1) of this section and take a greater tip credit. In order for the employer to claim a tip credit, the employer must demonstrate that the worker received at least the amount of the credit claimed in actual tips. If the worker received less than the claimed tip credit amount in tips during the workweek, the employer is required to pay the balance on the regular payday so that the worker receives the wage in effect under section 2 of the Executive Order with the defined combination of wages and tips.

(4) If the cash wage required to be paid under the Service Contract Act, 41 U.S.C. 6701 *et seq.,* or any other applicable law or regulation is higher than the wage required by section 2 of the Executive Order, the employer shall pay additional cash wages equal to the difference between the wage in effect under section 2 of the Executive Order and the highest wage required to be paid.

(b) *Requirements with respect to tipped employees.* The definitions and requirements concerning tipped employees, the tip credit, the characteristics of tips, service charges, tip pooling, and notice set forth in 29 CFR 10.28(b) through (f) apply with respect to workers who are tipped employees, as defined in § 23.20, performing on or in connection with contracts covered under Executive Order 14026, except that the minimum required cash wage shall be the minimum required cash wage described in paragraph (a)(1) of this section for the purposes of Executive 14026. For the purposes of this section, where 29 CFR 10.28(b) through (f) uses the term ''Executive Order,'' that term refers to Executive Order 14026.

§ 23.290 Notice.

(a) The contractor must notify all workers performing work on or in connection with a covered contract of the applicable minimum wage rate under the Executive Order. With respect to service employees on contracts covered by the Service Contract Act and laborers and mechanics on contracts covered by the Davis-Bacon Act, the contractor may meet the requirement in

this paragraph (a) by posting, in a prominent and accessible place at the worksite, the applicable wage determination under those statutes.

(b) With respect to workers performing work on or in connection with a covered contract whose wages are governed by the FLSA, the contractor must post a notice provided by the Department of Labor in a prominent and accessible place at the worksite so it may be readily seen by workers.

(c) Contractors that customarily post notices to workers electronically may post the notice electronically, provided such electronic posting is displayed prominently on any website that is maintained by the contractor, whether external or internal, and customarily used for notices to workers about terms and conditions of employment.

Subpart D—Enforcement

§ 23.410 Complaints.

(a) *Filing a complaint.* Any worker, contractor, labor organization, trade organization, contracting agency, or other person or entity that believes a violation of the Executive Order or this part has occurred may file a complaint with any office of the Wage and Hour Division. No particular form of complaint is required. A complaint may be filed orally or in writing. The Wage and Hour Division will accept the complaint in any language.

(b) *Confidentiality.* It is the policy of the Department of Labor to protect the identity of its confidential sources and to prevent an unwarranted invasion of personal privacy. Accordingly, the identity of any individual who makes a written or oral statement as a complaint or in the course of an investigation, as well as portions of the statement which would reveal the individual's identity, shall not be disclosed in any manner to anyone other than Federal officials without the prior consent of the individual. Disclosure of such statements shall be governed by the provisions of the Freedom of Information Act (5 U.S.C. 552, *see* 29 CFR part 70) and the Privacy Act of 1974 (5 U.S.C. 552a).

§ 23.420 Wage and Hour Division conciliation.

After receipt of a complaint, the Administrator may seek to resolve the matter through conciliation.

§ 23.430 Wage and Hour Division investigation.

The Administrator may investigate possible violations of the Executive Order or this part either as the result of a complaint or at any time on his or her own initiative. As part of the investigation, the Administrator may conduct interviews with the relevant contractor, as well as the contractor's workers at the worksite during normal work hours; inspect the relevant contractor's records (including contract documents and payrolls, if applicable); make copies and transcriptions of such records; and require the production of any documentary or other evidence the Administrator deems necessary to determine whether a violation, including conduct warranting imposition of debarment, has occurred. Federal agencies and contractors shall cooperate with any authorized representative of the Department of Labor in the inspection of records, in interviews with workers, and in all aspects of investigations.

§ 23.440 Remedies and sanctions.

(a) *Unpaid wages.* When the Administrator determines a contractor has failed to pay the applicable Executive Order minimum wage to workers, the Administrator will notify the contractor and the applicable contracting agency of the unpaid wage violation and request the contractor to remedy the violation. If the contractor does not remedy the violation of the Executive Order or this part, the Administrator shall direct the contractor to pay all unpaid wages to the affected workers in the investigative findings letter it issues pursuant to § 23.510. The Administrator may additionally direct that payments due on the contract or any other contract between the contractor and the Government be withheld as necessary to pay unpaid wages. Upon the final order of the Secretary that unpaid wages are due, the Administrator may direct the relevant contracting agency to transfer the withheld funds to the Department of Labor for disbursement.

(b) *Antiretaliation.* When the Administrator determines that any person has discharged or in any other manner discriminated against any worker because such worker filed any complaint or instituted or caused to be instituted any proceeding under or related to the Executive Order or this part, or because such worker testified or is about to testify in any such proceeding, the Administrator may provide for any relief to the worker as may be appropriate, including employment, reinstatement, promotion, and the payment of lost wages.

(c) *Debarment.* Whenever a contractor is found by the Secretary of Labor to have disregarded its obligations under the Executive Order, or this part, such contractor and its responsible officers, and any firm, corporation, partnership, or association in which the contractor or responsible officers have an interest, shall be ineligible to be awarded any contract or subcontract subject to the Executive Order for a period of up to three years from the date of publication of the name of the contractor or responsible officer on the ineligible list. Neither an order for debarment of any contractor or its responsible officers from further Government contracts nor the inclusion of a contractor or its responsible officers on a published list of noncomplying contractors under this section shall be carried out without affording the contractor or responsible officers an opportunity for a hearing before an Administrative Law Judge.

(d) *Civil action to recover greater underpayments than those withheld.* If the payments withheld under § 23.110(c) are insufficient to reimburse all workers' lost wages, or if there are no payments to withhold, the Department of Labor, following a final order of the Secretary, may bring action against the contractor in any court of competent jurisdiction to recover the remaining amount of underpayments. The Department of Labor shall, to the extent possible, pay any sums it recovers in this manner directly to the underpaid workers. Any sum not paid to a worker because of inability to do so within three years shall be transferred into the Treasury of the United States as miscellaneous receipts.

(e) *Retroactive inclusion of contract clause.* If a contracting agency fails to include the applicable contract clause in a contract to which the Executive Order applies, the contracting agency, on its own initiative or within 15 calendar days of notification by an authorized representative of the Department of Labor, shall incorporate the contract clause in the contract retroactive to commencement of performance under the contract through the exercise of any and all authority that may be needed (including, where necessary, its authority to negotiate or amend, its authority to pay any necessary additional costs, and its authority under any contract provision authorizing changes, cancellation and termination).

Subpart E—Administrative Proceedings

§ 23.510 Disputes concerning contractor compliance.

(a) This section sets forth the procedure for resolution of disputes of fact or law concerning a contractor's compliance with subpart C of this part. The procedures in this section may be initiated upon the Administrator's own

motion or upon request of the contractor.

(b)(1) In the event of a dispute described in paragraph (a) of this section in which it appears that relevant facts are at issue, the Administrator will notify the affected contractor(s) and the prime contractor (if different) of the investigative findings by certified mail to the last known address.

(2) A contractor desiring a hearing concerning the Administrator's investigative findings letter shall request such a hearing by letter postmarked within 30 calendar days of the date of the Administrator's letter. The request shall set forth those findings which are in dispute with respect to the violations and/or debarment, as appropriate, and explain how the findings are in dispute, including by making reference to any affirmative defenses.

(3) Upon receipt of a timely request for a hearing, the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to which shall be attached a copy of the investigative findings letter from the Administrator and response thereto, for designation to an Administrative Law Judge to conduct such hearings as may be necessary to resolve the disputed matters. The hearing shall be conducted in accordance with the procedures set forth in 29 CFR part 6.

(c)(1) In the event of a dispute described in paragraph (a) of this section in which it appears that there are no relevant facts at issue, and where there is not at that time reasonable cause to institute debarment proceedings under § 23.520, the Administrator shall notify the contractor(s) of the investigation findings by certified mail to the last known address, and shall issue a ruling in the investigative findings letter on any issues of law known to be in dispute.

(2)(i) If the contractor disagrees with the factual findings of the Administrator or believes that there are relevant facts in dispute, the contractor shall so advise the Administrator by letter postmarked within 30 calendar days of the date of the Administrator's letter. In the response, the contractor shall explain in detail the facts alleged to be in dispute and attach any supporting documentation.

(ii) Upon receipt of a timely response under paragraph (c)(2)(i) of this section alleging the existence of a factual dispute, the Administrator shall examine the information submitted. If the Administrator determines that there is a relevant issue of fact, the Administrator shall refer the case to the Chief Administrative Law Judge in accordance with paragraph (b)(3) of this section. If the Administrator determines that there is no relevant issue of fact, the Administrator shall so rule and advise the contractor accordingly.

(3) If the contractor desires review of the ruling issued by the Administrator under paragraph (c)(1) or (c)(2)(ii) of this section, the contractor shall file a petition for review thereof with the Administrative Review Board postmarked within 30 calendar days of the date of the ruling, with a copy thereof to the Administrator. The petition for review shall be filed in accordance with the procedures set forth in 29 CFR part 7.

(d) If a timely response to the Administrator's investigative findings letter is not made or a timely petition for review is not filed, the Administrator's investigative findings letter shall become the final order of the Secretary. If a timely response or petition for review is filed, the Administrator's letter shall be inoperative unless and until the decision is upheld by the Administrative Law Judge or the Administrative Review Board, or otherwise becomes a final order of the Secretary.

§ 23.520 Debarment proceedings.

(a) Whenever any contractor is found by the Secretary of Labor to have disregarded its obligations to workers or subcontractors under Executive Order 14026 or this part, such contractor and its responsible officers, and any firm, corporation, partnership, or association in which such contractor or responsible officers have an interest, shall be ineligible for a period of up to three years to receive any contracts or subcontracts subject to Executive Order 14026 from the date of publication of the name or names of the contractor or persons on the ineligible list.

(b)(1) Whenever the Administrator finds reasonable cause to believe that a contractor has committed a violation of Executive Order 14026 or this part which constitutes a disregard of its obligations to workers or subcontractors, the Administrator shall notify by certified mail to the last known address, the contractor and its responsible officers (and any firms, corporations, partnerships, or associations in which the contractor or responsible officers are known to have an interest), of the finding. The Administrator shall afford such contractor and any other parties notified an opportunity for a hearing as to whether debarment action should be taken under Executive Order 14026 or this part. The Administrator shall furnish to those notified a summary of the investigative findings. If the contractor or any other parties notified wish to request a hearing as to whether debarment action should be taken, such a request shall be made by letter to the Administrator postmarked within 30 calendar days of the date of the investigative findings letter from the Administrator, and shall set forth any findings which are in dispute and the reasons therefor, including any affirmative defenses to be raised. Upon receipt of such timely request for a hearing, the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to which shall be attached a copy of the investigative findings letter from the Administrator and the response thereto, for designation of an Administrative Law Judge to conduct such hearings as may be necessary to determine the matters in dispute.

(2) Hearings under this section shall be conducted in accordance with the procedures set forth in 29 CFR part 6. If no hearing is requested within 30 calendar days of the letter from the Administrator, the Administrator's findings shall become the final order of the Secretary.

§ 23.530 Referral to Chief Administrative Law Judge; amendment of pleadings.

(a) Upon receipt of a timely request for a hearing under § 23.510 (where the Administrator has determined that relevant facts are in dispute) or § 23.520 (debarment), the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to which shall be attached a copy of the investigative findings letter from the Administrator and response thereto, for designation of an Administrative Law Judge to conduct such hearings as may be necessary to decide the disputed matters. A copy of the Order of Reference and attachments thereto shall be served upon the respondent. The investigative findings letter from the Administrator and response thereto shall be given the effect of a complaint and answer, respectively, for purposes of the administrative proceedings.

(b) At any time prior to the closing of the hearing record, the complaint (investigative findings letter) or answer (response) may be amended with the permission of the Administrative Law Judge and upon such terms as he/she may approve. For proceedings pursuant to § 23.510, such an amendment may include a statement that debarment action is warranted under § 23.520. Such amendments shall be allowed when justice and the presentation of the merits are served thereby, provided there is no prejudice to the objecting

party's presentation on the merits. When issues not raised by the pleadings are reasonably within the scope of the original complaint and are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings, and such amendments may be made as necessary to make them conform to the evidence. The presiding Administrative Law Judge may, upon reasonable notice and upon such terms as are just, permit supplemental pleadings setting forth transactions, occurrences or events which have happened since the date of the pleadings and which are relevant to any of the issues involved. A continuance in the hearing may be granted or the record left open to enable the new allegations to be addressed.

§ 23.540 Consent findings and order.

(a) At any time prior to the receipt of evidence or, at the Administrative Law Judge's discretion prior to the issuance of the Administrative Law Judge's decision, the parties may enter into consent findings and an order disposing of the proceeding in whole or in part.

(b) Any agreement containing consent findings and an order disposing of a proceeding in whole or in part shall also provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based shall consist solely of the Administrator's findings letter and the agreement;

(3) A waiver of any further procedural steps before the Administrative Law Judge and the Administrative Review Board regarding those matters which are the subject of the agreement; and

(4) A waiver of any right to challenge or contest the validity of the findings and order entered into in accordance with the agreement.

(c) Within 30 calendar days after receipt of an agreement containing consent findings and an order disposing of the disputed matter in whole, the Administrative Law Judge shall, if satisfied with its form and substance, accept such agreement by issuing a decision based upon the agreed findings and order. If such agreement disposes of only a part of the disputed matter, a hearing shall be conducted on the matters remaining in dispute.

§ 23.550 Proceedings of the Administrative Law Judge.

(a) *General.* The Office of Administrative Law Judges has jurisdiction to hear and decide appeals concerning questions of law and fact from the Administrator's investigative findings letters issued under §§ 23.510 and 23.520. Any party may, when requesting an appeal or during the pendency of a proceeding on appeal, timely move an Administrative Law Judge to consolidate a proceeding initiated hereunder with a proceeding initiated under the Service Contract Act or the Davis-Bacon Act.

(b) *Proposed findings of fact, conclusions, and order.* Within 20 calendar days of filing of the transcript of the testimony or such additional time as the Administrative Law Judge may allow, each party may file with the Administrative Law Judge proposed findings of fact, conclusions of law, and a proposed order, together with a supporting brief expressing the reasons for such proposals. Each party shall serve such proposals and brief on all other parties.

(c) *Decision.* (1) Within a reasonable period of time after the time allowed for filing of proposed findings of fact, conclusions of law, and order, or within 30 calendar days of receipt of an agreement containing consent findings and order disposing of the disputed matter in whole, the Administrative Law Judge shall issue a decision. The decision shall contain appropriate findings, conclusions, and an order, and be served upon all parties to the proceeding.

(2) If the respondent is found to have violated Executive Order 14026 or this part, and if the Administrator requested debarment, the Administrative Law Judge shall issue an order as to whether the respondent is to be subject to the ineligible list, including findings that the contractor disregarded its obligations to workers or subcontractors under the Executive Order or this part.

(d) *Limit on scope of review.* The Equal Access to Justice Act, as amended, does not apply to proceedings under this part. Accordingly, Administrative Law Judges shall have no authority to award attorney's fees and/or other litigation expenses pursuant to the provisions of the Equal Access to Justice Act for any proceeding under this part.

(e) *Orders.* If the Administrative Law Judge concludes a violation occurred, the final order shall mandate action to remedy the violation, including, but not limited to, monetary relief for unpaid wages. Where the Administrator has sought imposition of debarment, the Administrative Law Judge shall determine whether an order imposing debarment is appropriate.

(f) *Finality.* The Administrative Law Judge's decision shall become the final order of the Secretary, unless a timely petition for review is filed with the Administrative Review Board.

§ 23.560 Petition for review.

(a) *Filing a petition for review.* Within 30 calendar days after the date of the decision of the Administrative Law Judge (or such additional time as is granted by the Administrative Review Board), any party aggrieved thereby who desires review thereof shall file a petition for review of the decision with supporting reasons. Such party shall transmit the petition in writing to the Administrative Review Board with a copy thereof to the Chief Administrative Law Judge. The petition shall refer to the specific findings of fact, conclusions of law, or order at issue. A petition concerning the decision on debarment shall also state the disregard of obligations to workers and/or subcontractors, or lack thereof, as appropriate. A party must serve the petition for review, and all briefs, on all parties and the Chief Administrative Law Judge. It must also timely serve copies of the petition and all briefs on the Administrator, Wage and Hour Division, and on the Associate Solicitor, Division of Fair Labor Standards, Office of the Solicitor, U.S. Department of Labor, Washington, DC 20210.

(b) *Effect of filing.* If a party files a timely petition for review, the Administrative Law Judge's decision shall be inoperative unless and until the Administrative Review Board issues an order affirming the letter or decision, or the letter or decision otherwise becomes a final order of the Secretary. If a petition for review concerns only the imposition of debarment, however, the remainder of the decision shall be effective immediately. No judicial review shall be available unless a timely petition for review to the Administrative Review Board is first filed.

§ 23.570 Administrative Review Board proceedings.

(a) *Authority*—(1) *General.* The Administrative Review Board has jurisdiction to hear and decide in its discretion appeals concerning questions of law and fact from investigative findings letters of the Administrator issued under § 23.510(c)(1) or (2), Administrator's rulings issued under § 23.580, and decisions of Administrative Law Judges issued under § 23.550.

(2) *Limit on scope of review.* (i) The Board shall not have jurisdiction to pass on the validity of any provision of this part. The Board is an appellate body and shall decide cases properly before it on the basis of substantial evidence contained in the entire record before it.

The Board shall not receive new evidence into the record.

(ii) The Equal Access to Justice Act, as amended, does not apply to proceedings under this part. Accordingly, the Administrative Review Board shall have no authority to award attorney's fees and/or other litigation expenses pursuant to the provisions of the Equal Access to Justice Act for any proceeding under this part.

(b) *Decisions.* The Board's final decision shall be issued within a reasonable period of time following receipt of the petition for review and shall be served upon all parties by mail to the last known address and on the Chief Administrative Law Judge (in cases involving an appeal from an Administrative Law Judge's decision).

(c) *Orders.* If the Board concludes a violation occurred, the final order shall mandate action to remedy the violation, including, but not limited to, monetary relief for unpaid wages. Where the Administrator has sought imposition of debarment, the Board shall determine whether an order imposing debarment is appropriate. The Board's order is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020 (or any successor to that order).

(d) *Finality.* The decision of the Administrative Review Board shall become the final order of the Secretary in accordance with Secretary's Order 01–2020 (or any successor to that order), which provides for discretionary review of such orders by the Secretary.

§ 23.580 Administrator ruling.

(a) Questions regarding the application and interpretation of the rules contained in this part may be referred to the Administrator, who shall issue an appropriate ruling. Requests for such rulings should be addressed to the Administrator, Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210.

(b) Any interested party may appeal to the Administrative Review Board for review of a final ruling of the Administrator issued under paragraph (a) of this section. The petition for review shall be filed with the Administrative Review Board within 30 calendar days of the date of the ruling.

Appendix A to Part 23—Contract Clause

The following clause shall be included by the contracting agency in every contract, contract-like instrument, and solicitation to which Executive Order 14026 applies, except for procurement contracts subject to the Federal Acquisition Regulation (FAR):

(a) *Executive Order 14026.* This contract is subject to Executive Order 14026, the regulations issued by the Secretary of Labor in 29 CFR part 23 pursuant to the Executive Order, and the following provisions.

(b) *Minimum Wages.* (1) Each worker (as defined in 29 CFR 23.20) engaged in the performance of this contract by the prime contractor or any subcontractor, regardless of any contractual relationship which may be alleged to exist between the contractor and worker, shall be paid not less than the applicable minimum wage under Executive Order 14026.

(2) The minimum wage required to be paid to each worker performing work on or in connection with this contract between January 30, 2022 and December 31, 2022, shall be $15.00 per hour. The minimum wage shall be adjusted each time the Secretary of Labor's annual determination of the applicable minimum wage under section 2(a)(ii) of Executive Order 14026 results in a higher minimum wage. Adjustments to the Executive Order minimum wage under section 2(a)(ii) of Executive Order 14026 will be effective for all workers subject to the Executive Order beginning January 1 of the following year. If appropriate, the contracting officer, or other agency official overseeing this contract shall ensure the contractor is compensated only for the increase in labor costs resulting from the annual inflation increases in the Executive Order 14026 minimum wage beginning on January 1, 2023. The Secretary of Labor will publish annual determinations in the **Federal Register** no later than 90 days before such new wage is to take effect. The Secretary will also publish the applicable minimum wage on *https://alpha.sam.gov/content/wage-determinations* (or any successor website). The applicable published minimum wage is incorporated by reference into this contract.

(3) The contractor shall pay unconditionally to each worker all wages due free and clear and without subsequent deduction (except as otherwise provided by 29 CFR 23.230), rebate, or kickback on any account. Such payments shall be made no later than one pay period following the end of the regular pay period in which such wages were earned or accrued. A pay period under this Executive Order may not be of any duration longer than semi-monthly.

(4) The prime contractor and any upper-tier subcontractor shall be responsible for the compliance by any subcontractor or lower-tier subcontractor with the Executive Order minimum wage requirements. In the event of any violation of the minimum wage obligation of this clause, the contractor and any subcontractor(s) responsible therefore shall be liable for the unpaid wages.

(5) If the commensurate wage rate paid to a worker performing work on or in connection with a covered contract whose wages are calculated pursuant to a special certificate issued under 29 U.S.C. 214(c), whether hourly or piece rate, is less than the Executive Order minimum wage, the contractor must pay the Executive Order minimum wage rate to achieve compliance with the Order. If the commensurate wage due under the certificate is greater than the Executive Order minimum wage, the contractor must pay the worker the greater commensurate wage.

(c) *Withholding.* The agency head shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the prime contractor under this or any other Federal contract with the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay workers the full amount of wages required by Executive Order 14026.

(d) *Contract Suspension/Contract Termination/Contractor Debarment.* In the event of a failure to pay any worker all or part of the wages due under Executive Order 14026 or 29 CFR part 23, or a failure to comply with any other term or condition of Executive Order 14026 or 29 CFR part 23, the contracting agency may on its own action or after authorization or by direction of the Department of Labor and written notification to the contractor, take action to cause suspension of any further payment, advance or guarantee of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the contractor in default with any additional cost. A breach of the contract clause may be grounds for debarment as a contractor and subcontractor as provided in 29 CFR 23.520.

(e) The contractor may not discharge any part of its minimum wage obligation under Executive Order 14026 by furnishing fringe benefits or, with respect to workers whose wages are governed by the Service Contract Act, the cash equivalent thereof.

(f) Nothing herein shall relieve the contractor of any other obligation under Federal, state or local law, or under contract, for the payment of a higher wage to any worker, nor shall a lower prevailing wage under any such Federal, State, or local law, or under contract, entitle a contractor to pay less than $15.00 (or the minimum wage as established each January thereafter) to any worker.

(g) *Payroll Records.* (1) The contractor shall make and maintain for three years records containing the information specified in paragraphs (g)(1)(i) through (vi) of this section for each worker and shall make the records available for inspection and transcription by authorized representatives of the Wage and Hour Division of the U.S. Department of Labor:

(i) Name, address, and social security number;

(ii) The worker's occupation(s) or classification(s);

(iii) The rate or rates of wages paid;

(iv) The number of daily and weekly hours worked by each worker;

(v) Any deductions made; and

(vi) Total wages paid.

(2) The contractor shall also make available a copy of the contract, as applicable, for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available such records for inspection and transcription shall be a violation of 29 CFR part 23 and this contract, and in the case

of failure to produce such records, the contracting officer, upon direction of an authorized representative of the Department of Labor, or under its own action, shall take such action as may be necessary to cause suspension of any further payment or advance of funds until such time as the violations are discontinued.

(4) The contractor shall permit authorized representatives of the Wage and Hour Division to conduct investigations, including interviewing workers at the worksite during normal working hours.

(5) Nothing in this clause limits or otherwise modifies the contractor's payroll and recordkeeping obligations, if any, under the Davis-Bacon Act, as amended, and its implementing regulations; the Service Contract Act, as amended, and its implementing regulations; the Fair Labor Standards Act, as amended, and its implementing regulations; or any other applicable law.

(h) The contractor (as defined in 29 CFR 23.20) shall insert this clause in all of its covered subcontracts and shall require its subcontractors to include this clause in any covered lower-tier subcontracts. The prime contractor and any upper-tier subcontractor shall be responsible for the compliance by any subcontractor or lower-tier subcontractor with this contract clause.

(i) *Certification of Eligibility.* (1) By entering into this contract, the contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed pursuant to section 5 of the Service Contract Act, section 3(a) of the Davis-Bacon Act, or 29 CFR 5.12(a)(1).

(2) No part of this contract shall be subcontracted to any person or firm whose name appears on the list of persons or firms ineligible to receive Federal contracts.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(j) *Tipped employees.* In paying wages to a tipped employee as defined in section 3(t) of the Fair Labor Standards Act, 29 U.S.C. 203(t), the contractor may take a partial credit against the wage payment obligation (tip credit) to the extent permitted under section 3(a) of Executive Order 14026. In order to take such a tip credit, the employee must receive an amount of tips at least equal to the amount of the credit taken; where the tipped employee does not receive sufficient tips to equal the amount of the tip credit the contractor must increase the cash wage paid for the workweek so that the amount of cash wage paid and the tips received by the employee equal the applicable minimum wage under Executive Order 14026. To utilize this proviso:

(1) The employer must inform the tipped employee in advance of the use of the tip credit;

(2) The employer must inform the tipped employee of the amount of cash wage that will be paid and the additional amount by which the employee's wages will be considered increased on account of the tip credit;

(3) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received); and

(4) The employer must be able to show by records that the tipped employee receives at least the applicable Executive Order minimum wage through the combination of direct wages and tip credit.

(k) *Antiretaliation.* It shall be unlawful for any person to discharge or in any other manner discriminate against any worker because such worker has filed any complaint or instituted or caused to be instituted any proceeding under or related to Executive Order 14026 or 29 CFR part 23, or has testified or is about to testify in any such proceeding.

(l) *Disputes concerning labor standards.* Disputes related to the application of Executive Order 14026 to this contract shall not be subject to the general disputes clause of the contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR part 23. Disputes within the meaning of this contract clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the workers or their representatives.

(m) *Notice.* The contractor must notify all workers performing work on or in connection with a covered contract of the applicable minimum wage rate under the Executive Order. With respect to service employees on contracts covered by the Service Contract Act and laborers and mechanics on contracts covered by the Davis-Bacon Act, the contractor may meet this requirement by posting, in a prominent and accessible place at the worksite, the applicable wage determination under those statutes. With respect to workers performing work on or in connection with a covered contract whose wages are governed by the FLSA, the contractor must post a notice provided by the Department of Labor in a prominent and accessible place at the worksite so it may be readily seen by workers. Contractors that customarily post notices to workers electronically may post the notice electronically provided such electronic posting is displayed prominently on any website that is maintained by the contractor, whether external or internal, and customarily used for notices to workers about terms and conditions of employment.

NOTE: The following appendix will not appear in the Code of Federal Regulations.

Appendix—Increasing the Minimum Wage for Federal Contractors

BILLING CODE 4510–27–C

WORKER RIGHTS
UNDER EXECUTIVE ORDER 14026

FEDERAL MINIMUM WAGE FOR CONTRACTORS

$15.00 PER HOUR

EFFECTIVE JANUARY 30, 2022 – DECEMBER 31, 2022

The law requires certain employers to display this poster where employees can readily see it.

MINIMUM WAGE

Executive Order 14026 (EO) requires that federal contractors pay workers performing work on or in connection with covered contracts at least (1) $15.00 per hour beginning January 30, 2022, and (2) beginning January 1, 2023, and every year thereafter, an inflation-adjusted amount determined by the Secretary of Labor in accordance with the EO and appropriate regulations. The EO hourly minimum wage in effect from January 30, 2022 through December 31, 2022 is $15.00.

TIPS

Covered tipped employees must be paid a cash wage of at least $10.50 per hour effective January 30, 2022 through December 31, 2022. If a worker's tips combined with the required cash wage of at least $10.50 per hour paid by the contractor do not equal the EO hourly minimum wage for contractors, the contractor must increase the cash wage paid to make up the difference. Certain other conditions must also be met.

EXCLUSIONS

- Some workers who provide support "in connection with" covered contracts for less than 20 percent of their hours worked in a week may not be entitled to the EO minimum wage.
- Certain full-time students, learners, and apprentices who are employed under subminimum wage certificates are not entitled to the EO minimum wage.
- Certain other occupations and workers are also exempt from the EO.

ENFORCEMENT

The U.S. Department of Labor's Wage and Hour Division (WHD) is responsible for enforcing the EO. WHD can answer questions, in person or by telephone, about your workplace rights and protections. We can investigate employers, recover wages to which workers may be entitled, and pursue appropriate sanctions against covered contractors. All services are free and confidential. The law also prohibits discriminating against or discharging workers who file a complaint or participate in any proceeding under the EO. If you are unable to file a complaint in English, WHD will accept the complaint in any language. You can find your nearest WHD office at https://www.dol.gov/whd/local/.

ADDITIONAL INFORMATION

- The EO applies only to new federal construction and service contracts, as defined by the Secretary in the regulations at 29 CFR part 23.
- Workers with disabilities whose wages are governed by special certificates issued under section 14(c) of the Fair Labor Standards Act must also receive no less than the full EO minimum wage rate.
- Some state or local laws may provide greater worker protections; employers must comply with both.
- More information about the EO is available at: www.dol.gov/agencies/whd/government-contracts/eo14026.

WHD WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

1-866-487-9243
TTY: 1-877-889-5627
www.dol.gov/agencies/whd

WH1089 REV 01/22

[FR Doc. 2021–15348 Filed 7–21–21; 8:45 am]
BILLING CODE 4510–27–P

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Vol. 86 Thursday,

No. 138 July 22, 2021

Part III

The President

Notice of July 20, 2021—Continuation of the National Emergency With Respect to Lebanon

Notice of July 20, 2021—Continuation of the National Emergency With Respect to Mali

Federal Register
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Presidential Documents

Title 3—

The President

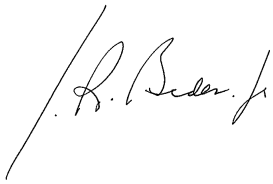
Notice of July 20, 2021

Continuation of the National Emergency With Respect to Lebanon

On August 1, 2007, by Executive Order 13441, the President declared a national emergency with respect to Lebanon pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions of certain persons to undermine Lebanon's legitimate and democratically elected government or democratic institutions; to contribute to the deliberate breakdown in the rule of law in Lebanon, including through politically motivated violence and intimidation; to reassert Syrian control or contribute to Syrian interference in Lebanon; or to infringe upon or undermine Lebanese sovereignty. Such actions contribute to political and economic instability in that country and the region.

Certain ongoing activities, such as Iran's continuing arms transfers to Hizballah—which include increasingly sophisticated weapons systems—serve to undermine Lebanese sovereignty, contribute to political and economic instability in the region, and continue to constitute an unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, the national emergency declared on August 1, 2007, must continue in effect beyond August 1, 2021. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to Lebanon declared in Executive Order 13441.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
July 20, 2021.

[FR Doc. 2021–15808
Filed 7–21–21; 11:15 am]
Billing code 3295–F1–P

Presidential Documents

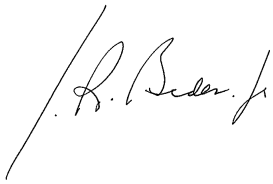
Notice of July 20, 2021

Continuation of the National Emergency With Respect to Mali

On July 26, 2019, by Executive Order 13882, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the situation in Mali.

The situation in Mali, including repeated violations of ceasefire arrangements made pursuant to the 2015 Agreement on Peace and Reconciliation in Mali; the expansion of terrorist activities into southern and central Mali; the intensification of drug trafficking and trafficking in persons, human rights abuses, and hostage-taking; and the intensification of attacks against civilians, the Malian defense and security forces, the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA), and international security presences, continues to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, the national emergency declared on July 26, 2019, must continue in effect beyond July 26, 2021. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13882 with respect to the situation in Mali.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,

July 20, 2021.

[FR Doc. 2021–15824

Filed 7–21–21; 11:15 am]

Billing code 3295–F1–P

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