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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2021–0906; Special Conditions No. 25–792–SC]

Special Conditions: Honeywell, Bombardier Model BD–100–1A10 Airplane; Electronic System Security Protection From Unauthorized External Access

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

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Bombardier Model BD–100–1A10 airplane. This airplane, as modified by Honeywell, will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. This design feature is the installation of a system that provides wireless data download capability from the engine electronic control unit to Honeywell cloud-based storage. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on Honeywell on October 29, 2021. Send comments on or before December 13, 2021.

ADDRESSES: Send comments identified by Docket No. FAA–2021–0906 using any of the following methods:

- *Federal eRegulations Portal:* Go to *https://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

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

Confidential Business Information: Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to these special conditions contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to these special conditions, 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 the indicated comments will not be placed in the public docket of these special conditions. Send submissions containing CBI to the Information Contact below. Comments the FAA receives, which are not specifically designated as CBI, will be placed in the public docket for these special conditions.

Docket: Background documents or comments received may be read at *https://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Varun Khanna, Aircraft Information Systems, AIR–622, Technical Innovation Policy Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206–231–3159; email *varun.khanna@faa.gov.*

SUPPLEMENTARY INFORMATION: The substance of these special conditions has been published in the **Federal Register** for public comment in several prior instances with no substantive comments received. Therefore, the FAA has determined that prior public notice and comment are unnecessary, and finds that, for the same reason, good cause exists for adopting these special conditions upon publication in the **Federal Register**.

Comments Invited

The FAA invites interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

The FAA will consider all comments received by the closing date for comments. The FAA may change these special conditions based on the comments received.

Background

On February 24, 2020, Honeywell applied for a supplemental type certificate for installation of the Honeywell Connected Engine Data Access System (CEDAS) in the Bombardier Model BD–100–1A10 airplane, requiring security protection from unauthorized external access. The Bombardier Model BD–100–1A10 airplane is a twin-engine business jet with a passenger capacity of 16 and a maximum takeoff weight of 40,600 pounds.

Type Certification Basis

Under the provisions of title 14 Code of Federal Regulations (14 CFR) 21.101, Honeywell must show that the Bombardier Model BD–100–1A10

airplane, as changed, continues to meet the applicable provisions of the regulations listed in Type Certificate No. T00005NY, or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*e.g.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Bombardier Model BD–100–1A10 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Bombardier Model BD–100–1A10 airplane must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Feature

The Bombardier Model BD–100–1A10 airplane, as modified by Honeywell, will incorporate the following novel or unusual design feature:

Installation of the Honeywell Connected Engine Data Access System (CEDAS) which provides wireless data download capability from the engine's electronic control unit (ECU) to Honeywell cloud-based storage. CEDAS allows maintenance personnel to wirelessly connect to the ECUs and allows autonomous engine data uploads to cloud data services over WiFi.

Discussion

The Honeywell supplemental type certificate for the Bombardier Model BD–100–1A10 airplane design adds the Connected Engine Data Access System (CEDAS) architecture which is novel for commercial transport category airplanes. CEDAS allows connection to airplane electronic systems and networks, and access from aircraft external sources (*e.g.,* operator networks, wireless devices, internet connectivity, service provider satellite communications, electronic flight bags, etc.) to the previously isolated airplane electronic assets (networks, systems, and databases). The installation of CEDAS may result in network security vulnerabilities from intentional or unintentional corruption of data and systems required for the operations and maintenance of the airplane.

The existing FAA regulations did not anticipate these networked airplane system architectures. Furthermore, these regulations and the current guidance material do not address potential security vulnerabilities, which could be exploited by unauthorized access to airplane networks, data buses, and servers. Therefore, these special conditions ensure that the security (*i.e.,* confidentiality, integrity, and availability) of airplane systems is not compromised by unauthorized wired or wireless electronic connections. This includes ensuring that the security of the airplane's systems is not compromised during maintenance of the airplane's electronic systems. These special conditions also require the applicant to provide appropriate instructions to the operator to maintain all electronic system safeguards that have been implemented as part of the original network design so that this feature does not allow or reintroduce security threats.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these special conditions are applicable to the Bombardier Model BD–100–1A10 airplane. Should Honeywell apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. T00005NY to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only a certain novel or unusual design feature on one model of airplane, as modified by Honeywell. It is not a rule of general applicability and affects only the applicant.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Bombardier Model BD–100–1A10 airplane, as modified by Honeywell, for airplane electronic system security protection from unauthorized external access.

1. The applicant must ensure airplane electronic system security protection from access by unauthorized sources external to the airplane, including those possibly caused by maintenance activity.

2. The applicant must ensure that electronic system security threats are identified and assessed, and that effective electronic system security protection strategies are implemented to protect the airplane from all adverse impacts on safety, functionality, and continued airworthiness.

3. The applicant must establish appropriate procedures to allow the operator to ensure that continued airworthiness of the airplane is maintained, including all post type certification modifications that may have an impact on the approved electronic system security safeguards.

Issued in Kansas City, Missouri, on October 25, 2021.

Patrick R. Mullen,

Manager, Technical Innovation Policy Branch, Policy and Innovation Division, Aircraft Certification Service.

[FR Doc. 2021–23552 Filed 10–28–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2021–0907; Special Conditions No. 25–793–SC]

Special Conditions: Honeywell, Bombardier Model BD–100–1A10 Airplane; Electronic System Security Protection From Unauthorized Internal Access

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

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Bombardier Model BD–100–1A10 airplane. This airplane, as modified by Honeywell, will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. This design feature is the installation of a system that provides wireless data download capability from the engine electronic control unit to Honeywell cloud-based storage. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on Honeywell on October 29, 2021. Send comments on or before December 13, 2021.

ADDRESSES: Send comments identified by Docket No. FAA–2021–0907 using any of the following methods:

- *Federal eRegulations Portal:* Go to *https://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

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

Confidential Business Information: Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to these special conditions contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to these special conditions, 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 the indicated comments will not be placed in the public docket of these special conditions. Send submissions containing CBI to the Information Contact below. Comments the FAA receives, which are not specifically designated as CBI, will be placed in the public docket for these special conditions.

Docket: Background documents or comments received may be read at *https://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Varun Khanna, Aircraft Information Systems, AIR–622, Technical Innovation Policy Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206–231–3159; email *varun.khanna@faa.gov.*

SUPPLEMENTARY INFORMATION: The substance of these special conditions has been published in the **Federal Register** for public comment in several prior instances with no substantive comments received. Therefore, the FAA has determined that prior public notice and comment are unnecessary, and finds that, for the same reason, good cause exists for adopting these special conditions upon publication in the **Federal Register**.

Comments Invited

The FAA invites interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

The FAA will consider all comments received by the closing date for comments. The FAA may change these special conditions based on the comments received.

Background

On February 24, 2020, Honeywell applied for a supplemental type certificate for installation of the Honeywell Connected Engine Data Access System (CEDAS) in the Bombardier Model BD–100–1A10 airplane, requiring security protection from unauthorized internal access. The Bombardier Model BD–100–1A10 airplane is a twin-engine business jet with a passenger capacity of 16 and a maximum takeoff weight of 40,600 pounds.

Type Certification Basis

Under the provisions of title 14 Code of Federal Regulations (14 CFR) 21.101, Honeywell must show that the Bombardier Model BD–100–1A10 airplane, as changed, continues to meet the applicable provisions of the regulations listed in Type Certificate No. T00005NY or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*e.g.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Bombardier Model BD–100–1A10 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Bombardier Model BD–100–1A10 airplane must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Feature

The Bombardier Model BD–100–1A10 airplane, as modified by Honeywell, will incorporate the following novel or unusual design feature:

Installation of the Honeywell Connected Engine Data Access System (CEDAS) which provides wireless data

download capability from the engine's electronic control unit (ECU) to Honeywell cloud-based storage. CEDAS allows maintenance personnel to wirelessly connect to the ECUs and allows autonomous engine data uploads to cloud data services over WiFi.

Discussion

The Honeywell supplemental type certificate for the Bombardier Model BD–100–1A10 airplane design adds the Connected Engine Data Access System (CEDAS) architecture which is novel for commercial transport category airplanes. CEDAS allows connection to airplane electronic systems and networks, and access from aircraft external sources (*e.g.,* operator networks, wireless devices, internet connectivity, service provider satellite communications, electronic flight bags, etc.) to the previously isolated airplane electronic assets (networks, systems, and databases). The CEDAS design introduces the potential for unauthorized access to these previously isolated airplane electronic systems and networks by persons inside the airplane. The installation of CEDAS may result in network security vulnerabilities from intentional or unintentional corruption of data and systems required for the operations and maintenance of the airplane.

The existing FAA regulations did not anticipate these networked airplane system architectures. Furthermore, these regulations and the current guidance material do not address potential security vulnerabilities, which could be exploited by unauthorized access to airplane networks, data buses, and servers. Therefore, these special conditions ensure that the security (*i.e.,* confidentiality, integrity, and availability) of airplane systems will not be compromised by unauthorized wired or wireless connections from within the airplane. These special conditions also require the applicant to provide appropriate instructions to the operator to maintain all electronic system safeguards that have been implemented as part of the original network design so that this feature does not allow or reintroduce security threats.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these special conditions are applicable to the Bombardier Model BD–100–1A10 airplane. Should Honeywell apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. T00005NY to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only a certain novel or unusual design feature on one model of airplane, as modified by Honeywell. It is not a rule of general applicability and affects only the applicant.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Bombardier Model BD–100–1A10 airplane, as modified by Honeywell, for electronic system security protection from unauthorized internal access.

1. The applicant must ensure that the design provides isolation from, or airplane electronic system security protection against, access by unauthorized sources internal to the airplane. The design must prevent inadvertent and malicious changes to, and all adverse impacts upon, airplane equipment, systems, networks, or other assets required for safe flight and operations.

2. The applicant must establish appropriate procedures to allow the operator to ensure that continued airworthiness of the airplane is maintained, including all post type certification modifications that may have an impact on the approved electronic system security safeguards.

Issued in Kansas City, Missouri, on October 25, 2021.

Patrick R. Mullen,

Manager, Technical Innovation Policy Branch, Policy and Innovation Division, Aircraft Certification Service.

[FR Doc. 2021–23553 Filed 10–28–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0840; Project Identifier MCAI–2021–00262–T; Amendment 39–21760; AD 2021–20–22]

RIN 2120–AA64

Airworthiness Directives; Fokker Services B.V. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Fokker Services B.V. Model F28 Mark 0070 and Mark 0100 airplanes. This AD was prompted by a report of exfoliation corrosion found during an inspection of the wing front spar lower boom. This AD requires an inspection for corrosion of the wing front spar lower boom, and applicable corrective actions, 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 becomes effective November 15, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 15, 2021.

The FAA must receive comments on this AD by December 13, 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 EASA 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 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–2021–0840.

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–2021–0840; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Ho-Joon Lim, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3405; email *ho-joon.lim@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2021–0840; Project Identifier MCAI–2021–00262–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, 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 final rule because of those comments.

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

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 AD 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 AD, 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 AD. Submissions containing CBI should be sent to Ho-Joon Lim, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3405; email *ho-joon.lim@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 2021–0059, dated March 2, 2021 (EASA AD 2021–0059) (also referred to as the MCAI), to correct an unsafe condition for certain Model F28 Mark 0070 and Mark 0100 airplanes.

This AD was prompted by a report of exfoliation corrosion found during an inspection of the wing front spar lower boom. This corrosion was found between wing station (WSTA) 3100 and WSTA 3600. It was determined that corrosion may also exist at other spanwise positions on the wing front spar lower boom. The FAA is issuing this AD to address corrosion, which if not corrected, could lead to reduced structural integrity of the wing structure and reduced wing ultimate and limit load capability. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0059 specifies procedures for a detailed inspection for corrosion of the wing front spar lower boom between WSTA 1825 and WSTA 10110, corrective actions (repair and restoration of the surface corrosion), and sending an inspection report to Fokker Services B.V. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI described above. The FAA is issuing this AD after determining that the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Requirements of This AD

This AD requires accomplishing the actions specified in the MCAI described previously, except for any differences identified as exceptions in the regulatory text of this AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, EASA AD 2021–0059 is incorporated by reference in this AD. This AD requires compliance with EASA AD 2021–0059 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Using common terms that are the same as the heading of a particular section in EASA AD 2021–0059 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2021–0059. Service information required by EASA AD 2021–0059 for compliance will be available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0840 after this AD is published.

Interim Action

The FAA considers this AD interim action. The inspection reports that are required by this AD will enable the manufacturer to re-evaluate the current 12-year visual inspection interval of the front spar front side. Once final action has been identified, the FAA might consider further rulemaking.

FAA's Justification and Determination of the Effective Date

There are currently no domestic operators of these products. Accordingly, notice and opportunity for prior public comment are unnecessary,

pursuant to 5 U.S.C. 553(b)(3). In addition, for the foregoing reason, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days.

Regulatory Flexibility Act (RFA)

There are currently no domestic operators of these products.

Accordingly, notice and opportunity for prior public comment are unnecessary, pursuant to 5 U.S.C. 553(b)(3)(B). In addition, for the foregoing reason(s), the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days.

Costs of Compliance

Currently, there are no affected U.S.-registered airplanes. If an affected airplane is imported and placed on the U.S. Register in the future, the FAA provides the following cost estimates to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS *

Labor cost	Parts cost	Cost per product
28 work-hours × $85 per hour = $2,380	$0	$2,380

*Table does not include estimated costs for reporting.

The FAA estimates that it takes about 1 work-hour per product to comply with the reporting requirement in this AD. The average labor rate is $85 per hour. Based on these figures, the FAA estimates the cost of reporting the inspection results on U.S. operators to be $0, or $85 per product.

The FAA has received no definitive data on which to base the cost estimates for the on-condition actions specified in this AD.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this AD is 2120–0056. Public reporting for this collection of information is estimated to take approximately 1 hour 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. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that 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, and

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2021–20–22 Fokker Services B.V.: Amendment 39–21760; Docket No. FAA–2021–0840; Project Identifier MCAI–2021–00262–T.

(a) Effective Date

This airworthiness directive (AD) becomes effective November 15, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Fokker Services B.V. Model F28 Mark 0070 and Mark 0100 airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2021–0059, dated March 2, 2021 (EASA AD 2021–0059).

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Reason

This AD was prompted by a report of exfoliation corrosion found during an inspection of the wing front spar lower boom. The FAA is issuing this AD to address corrosion, which if not corrected, could lead to reduced structural integrity of the wing structure and reduced wing ultimate and limit load capability.

(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 2021–0059.

(h) Exceptions to EASA AD 2021–0059

(1) Where EASA AD 2021–0059 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2021–0059 does not apply to this AD.

(3) Paragraph (3) of EASA AD 2021–0059 specifies to report inspection results to Fokker Services B.V. within a certain compliance time. For this AD, report inspection results at the applicable time specified in paragraph (h)(3)(i) or (ii) of this AD.

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

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

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or 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 (j) 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 Fokker Services B.V.'s EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(j) Related Information

For more information about this AD, contact Ho-Joon Lim, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3405; email *ho-joon.lim@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2021–0059, dated March 2, 2021.

(ii) [Reserved]

(3) For EASA AD 2021–0059, 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–2021–0840.

(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 *fr.inspection@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on September 24, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–23431 Filed 10–28–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0700; Project Identifier 2019–CE–017–AD; Amendment 39–21795; AD 2021–22–22]

RIN 2120–AA64

Airworthiness Directives; Costruzioni Aeronautiche Tecnam S.P.A. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Costruzioni Aeronautiche Tecnam S.P.A. Model P2006T airplanes. This 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 identifies the unsafe condition as a manufacturing defect in the nose landing gear (NLG) piston tube. This AD requires replacing the NLG piston tube. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective December 3, 2021.

ADDRESSES: For service information identified in this final rule, contact Costruzioni Aeronautiche Tecnam S.P.A, Via S. D'acquisto 62, 80042 Boscotrecase (NA), Italy; phone: +39 0823 620134; fax: +39 0823 622899; email: *airworthiness@tecnam.com;* website: *https://www.tecnam.com/us/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–2021–0700.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0700; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the MCAI, 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: Jim Rutherford, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 901 Locust, Room 301, Kansas City, MO 64106; phone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@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 all Costruzioni Aeronautiche Tecnam S.P.A. Model P2006T airplanes. The NPRM published in the **Federal Register** on August 25, 2021 (86 FR 47422). The NPRM was prompted by MCAI originated by the European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union. EASA issued AD 2019–0043, dated March 6, 2019 (referred to after this as ''the MCAI''), to correct an unsafe condition for Costruzioni Aeronautiche Tecnam S.P.A. Model P2006T airplanes. The MCAI states:

> Failures of NLG piston tubes P/N 26–8–1408–1 were reported during ground operations. Subsequent investigation determined a deficiency in NLG piston tube manufacturing process. It was also determined that only a specific batch is affected by this defect.

This condition, if not corrected, could lead to failure of the NLG, possibly resulting in loss of control on the ground, during or after landing, with consequent damage to the aeroplane and injury to occupants.

To address this potential unsafe condition, TECNAM issued the [service bulletin] SB to provide instructions for the replacement of each affected part with a part that was manufactured by an improved process.

For the reasons described above, this [EASA] AD requires removal from service of the affected parts.

You may examine the MCAI in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0700.

Discussion of Final Airworthiness Directive

Comments

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

Conclusion

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 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

Costruzioni Aeronautiche Tecnam S.P.A. Service Bulletin No. SB 288–CS–Ed 1, Revision 1, dated December 22, 2017, is related to this AD and provides information about installing nose landing gear (NLG) piston tube kit number SB 288–1.

Costs of Compliance

The FAA estimates that this AD affects 59 airplanes of U.S. registry. The FAA also estimates it will take about 4 work-hours per airplane to comply with the replacement required by this AD and required parts would cost about $1,200 per airplane. The average labor rate is $85 per work-hour.

Based on these figures, the FAA estimates the cost of this AD on U.S. operators to be $90,860 or $1,540 per airplane.

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some of the costs of this 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

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:

2021–22–22 Costruzioni Aeronautiche Tecnam S.P.A.: Amendment 39–21795; Docket No. FAA–2021–0700; Project Identifier 2019–CE–017–AD.

(a) Effective Date

This airworthiness directive (AD) is effective December 3, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Costruzioni Aeronautiche Tecnam S.P.A. Model P2006T airplanes, all serial numbers, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 3220, Nose/Tail Landing Gear.

(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 a manufacturing defect in the nose landing gear (NLG) piston tube. The unsafe condition, if not addressed, could result in failure of the NLG upon or after landing.

(f) Compliance

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

(g) Required Actions

(1) For airplanes with an NLG piston tube part number (P/N) 26–8–1408–1 installed and not marked ''rev. F00'': Within 50 hours time-in-service after the effective date of this AD or within 2 months after the effective date of this AD, whichever occurs first, replace any P/N 26–8–1408–1 NLG piston tube with an improved part by installing NLG piston tube kit number SB 288–1.

(2) As of the effective date of this AD, do not install an NLG piston tube P/N 26–8–1408–1 on any airplane unless it is marked ''rev. F00.''

(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 paragraph (j)(1) of this AD 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.

(j) Related Information

(1) For more information about this AD, contact Jim Rutherford, Aviation Safety

Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 901 Locust, Room 301, Kansas City, MO 64106; phone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov.*

(2) Refer to European Union Aviation Safety Agency (EASA) AD 2019–0043, dated March 6, 2019, for more information. You may examine the EASA AD in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0700.

(3) For service information identified in this AD, contact Costruzioni Aeronautiche Tecnam S.P.A, Via S. D'acquisto 62, 80042 Boscotrecase (NA), Italy; phone: +39 0823 620134; fax: +39 0823 622899; email: *airworthiness@tecnam.com;* website: *https://www.tecnam.com/us/support/.* 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.

(k) Material Incorporated by Reference

None.

Issued on October 22, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–23516 Filed 10–28–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31395; Amdt. No. 3979]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPS) and associated Takeoff Minimums and Obstacle Departure procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective October 29, 2021. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 29, 2021.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops-M30. 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001.

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Information Services, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fr.inspection@nara.gov* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg. 29, Room 104, Oklahoma City, OK 73169. Telephone (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends 14 CFR part 97 by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, 8260–15B, when required by an entry on 8260–15A, and 8260–15C.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers or aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the typed of SIAPS, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPS, Takeoff Minimums and/or ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flights safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find

that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under 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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Lists of Subjects in 14 CFR part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on October 15, 2021.

Thomas J. Nichols,

Aviation Safety, Flight Standards Service, Manager, Standards Section, Flight Procedures & Airspace Group, Flight Technologies & Procedures Division.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CRF part 97) is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 2 December 2021

Hughes, AK, Hughes, HUGHES ONE Graphic DP
Hughes, AK, PAHU, RNAV (GPS) RWY 18, Orig
Hughes, AK, PAHU, RNAV (GPS) RWY 36, Orig
Hughes, AK, Hughes, Takeoff Minimums and Obstacle DP, Orig
Russian Mission, AK, Russian Mission, Takeoff Minimums and Obstacle DP, Amdt 3
Mena, AR, KMEZ, ILS OR LOC RWY 27, Amdt 2
North Little Rock, AR, KORK, RNAV (GPS) RWY 5, Amdt 1A
Oakdale, CA, O27, RNAV (GPS) RWY 28, Amdt 2A
San Francisco, CA, KSFO, GLS RWY 19L, Orig
San Francisco, CA, KSFO, GLS RWY 19R, Orig
San Francisco, CA, KSFO, GLS RWY 28L, Orig
San Francisco, CA, KSFO, GLS RWY 28R, Orig
San Jose, CA, KSJC, RNAV (GPS) Y RWY 30L, Amdt 4
San Jose, CA, KSJC, RNAV (GPS) Y RWY 30R, Amdt 4
San Jose, CA, KSJC, RNAV (RNP) Z RWY 30L, Amdt 4
San Jose, CA, KSJC, RNAV (RNP) Z RWY 30R, Amdt 3
Willits, CA, O28, RNAV (GPS) RWY 16, Amdt 2
Willits, CA, O28, RNAV (GPS) RWY 34, Amdt 2
Bonifay, FL, KBCR, RNAV (GPS) RWY 1, Orig
Bonifay, FL, KBCR, RNAV (GPS) RWY 19, Orig-D
Bonifay, FL, Tri-County, Takeoff Minimums and Obstacle DP, Amdt 1
Kansas City, MO, KMCI, ILS OR LOC RWY 19L, Amdt 2C
Kansas City, MO, KMCI, RNAV (GPS) Y RWY 19L, Amdt 2C
Kansas City, MO, KMCI, RNAV (RNP) Z RWY 19L, Amdt 1B
Malden, MO, KMAW, RNAV (GPS) RWY 14, Amdt 1
Malden, MO, KMAW, RNAV (GPS) RWY 18, Amdt 2
Malden, MO, KMAW, RNAV (GPS) RWY 32, Amdt 2
Malden, MO, KMAW, RNAV (GPS) RWY 36, Amdt 2
Malden, MO, KMAW, VOR/DME RWY 14, Amdt 1, CANCELLED
Oxford, NC, KHNZ, RNAV (GPS) RWY 6, Amdt 2
Farmington, NM, KFMN, ILS OR LOC RWY 25, Amdt 8
Farmington, NM, KFMN, RNAV (GPS) RWY 23, Amdt 2
Farmington, NM, KFMN, RNAV (GPS) RWY 25, Amdt 2
Philadelphia, PA, KPHL, ILS OR LOC RWY 27L, ILS RWY 27L (SA CAT II), Amdt 15
Sioux Falls, SD, KFSD, RNAV (GPS) RWY 15, Amdt 1B
Millington, TN, 2M8, RNAV (GPS) RWY 18, Orig-B
San Angelo, TX, KSJT, RNAV (GPS) RWY 21, Amdt 2A
San Angelo, TX, KSJT, VOR Y RWY 21, Amdt 18
Delta, UT, Delta Muni, DELTA ONE Graphic DP
Delta, UT, KDTA, RNAV (GPS) RWY 17, Amdt 2
Delta, UT, KDTA, RNAV (GPS) RWY 35, Amdt 2
Delta, UT, KDTA, VOR RWY 35, Amdt 4
Middleton, WI, Middleton Muni-Morey Fld, Takeoff Minimums and Obstacle DP, Amdt 2A
Jackson, WY, KJAC, ILS Y OR LOC Y RWY 19, Amdt 1
Jackson, WY, KJAC, ILS Z OR LOC Z RWY 19, Amdt 1
Jackson, WY, KJAC, RNAV (GPS) Z RWY 19, Amdt 2
Jackson, WY, KJAC, RNAV (RNP) X RWY 19, Orig
Jackson, WY, KJAC, RNAV (RNP) Y RWY 19, Amdt 3
Wheatland, WY, Phifer Airfield, RNAV (GPS) RWY 26, Orig
Wheatland, WY, Phifer Airfield, RNAV (GPS)-A, Amdt 1, CANCELLED

[FR Doc. 2021–23496 Filed 10–28–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31396; Amdt. No. 3980]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective October 29, 2021. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 29, 2021.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC, 20590–0001;
2. The FAA Air Traffic Organization Service Area in which the affected airport is located;
3. The office of Aeronautical Information Services, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. The National Archives and Records Administration (NARA).

For information on the availability of this material at NARA, email *fr.inspection@nara.gov* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg. 29, Room 104, Oklahoma City, OK 73169. Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends 14 CFR part 97 by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary. This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under 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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on October 15, 2021.

Thomas J. Nichols,

Aviation Safety, Flight Standards Service, Manager, Standards Section, Flight Procedures & Airspace Group, Flight Technologies & Procedures Division.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, CFR part 97, (is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
2–Dec–21	PA	Lehighton	Jake Arner Meml	1/0322	7/29/21	RNAV (GPS) RWY 26, Amdt 1C.
2–Dec–21	IL	Canton	Ingersoll	1/0530	9/2/21	RNAV (GPS) RWY 36, Amdt 1C.

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
2–Dec–21	IL	Canton	Ingersoll	1/0538	9/2/21	RNAV (GPS) RWY 18, Amdt 1B.
2–Dec–21	IL	Canton	Ingersoll	1/0539	9/2/21	VOR–A, Amdt 8A.
2–Dec–21	TX	Levelland	Levelland Muni	1/0857	9/23/21	Takeoff Minimum and Obstacle DP, Amdt 4.
2–Dec–21	ME	Biddeford	Biddeford Muni	1/1080	10/4/21	VOR RWY 6, Orig-A.
2–Dec–21	ME	Biddeford	Biddeford Muni	1/1082	10/4/21	RNAV (GPS) RWY 6, Orig-A.
2–Dec–21	TN	Paris	Henry County	1/1193	8/19/21	RNAV (GPS) RWY 2, Orig-A.
2–Dec–21	AR	Malvern	Malvern Muni	1/1203	7/12/21	RNAV (GPS) RWY 22, Orig-B.
2–Dec–21	AL	Tuscaloosa	Tuscaloosa Ntl	1/1418	7/29/21	ILS OR LOC RWY 4, Amdt 14F.
2–Dec–21	ID	Gooding	Gooding Muni	1/1628	8/20/21	RNAV (GPS) RWY 7, Amdt 1.
2–Dec–21	SD	Aberdeen	Aberdeen Rgnl	1/1660	10/4/21	VOR RWY 31, Amdt 21A.
2–Dec–21	WV	Buckhannon	Upshur County Rgnl	1/2582	7/29/21	RNAV (GPS) RWY 11, Amdt 2C.
2–Dec–21	WV	Buckhannon	Upshur County Rgnl	1/2584	7/29/21	RNAV (GPS) RWY 29, Amdt 2C.
2–Dec–21	AR	Clinton	Holley Mountain Airpark	1/2950	8/10/21	RNAV (GPS) RWY 23, Amdt 1B.
2–Dec–21	FL	Miami	Miami Exec	1/3806	8/24/21	ILS OR LOC RWY 9R, Amdt 11D.
2–Dec–21	FL	Miami	Miami Exec	1/3807	8/24/21	RNAV (GPS) RWY 27L, Amdt 2D.
2–Dec–21	FL	Miami	Miami Exec	1/3808	8/24/21	RNAV (GPS) RWY 27R, Orig-B.
2–Dec–21	FL	Miami	Miami Exec	1/3811	8/24/21	RNAV (GPS) RWY 9L, Orig-C.
2–Dec–21	FL	Miami	Miami Exec	1/3812	8/24/21	RNAV (GPS) RWY 9R, Amdt 2D.
2–Dec–21	NY	Buffalo	Buffalo Niagara Intl	1/4396	8/13/21	RNAV (GPS) Y RWY 5, Amdt 2D.
2–Dec–21	NY	Buffalo	Buffalo Niagara Intl	1/4397	8/13/21	RNAV (GPS) Y RWY 23, Amdt 2C.
2–Dec–21	NY	Buffalo	Buffalo Niagara Intl	1/4398	8/13/21	RNAV (GPS) RWY 32, Amdt 2B.
2–Dec–21	AK	Utqiagvik	Wiley Post-Will Rogers Meml	1/4443	9/29/21	ILS OR LOC RWY 8, Amdt 2.
2–Dec–21	AK	Utqiagvik	Wiley Post-Will Rogers Meml	1/4444	9/29/21	LOC BC RWY 26, Amdt 2.
2–Dec–21	AK	Utqiagvik	Wiley Post-Will Rogers Meml	1/4445	9/29/21	RNAV (GPS) RWY 26, Amdt 1.
2–Dec–21	AK	Utqiagvik	Wiley Post-Will Rogers Meml	1/4446	9/29/21	RNAV (GPS) RWY 8, Amdt 1.
2–Dec–21	AK	Utqiagvik	Wiley Post-Will Rogers Meml	1/4447	9/29/21	VOR RWY 26, Amdt 2.
2–Dec–21	AK	Utqiagvik	Wiley Post-Will Rogers Meml	1/4448	9/29/21	Takeoff Minimum and Obstacle DP, Orig-B.
2–Dec–21	FL	Winter Haven	Winter Haven Rgnl	1/4455	9/9/21	RNAV (GPS) RWY 5, Amdt 1D.
2–Dec–21	AK	Arctic Village	Arctic Village	1/4508	7/8/21	RNAV (GPS) RWY 20, Orig.
2–Dec–21	AK	Arctic Village	Arctic Village	1/4509	7/8/21	RNAV (GPS) RWY 2, Orig.
2–Dec–21	AK	Ruby	Ruby	1/4578	7/7/21	RNAV (GPS) RWY 21, Amdt 2.
2–Dec–21	AK	Ruby	Ruby	1/4579	7/7/21	RNAV (GPS) RWY 3, Amdt 1B.
2–Dec–21	OH	Cleveland	Cleveland-Hopkins Intl	1/4640	10/4/21	RNAV (GPS) Y RWY 24L, Amdt 5.
2–Dec–21	AR	Texarkana	Texarkana Rgnl-Webb Fld	1/5143	7/12/21	ILS OR LOC RWY 22, Amdt 16.
2–Dec–21	AR	Texarkana	Texarkana Rgnl-Webb Fld	1/5144	7/12/21	LOC BC RWY 4, Amdt 13.
2–Dec–21	AR	Texarkana	Texarkana Rgnl-Webb Fld	1/5146	7/12/21	RNAV (GPS) RWY 4, Orig-A.
2–Dec–21	AR	Texarkana	Texarkana Rgnl-Webb Fld	1/5147	7/12/21	RNAV (GPS) RWY 13, Orig-B.
2–Dec–21	AR	Texarkana	Texarkana Rgnl-Webb Fld	1/5148	7/12/21	RNAV (GPS) RWY 22, Orig-A.
2–Dec–21	AR	Texarkana	Texarkana Rgnl-Webb Fld	1/5150	7/12/21	RNAV (GPS) RWY 31, Orig-B.
2–Dec–21	AR	Texarkana	Texarkana Rgnl-Webb Fld	1/5151	7/12/21	VOR RWY 13, Amdt 16A.
2–Dec–21	OK	Seminole	Seminole Muni	1/5744	7/28/21	RNAV (GPS) RWY 16, Amdt 1A.
2–Dec–21	TN	Fayetteville	Fayetteville Muni	1/6610	7/29/21	RNAV (GPS) RWY 2, Orig.
2–Dec–21	TN	Fayetteville	Fayetteville Muni	1/6611	7/29/21	RNAV (GPS) RWY 20, Amdt 1A.
2–Dec–21	TN	Fayetteville	Fayetteville Muni	1/6612	7/29/21	VOR/DME RWY 2, Orig-E.
2–Dec–21	CA	Hemet	Hemet-Ryan	1/6910	10/1/21	RNAV (GPS) RWY 5, Orig-D.
2–Dec–21	AK	Ketchikan	Ketchikan Intl	1/7255	7/29/21	RNAV (GPS) RWY 11, Orig.
2–Dec–21	CA	Rio Vista	Rio Vista Muni	1/7826	8/17/21	RNAV (GPS) RWY 25, Amdt 3D.
2–Dec–21	VT	Highgate	Franklin County State	1/7997	10/5/21	RNAV (GPS) RWY 1, Amdt 3A.
2–Dec–21	LA	Marksville	Marksville Muni	1/8329	7/20/21	RNAV (GPS) RWY 4, Orig-B.
2–Dec–21	NY	Watertown	Watertown Intl	1/8385	9/2/21	ILS OR LOC RWY 7, Amdt 8.
2–Dec–21	WI	Clintonville	Clintonville Muni	1/8409	9/2/21	RNAV (GPS) RWY 22, Amdt 1A.
2–Dec–21	KS	Great Bend	Great Bend Muni	1/8610	7/20/21	ILS OR LOC RWY 35, Orig-C.
2–Dec–21	KS	Great Bend	Great Bend Muni	1/8611	7/20/21	NDB RWY 35, Amdt 3A.
2–Dec–21	KS	Great Bend	Great Bend Muni	1/8612	7/20/21	RNAV (GPS) RWY 17, Orig-B.
2–Dec–21	KS	Great Bend	Great Bend Muni	1/8613	7/20/21	RNAV (GPS) RWY 35, Orig-A.
2–Dec–21	NM	Raton	Raton Muni/Crews Fld	1/9043	9/2/21	RNAV (GPS) RWY 2, Orig-C.
2–Dec–21	FL	Miami	Miami-Opa Locka Exec	1/9965	7/29/21	ILS OR LOC RWY 9L, Amdt 5B.
2–Dec–21	FL	Miami	Miami-Opa Locka Exec	1/9967	7/29/21	ILS OR LOC RWY 12, Amdt 2B.
2–Dec–21	FL	Miami	Miami-Opa Locka Exec	1/9968	7/29/21	ILS OR LOC RWY 27R, Amdt 1D.
2–Dec–21	FL	Miami	Miami-Opa Locka Exec	1/9976	7/29/21	RNAV (GPS) RWY 9L, Orig-B.
2–Dec–21	FL	Miami	Miami-Opa Locka Exec	1/9983	7/29/21	RNAV (GPS) RWY 12, Orig-B.
2–Dec–21	FL	Miami	Miami-Opa Locka Exec	1/9984	7/29/21	RNAV (GPS) RWY 27R, Orig-C.

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FEDERAL TRADE COMMISSION

16 CFR Parts 1, 4, 306, 309, 323, and 500

Procedures for Responding to Petitions for Rulemaking

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') is updating its procedures for responding to petitions for rulemaking. These changes will provide increased transparency and promote public participation in the rulemaking process. Pursuant to the amendments, the FTC will provide notice and an opportunity for public comment on petitions for the issuance, amendment, or repeal of regulations. The rules also provide greater guidance to the public on the procedures for filing petitions and the types of material that may be submitted in support of a petition.

DATES: This rule is effective October 29, 2021.

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

SUPPLEMENTARY INFORMATION: The Commission is revising parts 1 and 4 of its rules of practice, 16 CFR parts 1 and 4, to update procedures for handling petitions for rulemaking. These updated procedures will govern the handling of petitions for the issuance, amendments, or repeal of rules, including trade regulation rules issued pursuant to Section 18(a)(1)(B) of the FTC Act (15 U.S.C. 57a(a)(1)(B)), as well as other statutory grants of rulemaking authority. These procedures will also apply to requests to issue, amend, or repeal interpretive rules, including guides described in subchapter B of the Commission rules and other official Commission interpretations.[1] In addition, the procedures will apply to petitions from regulated parties seeking exemptions from Commission rules.[2]

The amendments add a new subpart D in part 1 of the Commission rules to establish updated procedures for responding to petitions for rulemaking. Pursuant to these procedures, interested persons may petition the Commission for the issuance, amendment, or repeal of a regulation administered by the Commission, including an interpretive rule providing a Commission interpretation of a statute or regulation administered by the Commission.

Under the revised procedures, the Commission will publish petitions for rulemaking in the **Federal Register** and invite public comment on the merits of petitions. This change will promote public participation in the rulemaking process and allow the Commission to obtain useful public input in reaching a determination on whether to grant a petition for rulemaking.

The amendments also provide additional detail regarding the types of information that must be filed in support of a petition for rulemaking as well as the types of data that may assist the Commission in evaluating petitions. The rule describes the information and supporting data that must be included with any petition for rulemaking, including the name and contact information for the petitioner along with an explanation of how the petitioner's interests would be affected by the proposed action. The rule also requires petitioners to provide a thorough description of the action being requested along with a full explanation of the factual and legal basis for the requested action. The rule also provides guidance to petitioners on the types of information that may be relied upon to support a petition including, but not limited to, research, industry data, and all scientific, technical, or statistical analyses prepared in support of the proposal.

The rule also provides instructions to the public on the mechanics for filing petitions for rulemaking, and additional detail on how the Commission will docket and handle petitions that are received. The revised rule also promotes transparency by ensuring petitioners are notified of a Commission decision to either initiate rulemaking in response to a petition or to deny the petition. In addition, the revised rule provides clearer instructions on how to obtain confidential treatment of information submitted in support of a petition.

These procedures will also apply to petitions for exemptions from Commission rules. Accordingly, the Commission is making conforming amendments to update cross-references to the Commission's procedures for responding to petitions for rulemaking and petitions for exemptions from an agency rule in several other FTC rules.

§ 1.6 How Promulgated

The amendments revise § 1.6 to clarify that the Commission will employ these updated procedures to respond to petitions seeking the issuance, amendment, or repeal of industry guides.

§ 1.9 Petitions To Commence Trade Regulation Rule Proceedings

The amendments revise § 1.9 to include an updated cross-reference to these new procedures in § 1.31 of the Commission's rules. This change makes clear that these new procedures will apply to petitions to issue, amend, or repeal trade regulation rules issued under section 18(a)(1)(B) of the FTC Act (15 U.S.C. 57a(1)(B)).

§ 1.16 Petition for Exemption From Trade Regulation Rule

The amendments revise § 1.16 to include an updated cross-reference to § 1.31. Pursuant to these amendments, these new procedures will apply to petitions by individual regulated entities seeking an exemption from the application of a trade regulation rule.

§ 1.25 Initiation of Proceedings

The Commission is also revising § 1.25 of the Commission's rules, 16 CFR 1.25. This change makes clear that the new procedures will be employed to resolve petitions for rulemaking under authorities other than section 18(a)(1)(B) of the FTC Act (15 U.S.C. 57a(1)(B)).

§ 4.2 Requirements as to Form, and Filing of Documents Other Than Correspondence

The amendments also incorporate an updated cross-reference to these new procedures in the Commission's filing rules contained in § 4.2 of the Commission's rules, 16 CFR 4.2.

Other Rule Provisions

The Commission is also updating references to petition procedures in several FTC rules that provide for regulated parties to seek exemptions from Commission rules. Specifically, the Commission is updating cross-references to its petition procedures in the following rules: Automotive fuel

[1] These new procedures do not alter or supersede the procedures described in subpart A of Part 1, 16 CFR 1.1 through 1.4, of the Commission's rules of practice governing requests for advisory opinions with respect to a course of action the requesting party proposes to pursue. Requests for individualized advisory opinions relating to the lawfulness of a specific course of conduct will continue to be handled pursuant to the procedures outlined in subpart A of Part 1.

[2] As described below, the Commission is also making conforming amendments to provisions in parts 306, 309, 323, and 500, which allow regulated parties to seek exemptions from Commission rules, to include a cross-reference to the Commission's updated procedures for responding to petitions for rulemaking.

ratings, certification and posting, 16 CFR part 306; Labeling requirements for alternative fuels and alternative fueled vehicles, 16 CFR part 309; Made in USA Labeling Rule, 16 CFR part 323; and Regulations under section 4 of the Fair Packaging and Labeling Act, 16 CFR part 500.

IV. Procedural Requirements

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.[3]

The Office of Management and Budget (''OMB'') has approved the information collections associated with requests for Commission action pursuant to the Commission's rules of practice, including the petitions covered by these amendments. OMB has approved these information collections through June 30, 2024 (OMB Control No. 3084–0169). These amendments revise the procedures the Commission will employ to respond to such petitions and provide additional guidance to the public on what types of information and supporting materials should be submitted in support of a petition to allow the Commission to respond effectively. The amendments do not impose additional requirements and do not require further OMB clearance.

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

16 CFR Part 1

Administrative practice and procedure.

16 CFR Part 4

Administrative practice and procedure, Freedom of information.

16 CFR Part 306

Fuel ratings, Fuel, Gasoline, Incorporation by reference, Trade practices.

16 CFR Part 309

Alternative fuel, Alternative fueled vehicle, Energy conservation, Labeling, Reporting and recordkeeping, Trade practices.

16 CFR Part 323

Labeling, U.S. origin.

16 CFR Part 500

Fair Packaging and Labeling Act, Incorporation by reference, Labeling, Packaging and containers, Trade practices.

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 1—GENERAL PROCEDURES

■ 1. The authority citation for part 1 continues 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.

■ 2. Add an authority citation for subpart A to read as follows:

Authority: 15 U.S.C. 46, unless otherwise noted.

■ 3. Revise § 1.6 to read as follows:

§ 1.6 How promulgated.

Industry guides[1] are promulgated by the Commission on its own initiative or pursuant to petition filed with the Secretary pursuant to § 1.31, by any interested person or group, when it appears to the Commission that guidance as to the legal requirements applicable to particular practices would be beneficial in the public interest and would serve to bring about more widespread and equitable observance of laws administered by the Commission. In connection with the promulgation of industry guides, the Commission at any time may conduct such investigations, make such studies, and hold such conferences or hearings as it may deem appropriate. All or any part of any such investigation, study, conference, or hearing may be conducted under the provisions of subpart A of part 2 of this chapter.

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

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

■ 5. Revise § 1.9 to read as follows:

§ 1.9 Petitions to commence trade regulation rule proceedings.

Trade regulation rule proceedings may be commenced by the Commission upon its own initiative or pursuant to written petition filed with the Secretary by any interested person stating reasonable grounds therefor. Such petitions will be handled in the same manner and pursuant to the same procedures as prescribed in § 1.31 of this chapter.

■ 6. 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. Petitions for exemptions will be handled in the same manner and pursuant to the same procedures as prescribed in § 1.31 of this chapter.

■ 7. Revise the authority citation for subpart C of Part 1 to read as follows:

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

■ 8. Revise § 1.25 to read as follows:

§ 1.25 Initiation of rulemaking proceedings—petitions.

Proceedings for the issuance, amendment, or repeal of rules issued pursuant to authorities other than Section 18(a)(1)(B) of the FTC Act (15 U.S.C. 57a(1)(B)), including proceedings for exemption of products or classes of products from statutory requirements, may be commenced by the Commission upon its own initiative or pursuant to petition. Such petitions will be handled in the same manner and pursuant to the same procedures as prescribed in § 1.31 of this chapter.

■ 9. Add subpart D, consisting of § 1.31, to read as follows:

Subpart D—Petitions for Rulemaking or Exemption

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

§ 1.31 Procedures for addressing petitions.

(a) *Petitions for rulemaking.* An interested person may petition for the issuance, amendment, or repeal of a rule, administered by the Commission pursuant to Section 18(a)(1)(B) of the FTC Act (15 U.S.C. 57a(1)(B)) or other statutory authorities. A request to issue, amend, or repeal an interpretive rule, including an industry guide, may also be submitted by petition. For purposes of this section, a ''petition'' means a written request to issue, amend, or repeal a rule or interpretive rule administered by the Commission or a petition seeking an exemption from the coverage of a rule.

(b) *Requirements.* Petitions must include the following information:

[3] 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.

[1] In the past, certain of these have been promulgated and referred to as trade practice rules.

(1) The petitioner's full name, address, telephone number, and email address (if available), along with an explanation of how the petitioner's interests would be affected by the requested action;

(2) A full statement of the action requested by the petitioner, including the text and substance of the proposed rule or amendment, or a statement identifying the rule proposed to be repealed, and citation to any existing Commission rules that would be affected by the requested action;

(3) A full statement of the factual and legal basis on which the petitioner relies for the action requested in the petition, including all relevant facts, views, argument, and data upon which the petitioner relies, as well as information known to the petitioner that is unfavorable to the petitioner's position. The statement should identify the problem the requested action is intended to address and explain why the requested action is necessary to address the problem.

(c) *Supporting data.* If an original research report is used to support a petition, the information should be presented in a form that would be acceptable for publication in a peer reviewed scientific or technical journal. If quantitative data are used to support a petition, the presentation of the data should include a complete statistical analysis using conventional statistical methods. Sources of information appropriate to use in support of a petition include, but are not limited to:

(1) Professional journal articles,
(2) Research reports,
(3) Official government statistics,
(4) Official government reports,
(5) Industry data, and
(6) Scientific textbooks.

(d) *Filing.* A petition should be submitted via email to *electronicfilings@ftc.gov* or sent via postal mail or commercial delivery to Federal Trade Commission, Office of the Secretary, Suite CC–5610, 600 Pennsylvania Avenue NW, Washington, DC 20580. If the petition meets the requirements for Commission consideration described in this section, the Secretary will assign a docket number to the petition. Once a petition has been docketed, the FTC will notify the petitioner in writing and provide the petitioner with the number assigned to the petition and an agency contact for inquiries relating to the petition. The petition number should be referenced by the petitioner in all contacts with the agency regarding the petition.

(e) *Confidential treatment.* If a petition contains material for which the petitioner seeks confidential treatment, the petitioner must file a request for confidential treatment that complies with § 4.9(c) of this chapter and two versions of the petition and all supporting materials, consisting of a confidential and a public version. Every page of each such document shall be clearly and accurately labeled ''Public'' or ''Confidential.'' In the confidential version, the petitioner must use brackets or similar conspicuous markings to indicate the material for which it is claiming confidential treatment. In the public version, the petitioner must redact all material for which it seeks confidential treatment in the petition and supporting materials or all portions thereof for which confidential treatment is requested. The written request for confidential treatment that accompanies the petition must include a description of the material for which confidential treatment is requested and the factual and legal basis for the request. Requests for confidential treatment will only be granted if the General Counsel grants the request in accordance with the law and the public interest, pursuant to § 4.9(c) of this chapter.

(f) *Notice and public comment.* After a petition has been docketed as described in paragraph (d) of this section, the Office of the Secretary will provide public notice of the petition on behalf of the Commission in the **Federal Register** and publish the document online for public comment for 30 days through the Federal eRulemaking portal at *https://www.regulations.gov.* Any person may file a statement in support of or in opposition to a petition prior to Commission action on the petition by following the instructions provided in the **Federal Register** notice inviting comment on the petition. All comments on a petition will become part of the public record.

(g) *Resolution of petitions.* The Commission may grant or deny a petition in whole or in part. If the Commission determines to commence a rulemaking proceeding in response to a petition, the Commission will publish a rulemaking notice in the **Federal Register** and will serve a copy of the notice initiating the rulemaking proceeding on the petitioner. If the petition is deemed by the Commission as insufficient to warrant commencement of a rulemaking proceeding, the Commission will make public its determination and notify the petitioner, who may be given the opportunity to submit additional data. Petitions that are moot, premature, repetitive, frivolous, or which plainly do not warrant consideration by the Commission may be denied or dismissed without prejudice to the petitioner.

PART 4—MISCELLANEOUS RULES

■ 10. The authority citation for part 4 continues to read as follows:

Authority: 15 U.S.C. 46.

■ 11. Amend § 4.2 by adding paragraph (a)(1)(iii) to read as follows:

§ 4.2 Requirements as to form, and filing of documents other than correspondence.

(a) * * *

(1) * * *

(iii) Petitions for rulemaking and petitions for exemptions from rules shall instead be filed in the manner prescribed in § 1.31 of this chapter.

* * * * *

PART 306—AUTOMOTIVE FUEL RATINGS, CERTIFICATION AND POSTING

■ 12. The authority citation for part 306 continues to read as follows:

Authority: 15 U.S.C. 2801 *et seq.;* 42 U.S.C. 17021.

■ 13. Revise § 306.10(b)(2) to read as follows:

§ 306.10 Automotive fuel rating posting.

(b) * * *

(2) You may petition for an exemption from the placement requirements. You must state the reasons that you want the exemption. Petitions for exemptions will be handled pursuant to the procedures prescribed in § 1.31 of this chapter.

* * * * *

■ 14. Amend § 306.12 by:

■ a. In paragraph (a)(2), revising the last two sentences; and

■ b. In paragraph (a)(3), revising the last two sentences.

The revisions to read as follows:

§ 306.12 Labels.

(a) * * *

(2) * * * You must state the size and contents of the label that you wish to use, and the reasons that you want to use it. Petitions for exemptions will be handled pursuant to the procedures prescribed in § 1.31 of this chapter.

(3) * * * You must state the size and contents of the label that you wish to use, and the reasons that you want to use it. Petitions for exemptions will be handled pursuant to the procedures prescribed in § 1.31 of this chapter.

* * * * *

PART 309—LABELING REQUIREMENTS FOR ALTERNATIVE FUELS AND ALTERNATIVE FUELED VEHICLES

■ 15. The authority citation for part 309 continues to read as follows:

Authority: 42 U.S.C. 13232(a).

■ 16. Revise § 309.15(b)(2) to read as follows:

§ 309.15 Posting of non-liquid alternative vehicle fuel rating.

* * * * *

(b) * * *

(2) You may petition for an exemption from the placement requirements by writing the Secretary of the Federal Trade Commission, Washington, DC 20580. You must state the reasons that you want the exemption. Petitions for exemptions will be handled pursuant to the procedures prescribed in § 1.31 of this chapter.

* * * * *

■ 17. Amend § 309.17 by:

■ a. In paragraph (a)(1), revising the last two sentences; and

■ b. In paragraph (a)(2), revising the last two sentences.

The revisions to read as follows:

§ 309.17 Labels.

* * * * *

(a) * * *

(1) * * * You must state the size and contents of the label that you wish to use, and the reasons that you want to use it. Petitions for exemptions will be handled pursuant to the procedures prescribed in § 1.31 of this chapter.

(2) * * * You must state the size and contents of the label that you wish to use, and the reasons that you want to use it. Petitions for exemptions will be handled pursuant to the procedures prescribed in § 1.31 of this chapter.

* * * * *

PART 323—MADE IN USA LABELING RULE

■ 18. The authority citation for part 323 continues to read as follows:

Authority: 15 U.S.C. 45a.

■ 19. Revise § 323.6 to read as follows:

§ 323.6 Exemptions.

Any person to whom this rule applies may petition the Commission for a partial or full exemption. The Commission may, in response to petitions or on its own authority, issue partial or full exemptions from this part if the Commission finds application of the rule's requirements is not necessary to prevent the acts or practices to which the rule relates. The Commission shall resolve petitions using the procedures provided in § 1.31 of this chapter. If appropriate, the Commission may condition such exemptions on compliance with alternative standards or requirements to be prescribed by the Commission.

PART 500—REGULATIONS UNDER SECTION 4 OF THE FAIR PACKAGING AND LABELING ACT

■ 20. The authority citation for part 500 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455.

■ 21. Amend § 500.3 by revising paragraph (e) to read as follows:

§ 500.3 Prohibited acts, coverage, general labeling requirements, exemption procedures.

* * * * *

(e) Proceedings for the promulgation of such exempting regulations may be commenced by the Commission upon its own initiative or pursuant to petition filed with the Secretary by any interested person or group stating reasonable grounds for the proposed exemption, pursuant to § 1.31 of this chapter.

By direction of the Commission, Commissioner Christine S. Wilson dissenting.

April J. Tabor,

Secretary.

The Following Will Not Appear in the Code of Federal Regulations

Statement of Chair Lina M. Khan

A key priority of mine is ensuring that the FTC is regularly hearing and learning from the broader public, including the consumers, workers, and honest businesses we strive to protect. Guarding against insularity is a constant challenge for virtually all federal agencies, and ensuring the FTC is accessible even to those who lack well-heeled counsel or personal connections is essential to our institutional credibility. Introducing these open meetings and inviting public comments on a monthly basis has been part of an effort to democratize our work in this way.

Today, we are taking this effort one step further by implementing changes to our procedures around rulemaking. Congress granted the FTC the power to issue rules, equipping us with a vital tool to protect the public from harmful business practices. Interested members of the public will be able to petition the FTC to invoke its rulemaking and other authorities to advance its mission. The new procedures provide clearer guidance to the public on how to file a petition with the Commission and what steps the Commission will take after receiving a petition. These revised procedures will help ensure that all interested parties will have effective and meaningful access to the petition process. Each petition for rulemaking will be made publicly available; petitioners will be provided an agency point of contact to assist them throughout the process; and all petitions will be put out for comment so others can comment on them. Finally, the new procedures ensure that petitioners are notified of a Commission decision on the petition one way or another.

As Chair, I am fully committed to finding ways to ensure our agency is directly connected to and responsive to the public we serve, and I welcome additional ideas for how we can modify our agency's processes to better meet these goals.

Statement of Commissioner Rohit Chopra

The Constitution of the United States guarantees the right ''to petition the Government.'' The Administrative Procedure Act also requires that an ''agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.'' Federal agencies across the government have moved toward more transparent procedures to allow the public to file petitions for rulemaking. Unfortunately, Commissioners spanning multiple administrations pursued a more secretive and less accountable policy when individuals exercised their First Amendment rights.

The FTC used to publish routinely the petitions it received to allow for public inspection. Those petitions came on a wide range of concerns. For example, Commissioners received petitions on everything from the labeling of cage-free eggs, health benefit claims, and immigration consulting. In 2011, Commissioners largely abandoned the practice of publishing these petitions. While we have resumed publication of these petitions, we have not done so consistently or in an orderly fashion.

In 2019, the New Civil Liberties Alliance, a conservative legal advocacy group, petitioned the FTC to pursue a rulemaking regarding the procedures for defending agency guidance when challenged in court. My initial review suggested the actions requested in the petition may not have been the best use of resources, but the petition was not frivolous. I unsuccessfully argued to my colleagues that we should post the petition and solicit comment on it, along with others, consistent with the best practices published by the Administrative Conference of the United States, rather than what amounted to pretending we never received it. Even if we disagree, we shouldn't silence or censor them.

The proposed rule changes will reverse the inappropriate practices implemented by prior Commissioners and allow interested persons to submit petitions for rulemaking. Petitions properly submitted will be posted for public inspection and the public will be allowed to comment.

This system is not perfect. Dark money groups funded by regulated entities may submit petitions and may manufacture fake comments, as federal agencies have seen in other regulatory proceedings. However, initiatives like these help loosen the grip large, dominant firms have held in order to secretly influence and dictate the agenda of this agency. Small businesses and community groups can't afford to hire high-priced FTC alumni with special access and

connections to push their agenda. Making public every properly filed petition for rulemaking will level the playing field. This is another important step to be more transparent, to promote democratic debate, and to rebuild trust in the Federal Trade Commission.

[FR Doc. 2021–21824 Filed 10–28–21; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2021–0804]

RIN 1625–AA08

Special Local Regulation; San Diego Bay, San Diego, CA

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation (SLR) in the navigable waters of San Diego Bay, California during the Baja Ha-Ha XXVII Pre-Rally Parade marine event. This regulation is necessary to provide for the safety of the participants, crew, spectators, sponsor vessels of the parade, and general users of the waterway during the event, which will be held on November 1, 2021. This special local regulation will temporarily prohibit persons and vessels from entering into, transiting through, anchoring, blocking, or loitering within the event area unless authorized by the Captain of the Port San Diego or a designated representative.

DATES: This rule is effective from 8:30 a.m. to 11:30 a.m. on November 1, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2021–0804 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander John Santorum, Waterways Management, U.S. Coast Guard Sector San Diego, CA; telephone (619) 278–7656, email *D11MarineEventsSD@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because we must establish this special local regulation by November 1, 2021. The event sponsor did not notify the Coast Guard of the official date of the event until September 12, 2021. Therefore, it is impracticable to publish an NPRM because we lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule. This regulation is necessary to ensure the safety of life on the navigable waters of San Diego Bay during the marine event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because action is needed to ensure the safety of life on the navigable waters of San Diego Bay during the marine event on November 1, 2021.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041 (previously 33 U.S.C. 1236). The Captain of the Port Sector San Diego (COTP) has determined that the large number of vessels associated with the Baja Ha-Ha XXVII Pre-Rally Parade marine event on November 1, 2021, poses a potential safety concern in the regulated area. This rule is needed to protect persons, vessels, and the marine environment in the navigable waters of San Diego Bay during the marine event.

IV. Discussion of the Rule

This rule establishes a special local regulation from 8:30 a.m. to 11:30 a.m. on November 1, 2021. This special local regulation will cover all navigable waters, from surface to bottom, on a pre-determined course within San Diego Bay, California, beginning at the starting point of the event in South San Diego Bay, proceeding northwest to Harbor Island, then southwest to Shelter Island, and finishing at the starting point of the rally outside of the San Diego Bay channel entrance. The duration of the temporary special local regulation is intended to ensure the safety of vessels, personnel, and the marine environment in these navigable waters during the scheduled marine event. No vessel or person will be permitted to enter the regulated area without obtaining permission from the COTP or a designated representative. The regulatory text provides information on how to contact the COTP or a designated representative for permission to transit the area. When in the regulated area, persons must comply with all lawful orders or directions given to them by the COTP or designated representative. Additionally, the COTP will provide notice of the regulated area through advanced notice via broadcast notice to mariners or by on-scene designated representatives.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and time-of-day of the regulated area. The affected portion of the navigable waterway in San Diego Bay will be of very limited duration, during morning hours when vessel traffic is historically low and is necessary for safety of life of participants in the marine event. Moreover, the Coast Guard will issue a Local Notice to Mariners and a Safety Marine Information Broadcast over Channel 22A about the regulated area.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on

small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary special local regulation that will limit access to certain areas within San Diego Bay, from 8:30 a.m. until 11:30 a.m. on November 1, 2021. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

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

■ 2. Add § 100.T11–081 to read as follows:

§ 100.T11–081 Baja Ha-Ha XXVII Pre-Rally Parade, San Diego, California.

(a) *Regulated area.* The regulations in this section apply to the following area: all navigable waters, from surface to bottom, on a pre-determined course within San Diego Bay, California, beginning at the starting point of the event in South San Diego Bay, proceeding northwest to Harbor Island, then southwest to Shelter Island, and finishing at the starting point of the rally outside of the San Diego Bay channel entrance.

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

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

Participant means all persons and vessels registered with the event sponsor as a participants in the boat parade.

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

(2) To seek permission to enter, contact the the COTP or a designated representative. They may be contacted on VHF–FM Channel 21A or by telephone at 619–278–7033. Those in the regulated area must comply with all lawful orders or directions given to them by the COTP or designated representative.

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

(d) *Enforcement period.* This section will be enforced from 8:30 a.m. until 11:30 a.m., on November 1, 2021.

Dated: October 25, 2021.

T.J. Barelli,

Captain, U.S. Coast Guard, Captain of the Port San Diego.

[FR Doc. 2021–23616 Filed 10–28–21; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R01–OAR–2021–0265; FRL–8861–01–R1]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Massachusetts; 111(d)/129 Revised State Plan for Large Municipal Waste Combustors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the Clean Air Act State Plan revisions for Large Municipal Waste Combustors (MWCs) submitted by the Massachusetts Department of Environmental Protection (MassDEP) on December 18, 2018. The revised State Plan is in response to amended emission guidelines (EGs) for Large MWCs promulgated on May 10, 2006. MassDEP's State Plan is for implementing and enforcing provisions at least as protective as the EGs applicable to existing Large MWCs. This action is being taken under the Clean Air Act.

DATES: This rule is effective on November 29, 2021. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of November 29, 2021.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2021–0265. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID–19.

FOR FURTHER INFORMATION CONTACT: Shutsu Wong, Air Quality Branch, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square—Suite 100, (Mail Code 05–2), Boston, MA 02109–3912, tel. 617–918–1078, email *wong.shutsu@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Table of Contents

I. Background and Purpose
II. Final Action
III. Incorporation by Reference
IV. Statutory and Executive Order Reviews

I. Background and Purpose

On May 20, 2021 (86 FR 27350), EPA published a notice of proposed rulemaking (NPRM) for the Commonwealth of Massachusetts.

The NPRM proposed approval of the Clean Air Act State Plan revisions for Large MWCs submitted by the MassDEP on December 18, 2018. MassDEP revised the Code of Massachusetts Regulations (CMR), specifically at 310 CMR 7.08(2) entitled ''Municipal Waste Combustors,'' and submitted the revised State Plan in response to amended EGs for Large MWCs promulgated on May 10, 2006. MassDEP's State Plan is for implementing and enforcing provisions at least as protective as the EGs applicable to existing Large MWCs.

Other specific requirements under sections 111(d) and 129 of the Clean Air Act, and the rationale for EPA's proposed action, are explained in the NPRM and will not be restated here. No public comments were received on the NPRM.

II. Final Action

EPA is approving the MassDEP's revised State Plan for existing Large MWCs.

III. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that uses incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the provisions of 310 CMR 7.08(2), entitled ''Municipal Waste Combustors,'' effective March 9, 2018, excluding the site assignment provisions of 310 CMR 7.08(2)(a), the definition of ''materials separation plan'' at 310 CMR 7.08(2)(c), and the materials separation plan provisions at 310 CMR 7.08(2)(f)8. These provisions establish emission limitations and requirements for Large MWCs in Massachusetts. In accordance with 5 U.S.C. 552(a), EPA has made, and will continue to make, these documents generally available through *https://www.regulations.gov* and at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). This incorporation by reference is approved by the Office of the Federal Register upon the effective date of this final rule, and the plan is federally enforceable under the Clean Air Act (CAA) as of the effective date of this final rulemaking.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a State Plan submittal that complies with the provisions of the Act and applicable Federal regulations. Clean Air Act sections 111(d) and 129(b); 40 CFR part 60, subparts B and Cb; and 40 CFR part 62, subpart A; and 40 CFR 62.04. Thus, in reviewing state plan submissions, 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 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 State Plan is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 28, 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 62

Environmental protection, Air pollution control, Administrative practice and procedure, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides, and Waste treatment and disposal.

Dated: October 25, 2021.

Deborah Szaro,

Acting Regional Administrator, EPA Region 1.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 62 as follows:

PART 62—APPROVAL AND PROMULGATION OF STATE PLAN FOR DESIGNATED FACILITIES AND POLLUTANTS

■ 1. The authority citation for part 62 continues to read as follows:

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

Subpart W—[Amended]

■ 2. In subpart W, remove the undesignated center heading ''Plan for the Control of Designated Pollutants From Existing Facilities (Section 111(d) Plan)''.

■ 3. Revise § 62.5340 to read as follows:

§ 62.5340 Identification of plan.

(a) *Identification of plan.* Massachusetts Plan for the Control of Designated Pollutants from Existing Plants (Section 111(d) Plan).

(b) *Official submission of plan.* Revised State Plan for the control of metals, acid gases, organic compounds and nitrogen oxide emissions from existing municipal waste combustors—as submitted December 18, 2018, by the Massachusetts Department of Environmental Protection. The plan includes the regulatory provisions cited in paragraph (d) of this section, which EPA incorporates by reference.

(c) *Identification of sources.* The plan applies to existing sources in the following categories of sources:

(1) Municipal waste combustors.

(2) [Reserved]

(d) *Incorporation by reference.* (1) The material incorporated by reference in this section was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies at the EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square–Suite 100, Boston, MA, 617–918–1078 and from the source listed in paragraph (d)(2) of this section. You may also inspect the materials at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fr.inspection@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.*

(2) Commonwealth of Massachusetts, Massachusetts Department of Environmental Protection. 1 Winter Street, Boston, Massachusetts 02108, 617–292–5500, *mass.gov/orgs/massachusetts-department-of-environmental-protection;* Code of Massachusetts Regulations (CMR):

(i) 310 CMR 7.08(2): Title 310—Department of Environmental Protection, chapter 7.00—Air Pollution Control, section 7.08—U Incinerators, paragraph (2) ''Municipal Waste Combustors,'' in effect March 9, 2018 (as corrected and revised through August 21, 1998), excluding the following: subparagraph (2)(a) ''Site Assignment''; the definition of ''materials separation plan'' in subparagraph (2)(c); and subparagraph (2)(f)8. ''Material Separation Plan''.

(ii) [Reserved]

§ 62.5425 [Amended]

■ 4. In § 62.5425, remove and reserve paragraph (a)(1).

[FR Doc. 2021–23545 Filed 10–28–21; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 10–234; FCC 21–79; FR ID 46781]

Practice and Procedure, CORES Registration System

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) adopts a Report and Order to require entities and individuals doing business with the Commission to provide a valid email address when they register for FCC Registration Numbers (FRNs) and to keep the email information current along with other information used to register.

DATES: Effective November 29, 2021. The non-substantive change to an information collection effected by the revision to § 1.8002(b)(2) of the Commission's rules was approved by the Office of Management and Budget (OMB) on August 11, 2021.

FOR FURTHER INFORMATION CONTACT: Hua Lu, Financial Systems Operations

Group, Office of Managing Director, *hua.lu@fcc.gov*; 202.418.2424.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order,* in MD Docket No. 10–234, FCC 21–79, adopted on June 21, 2021 and released on June 22, 2021. The full text of this document is available for public inspection and copying during normal business hours in the FCC Reference Center, 45 L Street NE, Washington, DC 20554, or by downloading the text from the Commission's website at *https://docs.fcc.gov/public/attachments/FCC-21-79A1.pdf.*

Synopsis

I. Administrative Matters

A. Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980 (RFA), the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) relating to this Report and Order. The FRFA is located towards the end of this document.

B. Final Paperwork Reduction Act of 1995 Analysis

2. The Report and Order adopts a new information collection requirement subject to the Paperwork Reduction Act of 1995 (PRA). The new information collection requirement was submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA and pre-approved on March 15, 2011. In addition, the Report and Order adopts a non-substantive change to an existing approved information collection. This non-substantive change was approved by OMB on August 11, 2021.

C. Congressional Review Act.

3. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that these rules are non-major under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of this Report and Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

4. In 2000, the Commission established CORES, a web-based, password-protected, registration system that assigns a unique 10-digit FRN to a registrant for use when doing business with the FCC. While initially voluntary, in 2001 the Commission established that individuals and entities were required to obtain FRNs and supply FRNs when doing business with the Commission. Section 1.8002(b)(1) of the Commission's rules lists the information currently required from entities seeking to register for an FRN. Email address information has not been previously required under the rule. Section 1.8002(b)(2) requires that the information used to register for an FRN be kept current by the registrant.

5. In 2010, the Commission proposed modifications to CORES, seeking comment targeted at making CORES more user and feature-friendly and eliminating some of the system's then-current limitations. The 2010 notice of proposed rulemaking (NPRM) (76 FR 5652, Feb. 1, 2011) sought comment about potential changes to the FRN requirements, including whether email addresses should be required to be provided as part of the CORES registration process. The Commission tentatively concluded that ''[g]iven the significant increase in the use of and dependence on email in the years since CORES first became operational'' all FRN holders should be required to provide an email address upon registering in CORES. The Commission also tentatively concluded that entities and individuals should be required to validate email addresses at the time of registration by clicking on a link that CORES would automatically send to the email address that was provided.

6. In 2016, the Office of Managing Director (OMD) posted an upgraded version of CORES on the Commission's website providing FRN registrants more user-friendly and secure features such as enabling existing and new users to designate usernames to access FRNs and allowing registrants to establish multiple usernames for each FRN with different levels of access. Password recovery, already a feature of the legacy CORES, was also a component of the new version of CORES, providing users with password-recovery security questions to enable them to recover forgotten passwords. Although the new CORES has been available since 2016, the original ''legacy'' version of CORES has also remained available and in use for FRN registration. Maintaining both the new and legacy CORES on the Commission's website is consistent with the Commission's practice of rolling out upgrades to the CORES systems on a voluntary basis before making such changes mandatory.

7. Entities and individuals that register for FRNs in the new version of CORES must provide email address information which is verified through an email verification link in the FCC User Registration System. An email address remains an optional information request in legacy CORES. The current version of the paper forms for obtaining or updating an FRN, FCC Forms 160 and 161, however, require filers to provide a contact email address as part of the registration process.

II. Report and Order

8. We amend § 1.8002(b) of the Commission's rules to require entities and individuals doing business with the Commission to provide their email addresses when they register for FRNs and to keep the email information current along with other information used to register. We find that it is in the public interest to require email address information as part of the FRN registration process and to maintain a valid email address for all FRN registrants. This change will enable OMD to remove access to legacy CORES from the Commission's website at a later date and maintain only the modernized version of CORES for FRN registration. The new CORES is a more efficient and secure system for managing the Commission's financial and management matters. The change will also be more user-friendly and streamlined for CORES registrants that currently must decide between two versions of CORES.

9. The Commission received several comments on the proposal to require email addresses as part of CORES registration. Sprint, AT&T, and Frontier supported the Commission's proposal to collect email addresses for FRN holders and also supported the Commission using email address information to communicate with FRN holders. Sprint, for example, maintained that such a mandate ''will help avoid misrouted inquiries and delayed responses between entities and the Commission.'' The National Association for Amateur Radio (ARRL) and Blooston Law, however, argued for email address information to remain optional. ARRL asserted that certain individuals do not have and cannot obtain email addresses, such as those that are economically disadvantaged, those that live in very rural areas, and children. Blooston Law highlights that internet access is less available and can be absent in very remote areas. It also suggested that some FRN users do not subscribe to an internet service due to cost and asserted that the best methods for communication remain telephone and U.S. Mail, so that in the event of an absence, another contact representative is able to address the matter.

10. Although some individuals may lack resources or connectivity for a personal or home internet service, as compared to what was present at the time of the comment window for the 2010 NPRM, there is wide availability of

free or low cost public internet access today. For example, users may access the internet for free in public libraries, and also in schools that offer internet connectivity for after-hours community use. Also, other Commission proceedings have demonstrated that there is a vast majority of entities that already communicate with the Commission electronically. If there are entities and individuals that seek to do business with the Commission that lack access to internet service, they may need to use a proxy to register for an FRN with a valid email address, such as children seeking amateur radio licenses who rely on a parent or guardian to assist with the licensing process. Registrants are also able to use online support services or call a help desk to ask questions and receive help with their registrations.

11. The public benefit of adopting this rule change, which will enable the Commission to retire legacy CORES and retain the new CORES to deliver enhanced features and security, outweighs the potential burdens that may be faced by a small subset of users to provide email address information. Because it helps authenticate the individuals who will be utilizing the Commission's information systems, the new CORES is a more secure tool for the Commission and external users through the use of personal username registration and email verification. An email address is a unique ID and/or digital identity for each user that not only helps ensure the FCC provides better service and user experience based on data collected per a registered email address, it differentiates one user from another by establishing a digital identity to each person. By using an established email address and associated password, a user is granted appropriate access to do business with FCC.

12. Requiring email address information as part of FRN registration and requiring users to keep up-to-date email addresses in CORES will enable the Commission to fully finalize its shift from U.S. Postal Service delivery to electronic delivery of notices and other correspondence related to CORES. Therefore, retiring legacy CORES allows the Commission to operate more efficiently and effectively by freeing up the resources currently being used to maintain and operate two CORES systems, and by allowing the Commission to email CORES registrants CORES and FRN-related information rather than needing to send this information in mailed letters. We provide further guidance on OMD's implementation of this transition below.

13. *Implementation of the Rule Change.* After the rule revision goes into effect, we direct OMD to announce by public notice the end date for access to legacy CORES. To streamline this transition and best prepare for any upcoming Commission business, new and current registrants are encouraged to use the modernized CORES as soon as possible. Because the modernized CORES has been available since 2016, users do not need to wait for legacy CORES to be retired or for the rule change announced here to go into effect to take this step.

14. Retiring legacy CORES will primarily impact three groups of CORES users. First, users seeking to make changes related to their FRN will need to do so in the new CORES by associating with their FRN a user-specific identification (username) and password to continue managing their FRN. Second, any person or entity that does not yet have an FRN, but seeks to do business with the Commission, will use the new CORES to register. Third, users that forget their password and seek to reset their password online will use the new CORES to reset their password.

15. After the legacy CORES is retired, we delegate authority to OMD to allow users that obtained their FRN through legacy CORES and have not associated a valid email address with their FRN, to continue to use that FRN without an associated valid email address for a limited period. OMD, in consultation with the Commission's Chief Information Officer, will determine what steps to take to bring such users into compliance and ensure that the benefits of the rule change are fully utilized. We note, however, that this limited flexibility with respect to CORES does not negate the fact that certain Commission information systems and applications currently require, or may in the future require, valid email address information to gain entry or otherwise use such systems.

16. We are also deleting § 1.8002(e) of the Commission's rules because it is out of date. FRNs must be assigned through CORES and cannot be assigned by the Billing and Collection Agent for North American Numbering Plan Administration and the Administrators of the Universal Service Fund and the Telecommunications Relay Services Fund as suggested in § 1.8002(e).

17. *Paperwork Reduction Act Analysis.* The Report and Order adopts a new information collection requirement subject to the Paperwork Reduction Act of 1995 (PRA). The new information collection requirement was submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA and pre-approved on March 15, 2011. In addition, the Report and Order adopts a non-substantive change to an existing approved information collection. This non-substantive change was approved by OMB on August 11, 2021.

18. Final Regulatory Flexibility Analysis. As required by the Regulatory Flexibility Act of 1980 (RFA) the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) relating to this Report and Order.

III. Final Regulatory Flexibility Analysis

19. As required by the Regulatory Flexibility Act of 1980, as amended (''RFA'') we incorporated an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the 2010 NPRM. No comments were filed addressing the IRFA. Because we amend a Commission rule in this Report and Order, we have included this Final Regulatory Flexibility Analysis (FRFA). This present FRFA conforms to the RFA.

A. Need for and Objectives of the Proposed Rules

20. In the Report and Order, the Commission amends § 1.8002(b) of the Commission's rules to require entities and individuals doing business with the Commission, or seeking to business with the Commission, to provide their email addresses when they register for FRNs and to keep the email information current along with other information used to register. This change finalizes the requirement for CORES users to provide email address information as part of FRN registration: Email address submission is a requirement only in the newer, modernized version of CORES. With this change, the Commission will be able to end access to the original ''legacy'' CORES that has been available since the Commission established CORES in 2000 for FRN registration, and transition CORES users to the updated version of CORES for FRN registration. The updated version of CORES that will replace legacy CORES is a more efficient and secure system for managing the Commission's financial management matters because it will allow the Commission to email CORES registrants CORES and FRN-related information rather than require the use of U.S. Postal Service delivery, and the new CORES employs identity and access management for authenticating and authorizing access to the system. The email requirements named herein

are the only specific requirements being adopted in this Report and Order.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

21. There were no comments received in response to the IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

22. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

23. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration.

24. The changes or additions to the Commission's part 1 rules that will be made as a result of the Report and Order are of general applicability to all services, applying to all entities of any size that apply for or hold Commission licenses, permits, certifications, etc., as well as entities or individuals that have attributable ownership interests in such entities, and have already obtained or will in the future obtain a unique identifying number through CORES called an FCC Registration Number, or ''FRN.''

25. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration's (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 30.7 million businesses. Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2018, there were approximately 571,709 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2017 Census of Governments indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 36,931 general purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts with enrollment populations of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of ''small governmental jurisdictions.''

E. Providers of Telecommunications and Other Services

26. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as ''establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.'' The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small.

27. *Local Resellers.* The SBA has not developed a small business size standard specifically for Local Resellers. The SBA category of Telecommunications Resellers is the closest NAICs code category for local resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. Under the SBA's size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data from 2012 show that 1,341 firms provided resale services during that year. Of that number, all operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities.

28. *Toll Resellers.* The Commission has not developed a definition for Toll Resellers. The closest NAICS Code Category is Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from

owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. MVNOs are included in this industry. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. 2012 Census Bureau data show that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of this total, an estimated 857 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of toll resellers are small entities.

29. *Payphone Service Providers (''PSPs'').* The Commission has not developed a definition for Payphone Service Providers. The closest NAICS Code Category is Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. MVNOs are included in this industry. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. 2012 Census Bureau data show that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of this total, an estimated 857 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of toll resellers are small.

30. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. MVNOs are included in this industry. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. 2012 Census Bureau data show that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of this total, an estimated 857 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of Prepaid Calling Card Providers are small.

31. *800 and 800-Like Service Subscribers.* Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (''toll free'') subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. MVNOs are included in this industry. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. 2012 Census Bureau data show that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of this total, an estimated 857 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of 800 and 800-Like Service Providers are small.

32. *Satellite Telecommunications.* This category comprises firms ''primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' Satellite telecommunications service providers include satellite and earth station operators. The category has a small business size standard of $35 million or less in average annual receipts, under SBA rules. For this category, U.S. Census Bureau data for 2012 show that there were a total of 333 firms that operated for the entire year. Of this total, 299 firms had annual receipts of less than $25 million. Consequently, we estimate that the majority of satellite telecommunications providers are small entities.

33. *All Other Telecommunications.* The ''All Other Telecommunications'' category is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing internet services or voice over internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry. The SBA has developed a small business size standard for All Other Telecommunications, which consists of all such firms with annual receipts of $35 million or less. For this category, U.S. Census Bureau data for 2012 shows that there were 1,442 firms that operated for the entire year. Of those firms, a total of 1,400 had annual

receipts less than $25 million. Thus, the Commission estimates that the majority of ''All Other Telecommunications'' firms potentially affected by our action can be considered small.

34. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees. Thus, under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

35. *Television Broadcasting.* This Economic Census category ''comprises establishments primarily engaged in broadcasting images together with sound.'' These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: Those having $41.5 million or less in annual receipts. The 2012 Economic Census reports that 751 firms in this category operated in that year. Of that number, 656 had annual receipts of $25,000,000 or less. Based on this data we therefore estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

36. The Commission has estimated the number of licensed commercial television stations to be 1,377. Of this total, 1,258 stations (or about 91 percent) had revenues of $41.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on November 16, 2017, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission has estimated the number of licensed noncommercial educational television stations to be 384. Notwithstanding, the Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities. There are also 2,300 low power television stations, including Class A stations (LPTV) and 3,681 TV translator stations. Given the nature of these services, we will presume that all of these entities qualify as small entities under the above SBA small business size standard.

37. We note, however, that in assessing whether a business concern qualifies as ''small'' under the above definition, business (control) affiliations must be included. Our estimate, therefore likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of ''small business'' requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive. Also, as noted above, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and its estimates of small businesses to which they apply may be over-inclusive to this extent.

38. *Radio Stations.* This Economic Census category ''comprises establishments primarily engaged in broadcasting aural programs by radio to the public.'' The SBA has created the following small business size standard for this category: Those having $41.5 million or less in annual receipts. Census data for 2012 show that 2,849 firms in this category operated in that year. Of this number, 2,806 firms had annual receipts of less than $25 million. Because the Census has no additional classifications that could serve as a basis for determining the number of stations whose receipts exceeded $41.5 million in that year, we conclude that the majority of radio broadcast stations were small entities under the applicable SBA size standard. In addition, the Commission has estimated the number of noncommercial educational FM radio stations to be 4,122. NCE stations are non-profit, and therefore considered to be small entities.

39. *Auxiliary, Special Broadcast and Other Program Distribution Services.* This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). Neither the SBA nor the Commission has developed a size standard applicable to broadcast auxiliary licensees. The closest applicable SBA category and small business size standard falls under Radio Stations and Television Broadcasting. The SBA size standard for radio stations is $41.5 million per year. U.S. Census Bureau data for 2012 show that 2,849 radio station firms operated during that year. Of that number, 2,806 firms operated with annual receipts of less than $25 million per year. For Television Broadcasting the SBA small business size standard is such businesses having $41.5 million or less in annual receipts. U.S. Census Bureau data show that 751 firms in this category operated in that year. Of that number, 656 had annual receipts of $25,000,000 or less. Accordingly, based on the U.S. Census Bureau data for Radio Stations and Television Broadcasting, the Commission estimates that the majority of Auxiliary, Special Broadcast and Other Program Distribution Services firms are small.

40. *Cable Companies and Systems (Rate Regulation).* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers nationwide. Industry data indicate that there are 4,600 active cable systems in the United States. Of this total, all but five cable operators nationwide are small under the 400,000-subscriber size standard. In addition, under the Commission's rate regulation rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Commission records show 4,600 cable systems nationwide. Of this total, 3,900 cable systems have fewer than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records. Thus, under this standard as well, we estimate that most cable systems are small entities

41. *Internet Service Providers.* Broadband internet service providers include wired (*e.g.,* cable, DSL) and VoIP service providers using their own operated wired telecommunications

infrastructure fall in the category of Wired Telecommunication Carriers. Wired Telecommunications Carriers are comprised of establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. The SBA size standard for this category classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Consequently, under this size standard the majority of firms in this industry can be considered small.

F. Schools and Libraries

42. *Schools.* While the Commission does define entities eligible to participate in the E-Rate program, neither the Commission nor the SBA have a size standard for small entities specifically applicable to schools. Under the E-Rate program, which provides support for elementary and secondary schools and libraries, an elementary school is generally ''a non-profit institutional day or residential school that provides elementary education, as determined under state law.'' A secondary school is generally defined as ''a non-profit institutional day or residential school that provides secondary education, as determined under state law,'' and not offering education beyond grade 12. For-profit schools, and schools with endowments in excess of $50,000,000, are not eligible to receive discounts under the E-Rate program.

43. Although the SBA does not have a size standard for small entities specifically applicable to schools, the closest NAICS Code category is Elementary and Secondary Schools under the subsector Educational Services. The SBA has developed a small business size standard for Elementary and Secondary Schools which consists of all such entities with gross annual receipts of $12 million or less. In funding year 2017, approximately 104,500 schools received funding under the schools and libraries universal service mechanism. Although we are unable to estimate the exact number of these entities that would qualify as small entities under SBA's size standard, we estimate that fewer than 104,500 schools might be affected by our action.

44. *Libraries.* The Commission does have definitions for entities that participate in the E-Rate program but neither the Commission nor the SBA have a size standard for small entities specifically applicable to libraries. Under the E-Rate program, which provides support for libraries, a library includes ''(1) a public library, (2) a public elementary school or secondary school library, (3) an academic library, (4) a research library [] and (5) a private library, but only if the state in which such private library is located determines that the library should be considered a library for the purposes of this definition.'' For-profit libraries, are not eligible to receive discounts under the program, nor are libraries whose budgets are not completely separate from any schools.

45. Although the SBA does not have a size standard for small entities specifically applicable to libraries, the closest NAICS Code category is Libraries and Archives. The SBA has developed a small business size standard for Libraries and Archives which consists of all such entities with gross annual receipts of $16.5 million or less. In funding year 2017, approximately 11,490 libraries received funding under the schools and libraries universal service mechanism. Although we are unable to estimate the exact number of these entities that would qualify as small entities under SBA's size standard, we estimate that fewer than 11,490 libraries might be affected annually by our action.

G. Health Care Providers

46. Offices of Physicians (except Mental Health Specialists). This U.S. industry comprises establishments of health practitioners having the degree of M.D. (Doctor of Medicine) or D.O. (Doctor of Osteopathy) primarily engaged in the independent practice of general or specialized medicine (except psychiatry or psychoanalysis) or surgery. These practitioners operate private or group practices in their own offices (*e.g.,* centers, clinics) or in the facilities of others, such as hospitals or health maintenance organization (HMO) medical centers. The SBA has created a size standard for this industry, which is annual receipts of $11 million or less. According to 2012 U.S. Economic Census, 152,468 firms operated throughout the entire year in this industry. Of that number, 147,718 had annual receipts of less than $10 million. Based on this data, we conclude that a majority of firms operating in this industry are small under the applicable size standard.

47. *Offices of Physicians, Mental Health Specialists.* The U.S. industry comprises establishments of health practitioners having the degree of M.D. (Doctor of Medicine) or D.O. (Doctor of Osteopathy) primarily engaged in the independent practice of psychiatry or psychoanalysis. These practitioners operate private or group practices in their own offices (*e.g.,* centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers. The SBA has established a size standard for businesses in this industry, which is annual receipts of $12 million dollars or less. The U.S. Economic Census indicates that 8,809 firms operated throughout the entire year in this industry. Of that number 8,791 had annual receipts of less than $10 million. Based on this data, we conclude that a majority of firms in this industry are small under the applicable standard.

48. *Offices of Dentists.* This U.S. industry comprises establishments of health practitioners having the degree of D.M.D. (Doctor of Dental Medicine), D.D.S. (Doctor of Dental Surgery), or D.D.S. (Doctor of Dental Science) primarily engaged in the independent practice of general or specialized dentistry or dental surgery. These practitioners operate private or group practices in their own offices (*e.g.,* centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers. They can provide either comprehensive preventive, cosmetic, or emergency care, or specialize in a single field of dentistry. The SBA has established a size standard for that industry of annual receipts of $8.0 million or less. The 2012 U.S. Economic Census indicates that 115,268 firms operated in the dental industry throughout the entire year. Of that number 114,417 had annual receipts of less than $5 million. Based on this data, we conclude that a majority of business in the dental industry are small under the applicable standard.

49. *Offices of Chiropractors.* This U.S. industry comprises establishments of health practitioners having the degree of DC (Doctor of Chiropractic) primarily engaged in the independent practice of chiropractic. These practitioners provide diagnostic and therapeutic treatment of neuromusculoskeletal and related disorders through the manipulation and adjustment of the spinal column and extremities, and operate private or group practices in their own offices (*e.g.,* centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers. The SBA has established a size standard for this industry, which is annual receipts of $8.0 million or less. The 2012 U.S.

Economic Census statistics show that in 2012, there were 33,940 firms operated throughout the entire year. Of that number 33,910 operated with annual receipts of less than $5 million per year. Based on that data, we conclude that a majority of chiropractors are small.

50. *Offices of Optometrists.* This U.S. industry comprises establishments of health practitioners having the degree of O.D. (Doctor of Optometry) primarily engaged in the independent practice of optometry. These practitioners examine, diagnose, treat, and manage diseases and disorders of the visual system, the eye and associated structures as well as diagnose related systemic conditions. Offices of optometrists prescribe and/or provide eyeglasses, contact lenses, low vision aids, and vision therapy. They operate private or group practices in their own offices (*e.g.,* centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers, and may also provide the same services as opticians, such as selling and fitting prescription eyeglasses and contact lenses. The SBA has $8.0 established a size standard for businesses operating in this industry, which is annual receipts of million or less. The 2012 Economic Census indicates that 18,050 firms operated the entire year. Of that number, 17,951 had annual receipts of less than $5 million. Based on this data, we conclude that a majority of optometrists in this industry are small.

51. *Offices of Mental Health Practitioners (except Physicians).* This U.S. industry comprises establishments of independent mental health practitioners (except physicians) primarily engaged in (1) the diagnosis and treatment of mental, emotional, and behavioral disorders and/or (2) the diagnosis and treatment of individual or group social dysfunction brought about by such causes as mental illness, alcohol and substance abuse, physical and emotional trauma, or stress. These practitioners operate private or group practices in their own offices (*e.g.,* centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers. The SBA has created a size standard for this industry, which is annual receipts of $8.0 million or less. The 2012 U.S. Economic Census indicates that 16,058 firms operated throughout the entire year. Of that number, 15,894 firms received annual receipts of less than $5 million. Based on this data, we conclude that a majority of mental health practitioners who do not employ physicians are small.

52. *Offices of Physical, Occupational and Speech Therapists and Audiologists.* This U.S. industry comprises establishments of independent health practitioners primarily engaged in one of the following: (1) Providing physical therapy services to patients who have impairments, functional limitations, disabilities, or changes in physical functions and health status resulting from injury, disease or other causes, or who require prevention, wellness or fitness services; (2) planning and administering educational, recreational, and social activities designed to help patients or individuals with disabilities, regain physical or mental functioning or to adapt to their disabilities; and (3) diagnosing and treating speech, language, or hearing problems. These practitioners operate private or group practices in their own offices (*e.g.,* centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers. The SBA has established a size standard for this industry, which is annual receipts of $8.0 million or less. The 2012 U.S. Economic Census indicates that 20,567 firms in this industry operated throughout the entire year. Of this number, 20,047 had annual receipts of less than $5 million. Based on this data, we conclude that a majority of businesses in this industry are small.

53. *Offices of Podiatrists.* This U.S. industry comprises establishments of health practitioners having the degree of D.P.M. (Doctor of Podiatric Medicine) primarily engaged in the independent practice of podiatry. These practitioners diagnose and treat diseases and deformities of the foot and operate private or group practices in their own offices (*e.g.,* centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers. The SBA has established a size standard for businesses in this industry, which is annual receipts of $8.0 million or less. The 2012 U.S. Economic Census indicates that 7,569 podiatry firms operated throughout the entire year. Of that number, 7,545 firms had annual receipts of less than $5 million. Based on this data, we conclude that a majority of firms in this industry are small.

54. *Offices of All Other Miscellaneous Health Practitioners.* This U.S. industry comprises establishments of independent health practitioners (except physicians; dentists; chiropractors; optometrists; mental health specialists; physical, occupational, and speech therapists; audiologists; and podiatrists). These practitioners operate private or group practices in their own offices (*e.g.,* centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers. The SBA has established a size standard for this industry, which is annual receipts of $8.0 million or less. The 2012 U.S. Economic Census indicates that 11,460 firms operated throughout the entire year. Of that number, 11,374 firms had annual receipts of less than $5 million. Based on this data, we conclude the majority of firms in this industry are small.

55. *Family Planning Centers.* This U.S. industry comprises establishments with medical staff primarily engaged in providing a range of family planning services on an outpatient basis, such as contraceptive services, genetic and prenatal counseling, voluntary sterilization, and therapeutic and medically induced termination of pregnancy. The SBA has established a size standard for this industry, which is annual receipts of $12 million or less. The 2012 Economic Census indicates that 1,286 firms in this industry operated throughout the entire year. Of that number 1,237 had annual receipts of less than $10 million. Based on this data, we conclude that the majority of firms in this industry are small.

56. *Outpatient Mental Health and Substance Abuse Centers.* This U.S. industry comprises establishments with medical staff primarily engaged in providing outpatient services related to the diagnosis and treatment of mental health disorders and alcohol and other substance abuse. These establishments generally treat patients who do not require inpatient treatment. They may provide a counseling staff and information regarding a wide range of mental health and substance abuse issues and/or refer patients to more extensive treatment programs, if necessary. The SBA has established a size standard for this industry, which is $16.5 million or less in annual receipts. The 2012 U.S. Economic Census indicates that 4,446 firms operated throughout the entire year. Of that number, 4,069 had annual receipts of less than $10 million. Based on this data, we conclude that a majority of firms in this industry are small.

57. *HMO Medical Centers.* This U.S. industry comprises establishments with physicians and other medical staff primarily engaged in providing a range of outpatient medical services to the HMO subscribers with a focus generally on primary health care. These establishments are owned by the HMO. Included in this industry are HMO establishments that both provide health care services and underwrite health and medical insurance policies. The SBA has established a size standard for this industry, which is $35 million or less in

annual receipts. The 2012 U.S. Economic Census indicates that 14 firms in this industry operated throughout the entire year. Of that number, 5 firms had annual receipts of less than $25 million. Based on this data, we conclude that approximately one-third of the firms in this industry are small.

58. *Freestanding Ambulatory Surgical and Emergency Centers.* This U.S. industry comprises establishments with physicians and other medical staff primarily engaged in (1) providing surgical services (*e.g.,* orthoscopic and cataract surgery) on an outpatient basis or (2) providing emergency care services (*e.g.,* setting broken bones, treating lacerations, or tending to patients suffering injuries as a result of accidents, trauma, or medical conditions necessitating immediate medical care) on an outpatient basis. Outpatient surgical establishments have specialized facilities, such as operating and recovery rooms, and specialized equipment, such as anesthetic or X-ray equipment. The SBA has established a size standard for this industry, which is annual receipts of $16.5 million or less. The 2012 U.S. Economic Census indicates that 3,595 firms in this industry operated throughout the entire year. Of that number, 3,222 firms had annual receipts of less than $10 million. Based on this data, we conclude that a majority of firms in this industry are small.

59. *All Other Outpatient Care Centers.* This U.S. industry comprises establishments with medical staff primarily engaged in providing general or specialized outpatient care (except family planning centers, outpatient mental health and substance abuse centers, HMO medical centers, kidney dialysis centers, and freestanding ambulatory surgical and emergency centers). Centers or clinics of health practitioners with different degrees from more than one industry practicing within the same establishment (*i.e.,* Doctor of Medicine and Doctor of Dental Medicine) are included in this industry. The SBA has established a size standard for this industry, which is annual receipts of $22 million or less. The 2012 U.S. Economic Census indicates that 4,903 firms operated in this industry throughout the entire year. Of this number, 4,269 firms had annual receipts of less than $10 million. Based on this data, we conclude that a majority of firms in this industry are small.

60. *Blood and Organ Banks.* This U.S. industry comprises establishments primarily engaged in collecting, storing, and distributing blood and blood products and storing and distributing body organs. The SBA has established a size standard for this industry, which is annual receipts of $35 million or less. The 2012 U.S. Economic Census indicates that 314 firms operated in this industry throughout the entire year. Of that number, 235 operated with annual receipts of less than $25 million. Based on this data, we conclude that approximately three-quarters of firms that operate in this industry are small.

61. *All Other Miscellaneous Ambulatory Health Care Services.* This U.S. industry comprises establishments primarily engaged in providing ambulatory health care services (except offices of physicians, dentists, and other health practitioners; outpatient care centers; medical and diagnostic laboratories; home health care providers; ambulances; and blood and organ banks). The SBA has established a size standard for this industry, which is annual receipts of $16.5 million or less. The 2012 U.S. Economic Census indicates that 2,429 firms operated in this industry throughout the entire year. Of that number, 2,318 had annual receipts of less than $10 million. Based on this data, we conclude that a majority of the firms in this industry are small.

62. *Medical Laboratories.* This U.S. industry comprises establishments known as medical laboratories primarily engaged in providing analytic or diagnostic services, including body fluid analysis, generally to the medical profession or to the patient on referral from a health practitioner. The SBA has established a size standard for this industry, which is annual receipts of $35 million or less. The 2012 U.S. Economic Census indicates that 2,599 firms operated in this industry throughout the entire year. Of this number, 2,465 had annual receipts of less than $25 million. Based on this data, we conclude that a majority of firms that operate in this industry are small.

63. *Diagnostic Imaging Centers.* This U.S. industry comprises establishments known as diagnostic imaging centers primarily engaged in producing images of the patient generally on referral from a health practitioner. The SBA has established size standard for this industry, which is annual receipts of $16.5 million or less. The 2012 U.S. Economic Census indicates that 4,209 firms operated in this industry throughout the entire year. Of that number, 3,876 firms had annual receipts of less than $10 million. Based on this data, we conclude that a majority of firms that operate in this industry are small.

64. *Home Health Care Services.* This U.S. industry comprises establishments primarily engaged in providing skilled nursing services in the home, along with a range of the following: Personal care services; homemaker and companion services; physical therapy; medical social services; medications; medical equipment and supplies; counseling; 24-hour home care; occupation and vocational therapy; dietary and nutritional services; speech therapy; audiology; and high-tech care, such as intravenous therapy. The SBA has established a size standard for this industry, which is annual receipts of $16.5 million or less. The 2012 U.S. Economic Census indicates that 17,770 firms operated in this industry throughout the entire year. Of that number, 16,822 had annual receipts of less than $10 million. Based on this data, we conclude that a majority of firms that operate in this industry are small.

65. *Ambulance Services.* This U.S. industry comprises establishments primarily engaged in providing transportation of patients by ground or air, along with medical care. These services are often provided during a medical emergency but are not restricted to emergencies. The vehicles are equipped with lifesaving equipment operated by medically trained personnel. The SBA has established a size standard for this industry, which is annual receipts of $16.5 million. The 2012 U.S. Economic Census indicates that 2,984 firms operated in this industry throughout the entire year. Of that number, 2,926 had annual receipts of less than $15 million. Based on this data, we conclude that a majority of firms in this industry are small.

66. *Kidney Dialysis Centers.* This U.S. industry comprises establishments with medical staff primarily engaged in providing outpatient kidney or renal dialysis services. The SBA has established assize standard for this industry, which is annual receipts of $41.5 million or less. The 2012 U.S. Economic Census indicates that 396 firms operated in this industry throughout the entire year. Of that number, 379 had annual receipts of less than $25 million. Based on this data, we conclude that a majority of firms in this industry are small.

67. *General Medical and Surgical Hospitals.* This U.S. industry comprises establishments known and licensed as general medical and surgical hospitals primarily engaged in providing diagnostic and medical treatment (both surgical and nonsurgical) to inpatients with any of a wide variety of medical conditions. These establishments maintain inpatient beds and provide patients with food services that meet

their nutritional requirements. These hospitals have an organized staff of physicians and other medical staff to provide patient care services. These establishments usually provide other services, such as outpatient services, anatomical pathology services, diagnostic X-ray services, clinical laboratory services, operating room services for a variety of procedures, and pharmacy services. The SBA has established a size standard for this industry, which is annual receipts of $41.5 million or less. The 2012 U.S. Economic Census indicates that 2,800 firms operated in this industry throughout the entire year. Of that number, 877 has annual receipts of less than $25 million. Based on this data, we conclude that approximately one-quarter of firms in this industry are small.

68. *Psychiatric and Substance Abuse Hospitals.* This U.S. industry comprises establishments known and licensed as psychiatric and substance abuse hospitals primarily engaged in providing diagnostic, medical treatment, and monitoring services for inpatients who suffer from mental illness or substance abuse disorders. The treatment often requires an extended stay in the hospital. These establishments maintain inpatient beds and provide patients with food services that meet their nutritional requirements. They have an organized staff of physicians and other medical staff to provide patient care services. Psychiatric, psychological, and social work services are available at the facility. These hospitals usually provide other services, such as outpatient services, clinical laboratory services, diagnostic X-ray services, and electroencephalograph services. The SBA has established a size standard for this industry, which is annual receipts of $41.5 million or less. The 2012 U.S. Economic Census indicates that 404 firms operated in this industry throughout the entire year. Of that number, 185 had annual receipts of less than $25 million. Based on this data, we conclude that slightly less than one-half of the firms in this industry are small.

69. *Specialty (Except Psychiatric and Substance Abuse) Hospitals.* This U.S. industry consists of establishments known and licensed as specialty hospitals primarily engaged in providing diagnostic, and medical treatment to inpatients with a specific type of disease or medical condition (except psychiatric or substance abuse). Hospitals providing long-term care for the chronically ill and hospitals providing rehabilitation, restorative, and adjustive services to physically challenged or disabled people are included in this industry. These establishments maintain inpatient beds and provide patients with food services that meet their nutritional requirements. They have an organized staff of physicians and other medical staff to provide patient care services. These hospitals may provide other services, such as outpatient services, diagnostic X-ray services, clinical laboratory services, operating room services, physical therapy services, educational and vocational services, and psychological and social work services. The SBA has established a size standard for this industry, which is annual receipts of $41.5 million or less. The 2012 U.S. Economic Census indicates that 346 firms operated in this industry throughout the entire year. Of that number, 146 firms had annual receipts of less than $25 million. Based on this data, we conclude that approximately one-third of the firms in this industry are small.

70. *Emergency and Other Relief Services.* This industry comprises establishments primarily engaged in providing food, shelter, clothing, medical relief, resettlement, and counseling to victims of domestic or international disasters or conflicts (*e.g.,* wars). The SBA has established a size standard for this industry, which is annual receipts of $35 million or less. The 2012 U.S. Economic Census indicates that 541 firms operated in this industry throughout the entire year. Of that number, 509 had annual receipts of less than $25 million. Based on this data, we conclude that a majority of firms in this industry are small.

H. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

71. The Report and Order adopts the following new reporting requirement. New FRN registrants and certain existing FRN holders that need to update their FRNs will need to provide their email address information to set up a username and password to be associated with their FRN. Eventually, all FRN registrants will be expected to manage FRN-related business in the new CORES.

I. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

72. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.''

73. A substantial number of entities and individuals doing business with the Commission have already received their FRNs through a prior registration in the old version of CORES (or legacy CORES), and we anticipate that the changes proposed here will have little to no economic impact on them. For all users that are currently using the legacy CORES and will be expected to use the new CORES, there should be no economic barriers involved in seeking an FRN number through CORES when registering online through the Commission's website. The Office of Managing Director is the delegated authority to transition registrants that obtained passwords through legacy CORES to the new CORES, and, in consultation with the Commission's Chief Information Officer, will best determine what steps to take to bring such users into compliance. Through the transition process, all FRN holders will be expected to manage FRN business through the new CORES. After legacy CORES is retired (*i.e.,* no longer publicly accessible), new FRN registrants and existing FRN holders that need to update FRN information will need to do so in the new CORES because the legacy CORES system will not be available. When needing to first register for an FRN or make information changes to a registration, users will be required to provide an email address and password in the FCC User Registration System in order to access the new CORES. FRN holders that forget their passwords will also need to go through the new system to set up new passwords. The steps to obtain a new FRN or revise the information associated with an already-existing FRN are not burdensome because this requires a limited amount of data entry in form fields and should involve little to no cost for the registrant. However, this order does not address other Commission information systems that may require FRN and password entry or additional requirements for those separate systems

IV. Ordering Clauses

74. Accordingly, *it is ordered* that pursuant to sections 4(i), 8(c)(2), 9(c)(2), and 303(r) of the Communications Act

of 1934, as amended, 47 U.S.C. 154(i), 158(c)(2), 159(c)(2), and 303(r); and section 7701 of the Debt Collection Improvement Act of 1996, 31 U.S.C. 7701(c)(1), the Report and Order *is adopted* and the Commission's rules *are hereby amended* as set forth in Appendix B of the Report and Order. The rules and procedures adopted in the Report and Order are effective 30 days after the date of publication in the **Federal Register**. The non-substantive change to an information collection effected by the revision to § 1.8002(b)(2) of the Commission's rules was approved by OMB on August 11, 2021.

75. *It is further ordered* that this Report and Order *shall be effective* 30 days after publication of a summary in the **Federal Register**.

76. *It is further ordered* that the Commission *shall send* a copy of the Report and Order, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

77. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of the Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Communications, internet, Reporting and recordkeeping requirements, Telecommunications.

Federal Communications Commission.

Marlene Dortch,

Secretary.

For the reasons stated in the preamble, the FCC amends 47 CFR part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461 note, unless otherwise noted.

■ 2. Amend § 1.8002 by:

■ a. Revising paragraph (b); and

■ b. Removing paragraph (e).

The revision reads as follows:

§ 1.8002 Obtaining an FRN.

* * * * *

(b)(1) When registering for an FRN through the CORES, an entity's name, entity type, contact name and title, address, valid email address, and taxpayer identifying number (TIN) must be provided. For individuals, the TIN is the social security number (SSN).

(2) Information listed in paragraph (b)(1) of this section must be kept current by registrants either by updating the information on-line at the CORES link at *www.fcc.gov* or by filing FCC Form 161 (CORES Update/Change Form).

* * * * *

[FR Doc. 2021–20544 Filed 10–28–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 90

[WP Docket No. 07–100; FCC 21–106; FR ID 54675]

Improving Public Safety Communications in the 4.9 GHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule; grants of petitions for reconsideration; and final rule; correction.

SUMMARY: In this document, the Federal Communications Commission (Commission) grants three petitions for reconsideration insofar as the petitions sought deletion of the rules adopted in the *Sixth Report and Order* in this proceeding governing the 4.9 GHz (4940–4990 MHz) band. The Commission also partially lifts the licensing freeze to allow incumbents to modify their existing licenses or to license new permanent fixed sites.

DATES: This final rule is effective November 29, 2021. As of November 29, 2021, the final rule published on November 30, 2020 (85 FR 76469), is corrected.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Jon Markman of the Wireless Telecommunications Bureau, Mobility Division, at (202) 418–7090 or *Jonathan.Markman@fcc.gov* or Thomas Eng of the Public Safety and Homeland Security Bureau at (202) 418–0019 or *Thomas.Eng@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration, in WP Docket No. 07–100; FCC 21–106, adopted on September 30, 2021, and released on October 1, 2021. The full text of this document is available for public inspection online at *https://docs.fcc.gov/public/attachments/FCC-21-106A1.pdf.*

Congressional Review Act

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

Final Regulatory Flexibility Certification

Pursuant to Section 605(b) of the RFA, if a proposed or final rule, ''. . . will not, if promulgated, have a significant economic impact on a substantial number of small entities[,]'' an agency is permitted to file a certification with the rulemaking containing a statement that provides a factual basis for its conclusion that there will not be significant economic impact on a substantial number of small entities. The certification and statement must be filed in the **Federal Register** and sent to the Chief Counsel for Advocacy of the Small Business Administration (SBA). The *Order on Reconsideration* in this proceeding grants in part the petitions for reconsideration of the *Sixth Report and Order* (85 FR 76469, Nov. 30, 2020), in WP Docket No. 07–100, reverting back to the rules that were in effect prior to modification by the *Sixth Report and Order.* No petitions for reconsideration of the Final Regulatory Flexibility Analysis (FRFA) that accompanied the *Sixth Report and Order* were received by the Commission. Accordingly, the Commission has prepared a Final Regulatory Flexibility Certification (FRFC) providing the factual basis for its determination that the Order on Reconsideration will not have significant economic impact on a substantial number of small entities. The Commission will publish a copy of the Order on Reconsideration and the FRFC in the **Federal Register** and send a copy to the Chief Counsel for Advocacy of the Small Business Administration (SBA). The FRFC is set forth in Appendix B of the *Order on Reconsideration.*

Synopsis

On September 30, 2020, the Commission adopted the *Sixth Report and Order* and *Seventh Further Notice of Proposed Rulemaking (FNPRM)* (85 FR 76505, Nov. 30, 2020) (36 FCC Rcd 1958) in this proceeding. The leasing framework adopted in the *Sixth Report and Order* granted states, through a single statewide entity designated as the State Lessor, the option to lease spectrum access to state and local entities—whether public safety or non-public safety—as well as to commercial and other private entities in their jurisdictions. State Lessors were also permitted to use the band for non-public safety purposes themselves. Prior to the issuance of the *Sixth Report and Order* and *Seventh FNPRM,* the Public Safety

and Homeland Security Bureau and the Wireless Telecommunications Bureau announced a freeze on applications in the 4.9 GHz band. Pursuant to the *Freeze Public Notice* (85 FR 63553, Oct. 8, 2020), the Bureaus are not accepting applications for new or modified licenses, including both geographic area licenses and individual fixed-site licenses.

On December 30, 2020, the Public Safety Spectrum Alliance (PSSA), APCO International (APCO), and the National Public Safety Telecommunications Council (NPSTC, and with PSSA and APCO, the Petitioners) filed petitions for reconsideration of the *Sixth Report and Order* (the Petitions). The Petitioners asked the Commission to vacate the *Sixth Report and Order* because that the new leasing framework adopted in the *Sixth Report and Order* fails to provide for protection of current and future public safety use of the band.

The *Order on Reconsideration* grants the Petitions insofar as they sought deletion of the rules adopted in the *Sixth Report and Order.* We agree that the framework, which allows State Lessors to use and lease the band for non-public safety purposes, is not in the public interest, and that the public interest would be better-served by considering other models. We also lift, in part, the licensing freeze adopted in advance of the *Sixth Report and Order,* thereby allowing incumbents to modify their existing licenses or to license new permanent fixed sites. We direct the Bureaus to implement this change to the freeze via public notice within 30 days of the adoption of this item.

List of Subjects in 47 CFR Parts 1 and 90

Communications equipment, Organization and functions (Government agencies), Radio, Reporting and recordkeeping requirements, Telecommunications.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

Correction

In FR Doc. 2020–23506, appearing on page 76469 in the **Federal Register** of Monday, November 30, 2020, the following correction is made:

PART 90 [Corrected]

■ 1. On page 76480, in the first column, in part 90, amendatory instruction 7 (adding § 90.1217) is removed.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1 and 90 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: : 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461 note, unless otherwise noted.

■ 2. Amend § 1.9001 by:

■ a. Revising paragraph (b); and

■ b. Removing paragraph (c).

The revision reads as follows:

§ 1.9001 Purpose and scope.

* * * * *

(b) Licensees holding exclusive use rights are permitted to engage in spectrum leasing whether their operations are characterized as commercial, common carrier, private, or non-common carrier.

§ 1.9005 [Amended]

■ 3. Amend § 1.9005 by:

■ a. Adding the word ''and'' at the end of paragraph (nn); and

■ b. Removing and reserving paragraph (oo).

■ 4. Revise § 1.9048 to read as follows:

§ 1.9048 Special provisions relating to spectrum leasing arrangements involving licensees in the Public Safety Radio Services.

Licensees in the Public Safety Radio Services (see part 90, subpart B, and § 90.311(a)(1)(i) of this chapter) may enter into spectrum leasing arrangements with other public safety entities eligible for such a license authorization as well as with entities providing communications in support of public safety operations (see § 90.523(b) of this chapter).

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 5. The authority citation for part 90 continues to read as follows:

Authority: 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7), 1401–1473.

■ 6. Amend § 90.1203 by:

■ a. Revising paragraph (b); and

■ b. Removing paragraph (c).

The revision reads as follows:

§ 90.1203 Eligibility.

* * * * *

(b) 4.9 GHz band licensees may enter into sharing agreements or other arrangements for use of the spectrum with entities that do not meet the eligibility requirements in this section. However, all applications in the band are limited to operations in support of public safety.

[FR Doc. 2021–23588 Filed 10–28–21; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 203, 205, 207, 209, 211, 212, 215, 216, 217, 218, 222, 223, 225, 228, 231, 232, 233, 239, 242, 245, 246, 251, and 252

[Docket DARS–2021–0001]

Defense Federal Acquisition Regulation Supplement: Technical Amendments

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement (DFARS) to provide needed editorial changes.

DATES: Effective October 29, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer D. Johnson, Defense Acquisition Regulations System, OUSD(A&S)DPC(DARS), Room 3B938, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 571–372–6100.

SUPPLEMENTARY INFORMATION: This final rule makes editorial changes to 48 CFR parts 203, 205, 207, 209, 211, 212, 215, 216, 217, 218, 222, 223, 225, 228, 231, 232, 233, 239, 242, 245, 246, 251, and 252 to amend the DFARS.

List of Subjects in 48 CFR Parts 203, 205, 207, 209, 211, 212, 215, 216, 217, 218, 222, 223, 225, 228, 231, 232, 233, 239, 242, 245, 246, 251, and 252

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 203, 205, 207, 209, 211, 212, 215, 216, 217, 218, 222, 223, 225, 228, 231, 232, 233, 239, 242, 245, 246, 251, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 203, 205, 207, 209, 211, 212, 215, 216, 217, 218, 222, 223, 225, 228, 231, 232, 233, 239, 242, 245, 246, 251, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

203.806 [Amended]

■ 2. Amend section 203.806 by removing ''PGI 203.8(a)'' and adding ''PGI 203.806(a)'' in its place.

PART 205—PUBLICIZING CONTRACT ACTIONS

■ 3. Add a 205.205 section heading to subpart 205.2 to read as follows:

205.205 Special situations.

PART 207—ACQUISITION PLANNING

Subpart 207.4—Equipment Acquisition

■ 4. Revise the heading for subpart 207.4 to read as set forth above.

PART 209—CONTRACTOR QUALIFICATIONS

■ 5. Revise the heading for section 209.409 to read as follows:

209.409 Contract clause.

* * * * *

PART 211—DESCRIBING AGENCY NEEDS

211.105 [Removed]

■ 6. Remove section 211.105.

Subpart 211.70[Removed]

■ 7. Remove subpart 211.70, consisting of reserved section 211.7001.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

Subpart 212.5—Applicability of Certain Laws to the Acquisition of Commercial Items and Commercially Available Off-the-Shelf Items

■ 8. Revise the heading for subpart 212.5 to read as set forth above.

212.570 [Redesignated as 212.505]

■ 9. Redesignate section 212.570 as 212.505 and revise the heading to read as follows:

212.505 Applicability of certain laws to contracts for the acquisition of COTS items.

* * * * *

PART 215—CONTRACTING BY NEGOTIATION

Subpart 215.1—Source Selection Processes and Techniques

■ 10. Add subpart 215.1 to consist of existing sections 215.101 through 215.101–70 under the heading set forth above.

PART 216—TYPES OF CONTRACTS

■ 11. Revise the heading for section 216.402–2 to read as follows:

216.402–2 Performance incentives.

* * * * *

PART 217—SPECIAL CONTRACTING METHODS

Subpart 217.78—Reverse Auctions

■ 12. Revise the heading for subpart 217.78 to read as set forth above.

PART 218—EMERGENCY ACQUISITIONS

■ 13. Revise the heading for section 218.203 to read as follows:

218.203 Emergency declaration or major disaster declaration.

* * * * *

PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

■ 14. Revise the heading for section 222.403 to read as follows:

222.403 Statutory, Executive order, and regulatory requirements.

* * * * *

222.403–4 [Redesignated as 222.403–70]

■ 15. Redesignate section 222.403–4 as 222.403–70.

Subpart 222.6—Contracts for Materials, Supplies, Articles, and Equipment

■ 16. Revise the heading for subpart 222.6 to read as set forth above.

PART 223—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

Subpart 223.4—Use of Recovered Materials and Biobased Products

■ 17. Revise the heading for subpart 223.4 to read as set forth above.

Subpart 223.8—Ozone-Depleting Substances and Greenhouse Gases

■ 18. Revise the heading for subpart 223.8 to read as set forth above.

223.803 [Redesignated as 223.802]

■ 19. Redesignate section 223.803 as 223.802.

PART 225—FOREIGN ACQUISITION

Subpart 225.1—Buy American—Supplies

■ 20. Revise the heading for subpart 225.1 to read as set forth above.

Subpart 225.2—Buy American—Construction Materials

■ 21. Revise the heading for subpart 225.2 to read as set forth above.

■ 22. Add a heading for section 225.701 to read as follows:

225.701 Restrictions administered by the Department of the Treasury on acquisitions of supplies or services from prohibited sources.

PART 228—BONDS AND INSURANCE

Subpart 228.1—Bonds and Other Financial Protections

■ 23. Revise the heading for subpart 228.1 to read as set forth above.

■ 24. Revise the heading for section 228.102 to read as follows:

228.102 Performance and payment bonds and alternative payment protections for construction contracts.

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

■ 25. Revise the heading for section 231.205–22 to read as follows:

231.205–22 Lobbying and political activity costs.

* * * * *

PART 232—CONTRACT FINANCING

232.705 and 232.705–70 [Redesignated as 232.706 and 232.706–70]

■ 26. Redesignate sections 232.705 and 232.705–70 as sections 232.706 and 232.706–70, respectively.

■ 27. Revise the heading for section 232.806 to read as follows:

232.806 Contract clauses.

* * * * *

PART 233—PROTESTS, DISPUTES, AND APPEALS

■ 28. Revise the heading for section 233.215 to read as follows:

233.215 Contract clauses.

* * * * *

PART 239—ACQUISITION OF INFORMATION TECHNOLOGY

239.001 [Redesignated]

■ 29. Redesignate section 239.001 by removing its designation in subpart

239.1 and placing it immediately before subpart 239.1.

239.7602–1 [Amended]

■ 30. Amend section 239.7602–1 in paragraph (b)(1) by removing ''*http://iase.disa.mil/cloud_security/Pages/index.aspx*'' and adding ''*https://public.cyber.mil/dccs/*'' in its place.

■ 31. Amend section 239.7602–2 by adding a sentence at the end of paragraph (b) to read as follows:

239.7602–2 Required storage of data within the United States or outlying areas.

* * * * *

(b) * * * See PGI 239.7602–2 for additional guidance.

PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 32. Revise the heading for section 242.1204 to read as follows:

242.1204 Applicability of novation agreements.

* * * * *

PART 245—GOVERNMENT PROPERTY

■ 33. Revise the heading for section 245.604 to read as follows:

245.604 Sale of surplus personal property.

245.604–3 [Redesignated as 245.604–1]

■ 34. Redesignate section 245.604–3 as 245.604–1 and revise it to read as follows:

245.604–1 Sales procedures.

(1) *Best value sales approach.* Plant clearance officers shall determine a best value sales approach (formal or informal sales), to include due consideration for costs, risks, and benefits, *e.g.,* potential sales proceeds.

(2) *Informal bid procedures.* The plant clearance officer may direct the contractor to issue informal invitations for bid (orally, telephonically, or by other informal media), provided—

(i) Maximum practical competition is obtained;

(ii) Sources solicited are recorded; and

(iii) Informal bids are confirmed in writing.

(3) *Sale approval and award.* Plant clearance officers shall—

(i) Evaluate bids to establish that the sale price is fair and reasonable, taking into consideration—

(A) Knowledge or tests of the market;

(B) Current published prices for the property;

(C) The nature, condition, quantity, and location of the property; and

(D) Past sale history for like or similar items;

(ii) Approve award to the responsible bidder whose bid is most advantageous to the Government. The plant clearance officer shall not approve award to any bidder who is an ineligible transferee, as defined in 252.245–7004, Reporting, Reutilization, and Disposal; and

(iii) Notify the contractor of the bidder to whom an award will be made within 5 working days from receipt of bids.

(4) *Noncompetitive sales.*

(i) Noncompetitive sales include purchases or retention at less than cost by the contractor. Noncompetitive sales may be made when—

(A) The plant clearance officer determines that this method is essential to expeditious plant clearance; and

(B) The Government's interests are adequately protected.

(ii) Noncompetitive sales shall be at fair and reasonable prices, not less than those reasonably expected under competitive sales.

(iii) Conditions justifying noncompetitive sales are—

(A) No acceptable bids are received under competitive sale;

(B) Anticipated sales proceeds do not warrant competitive sale;

(C) Specialized nature of the property would not create bidder interest;

(D) Removal of the property would reduce its value or result in disproportionate handling expenses; or

(E) Such action is essential to the Government's interests.

(5) Plant clearance officers shall consider any special disposal requirements such as demilitarization or trade security control requirements in accordance with DoDM 4160.28–M, Defense Demilitarization Manual, and DoDI 2030.08, Implementation of Trade Security Controls, respectively. See PGI 245.6.

PART 246—QUALITY ASSURANCE

246.701 [Removed]

■ 35. Remove the first instance of section 246.701 (without heading and text).

■ 36. Add section 246.702 to read as follows: 246.702 General.

246.701 [Redesignated as 246.702–70]

■ 37. Redesignate the second instance of section 246.701 (headed ''Definitions'') as 246.702–70.

■ 38. Revise the heading for section 246.710 to read as follows:

246.710 Contract clauses.

* * * * *

PART 251—USE OF GOVERNMENT SOURCES BY CONTRACTORS

Subpart 251.2—Contractor Use of Interagency Fleet Management System (IFMS)

■ 39. Revise the heading for subpart 251.2 to read as set forth above.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.102 [Redesignated as 252.103]

■ 40. Redesignate section 252.102 as 252.103.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.232–7007 [Amended]

■ 41. Amend section 252.232–7007 in the introductory text by removing ''232.705–70'' and adding ''232.706–70'' in its place.

[FR Doc. 2021–23458 Filed 10–28–21; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 383

[Docket No. FMCSA–2017–0330]

RIN 2126–AC11

Controlled Substances and Alcohol Testing: State Driver's Licensing Agency Non-Issuance/Downgrade of Commercial Driver's License; Correction

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Final rule; correction.

SUMMARY: In a final rule published in the **Federal Register** on October 7, 2021, FMCSA amended its regulations to establish requirements for State Driver's Licensing Agencies to access and use information obtained through the Drug and Alcohol Clearinghouse, an FMCSA-administered database containing driver-specific controlled substance and alcohol records. The final rule included amendatory instructions that need to be corrected because of a subsequent, unrelated rulemaking action affecting the same section of the Federal Motor Carrier Safety Regulations. This notice makes that correction.

DATES: This correction is effective November 8, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Gian Marshall, Drug and Alcohol Programs Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, *clearinghouse@dot.gov,* (202) 366–0928.

SUPPLEMENTARY INFORMATION: On October 7, 2021, FMCSA published a final rule (86 FR 55718) with an effective date of November 8, 2021, which amended 49 CFR 383.73(a) by adding a new paragraph (a)(3). FMCSA published another final rule on October 14, 2021 (86 FR 57060), General Technical, Organizational, Conforming, and Correcting Amendments to the Federal Motor Carrier Safety Regulations, which renumbered the paragraphs under § 383.73(a) such that the amendment from the October 7, 2021, final rule could not be made to the CFR upon its effective date. Through this document, FMCSA corrects the October 7, 2021, final rule to add the new paragraph to § 383.73(a) as paragraph (a)(8) instead of paragraph (a)(3).

In FR Doc. 2021–21928 appearing on page 55718 in the **Federal Register** of October 7, 2021, the following corrections are made:

§ 383.73 [Corrected]

■ 1. On page 55742, in the second column, in amendment 7a for § 383.73, the instruction ''Adding paragraph (a)(3);'' is corrected to read ''Adding paragraph (a)(8);''.

§ 383.73 [Corrected]

■ 2. On page 55742, in the second column, in the regulatory text for § 383.73, in paragraph (a), ''(3)'' is corrected to read ''(8)''.

Issued under authority delegated in 49 CFR 1.87 and redelegated in FMCSA Order 1101.1b.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2021–23596 Filed 10–28–21; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 210325–0071; RTID 0648–XB447]

Fisheries of the Northeastern United States; Atlantic Herring Fishery; Adjustment to the 2021 Specifications

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

ACTION: Temporary rule; inseason adjustment.

SUMMARY: NMFS increases the 2021 Atlantic herring annual catch limit and Area 1A sub-annual catch limit by 1,000 metric tons (mt). This action is required by the herring regulations when, based on data through October 1, the New Brunswick weir fishery lands less than 3,012 mt of herring. This notice informs the public of these catch limit changes.

DATES: Effective October 29, 2021, through December 31, 2021.

FOR FURTHER INFORMATION CONTACT: Maria Fenton, Fishery Management Specialist, (978) 281–9196; or *Maria.Fenton@noaa.gov.*

SUPPLEMENTARY INFORMATION: NMFS published final 2021 specifications for the Atlantic Herring Fishery Management Plan on April 1, 2021 (86 FR 17081), establishing the 2021 annual catch limit (ACL) and area sub-ACLs. Table 1 shows the original herring specifications for 2021 and the specifications as revised by this action for the remainder of the calendar year.

The NMFS Regional Administrator tracks herring landings in the New Brunswick weir fishery each year. The regulations at 50 CFR 648.201(h) require that if the New Brunswick weir fishery landings through October 1 are determined to be less than 3,012 mt, then NMFS subtracts 1,000 mt from the management uncertainty buffer and reallocates that amount to the ACL and Area 1A sub-ACL. When such a determination is made, NMFS is required to notify the New England Fishery Management Council and publish the ACL and Area 1A sub-ACL adjustment in the **Federal Register**.

Information from Canada's Department of Fisheries and Oceans indicates that the New Brunswick weir fishery landed 1,209 mt of herring through October 1, 2021. Therefore, the Regional Administrator determined that, effective October 29, 2021], 1,000 mt will be reallocated from the management uncertainty buffer to the Area 1A sub-ACL and the ACL. This 1,000 mt reallocation increases the Area 1A sub-ACL from 1,609 mt to 2,609 mt and the ACL from 4,128 mt to 5,128 mt. The revised specifications will be used to project when catch will reach 92 percent of the Area 1A sub-ACL or 95 percent of the ACL for the purpose of implementing a 2,000-pound (lb) (907-kilogram (kg)) herring possession limit in Area 1A or in all management areas, respectively.

TABLE 1—ATLANTIC HERRING SPECIFICATIONS FOR 2021

	Original specifications (mt)	Revised specifications (mt)
Overfishing Limit	23,423	23,423.
Acceptable Biological Catch	9,483	9,483.
Management Uncertainty	4,669	3,669.
Optimum Yield/ACL	4,128	5,128.
Domestic Annual Harvest	4,814	4,814.
Border Transfer	0	0.
Domestic Annual Processing	4,814	4,814.
U.S. At-Sea Processing	0	0.
Area 1A Sub-ACL (28.9%)	1,609	2,609.
Area 1B Sub-ACL (4.3%)	239	239.
Area 2 Sub-ACL (27.8%)	652	652.
Area 3 Sub-ACL (39%)	2,181	2,181.
Fixed Gear Set-Aside	30	30.
Research Set-Aside (RSA)*	0 percent of each sub-ACL	0 percent of each sub-ACL.

*Because RSA participants are not pursing RSA in 2021, we did not deduct it from the sub-ACLs. RSA will be revisited for 2023–2025 specifications.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 648, which was issued pursuant to section 403(b), and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment on this in-season adjustment because it would be unnecessary and contrary to the public interest. This action allocates a portion of the management uncertainty buffer to the ACL and Area 1A sub-ACL for the remainder of the calendar year pursuant to a previously published regulation that provides no discretionary decision-making. This reallocation process was the subject of prior notice and comment rulemaking. The adjustment is routine and formulaic, required by regulation, and is expected by industry. The potential to re-allocate the management uncertainty buffer was also outlined in the final 2021 herring specifications that were published April 1, 2021, which were developed through public notice and comment. Further, this reallocation provides additional economic opportunity for the herring fleet. If implementation of this action is delayed to solicit public comment, the objective of the fishery management plan to achieve optimum yield in the fishery could be compromised. Deteriorating weather conditions during the latter part of the fishing year may reduce fishing effort, and could also prevent the ACL from being fully harvested. This would result in a negative economic impact on vessels permitted to fish in this fishery. Based on these considerations, NMFS further finds, pursuant to 5 U.S.C. 553(d)(3), good cause to waive the 30-day delayed effectiveness period for the reasons stated above.

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

Dated: October 26, 2021.

Jennifer M. Wallace,

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

[FR Doc. 2021–23598 Filed 10–28–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 211026–0217]

RIN 0648–BK94

Fisheries Off West Coast States; Emergency Action to Temporarily Extend the Sablefish Primary Fishery Season

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

ACTION: Temporary rule; emergency action; request for comments.

SUMMARY: This emergency rule temporarily extends the 2021 sablefish primary fishery for vessels using bottom longline gear from October 31, 2021, to December 31, 2021. This action is necessary to provide operational flexibility so that vessels in the sablefish primary fishery are able to fully harvest their tier limits despite high economic uncertainty in 2021. This action would also extend the incidental halibut retention allowance provision for the primary fishery north of Point Chehalis, Washington from October 31, 2021, to December 7, 2021.

DATES: Effective October 29, 2021, until December 31, 2021. Comments must be received by November 29, 2021.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2021–0095 by any of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal.

Go to *https://www.regulations.gov* and enter NOAA–NMFS–2021–0095 in the Search box, click the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Electronic Access

This emergency rule and supporting documents, including a Supplemental Information Report prepared for this action, are accessible via the internet at the Office of the Federal Register website at *https://www.federalregister.gov.* Background information and documents are also available at the NMFS West Coast Region website at: *https://www.fisheries.noaa.gov/species/west-coast-groundfish* and at the Pacific Fishery Management Council's website at *https://www.pcouncil.org/managed_fishery/groundfish/.*

FOR FURTHER INFORMATION CONTACT: Abbie Moyer, phone: 206–305–9601, or email: *Abbie.moyer@noaa.gov.*

SUPPLEMENTARY INFORMATION: The primary sablefish fishery tier program is a limited access privilege program set up under Amendment 14 to the Pacific Coast Groundfish Fishery Management Plan (PCGFMP); which was approved by the Pacific Fishery Management Council (Council) in 2000 and was implemented by NMFS in 2001(66 FR 41152, August 7, 2001). Participants hold limited entry permits with a pot gear and/or longline gear endorsement and a sablefish endorsement.

Under Amendment 14, as set out in 50 CFR 660.231, the permit holder of a sablefish-endorsed permit receives a tier limit, which is an annual share of the sablefish catch allocation to this sector. NMFS sets three different tier limits through the biennial harvest specifications and management measures process (for the 2021 limits, see 85 FR 79880, December, 11 2020); and up to three permits may be stacked at one time on a vessel participating in the fishery. Stacked tier limits are combined to provide a cumulative catch limit for that vessel. After vessels have caught their full tier limits, they are allowed to move into other fisheries for sablefish, specifically the daily trip limit (DTL) fishery or the open access fishery, or fisheries for other species.

Under Amendment 14, the sablefish primary season has historically been open from April 1 through October 31 of each year, though individual permit holders may only fish up to their tier limits so may be required to cease fishing prior to October 31. These season dates were put into regulation during the development and implementation of the fishery under Amendment 14. Prior to the implementation of Amendment 14, the sablefish fishery had operated as a 'derby' style fishery, with a season length lasting a few weeks to a few days. Under Amendment 14, the fishery began

operating under a seven-month season. The seven-month season structure, as opposed to a year-long season, was intended to allow for timely catch accounting so that the sector allocation was not exceeded.

Vessels in the primary fishery north of Point Chehalis, Washington are also allowed to retain incidentally caught Pacific halibut up to a specific limit specified at 50 CFR 660.231(b)(3)(iv). Halibut are encountered regularly in the normal operation of the sablefish primary fishery due to the co-occurrence of halibut and sablefish in the same environments, and the design and function of fixed gear. This retention is allowed until the sablefish primary season ends and it contributes additional economic value to this sector.

At the September 2021 Council meeting, the Council's Groundfish Management Team (GMT) provided analysis of the 2021 sablefish primary fishery participation and performance compared to prior years of the fishery. The GMT demonstrated in their analysis that from 2011 to 2019, annual attainment averaged over 90 percent of total sablefish tier allocations, with 65 percent harvested between April and mid-September. By contrast, the GMT showed the fishery in 2021 has only attained 42 percent of its allocation as of mid-September. This underattainment is attributed to unforeseen delays related to the ongoing COVID–19 pandemic that have resulted in management problems for the harvesting fleet, processors and sales managers to catch, process and market sablefish in a timely manner within the current sablefish primary fishery season of April 1, 2021 to October 31, 2021.

In 2020, NMFS issued an emergency rule (85 FR 68001, October 27, 2020) to temporarily extend the 2020 sablefish primary fishery from October 31, 2020 to December 31, 2020 in response to industry requests and the Council recommendation. Between the season start date on April 1 and mid-September, the 2020 sablefish primary fishery participants also experienced unusually high underattainment attributed to unforeseen delays related to the COVID–19 pandemic. The delays were caused by local travel restrictions, postponed season start dates, and quarantine requirements.

The 2020 emergency action (85 FR 68001, October 27, 2020) extending the sablefish primary fishery season resulted in an additional 249.9 metric tons in landings and $857,833 in revenue for fishery participants. When the Council recommended emergency action in 2020, it was unforeseen how long the COVID–19 pandemic would last, how COVID–19 disease variants would emerge, or when vaccines would be available. There is a continued disruption because of COVID–19 to the sablefish primary fishery, which has prevented processors from keeping a full contingent of process workers, prevented shoreside processors from opening, and prevented vessels from sailing with full crews in 2021. Because of this risk and uncertainty, members of industry and the Council Groundfish Advisory Subpanel (GAP) and GMT advisory bodies recommended the Council take emergency action to extend the sablefish primary fishery season in 2021 to reduce economic hardships. The GMT estimated that if the sablefish primary fishery season closed on October 31, 2021, the fishery would only attain 64 percent of its allocation, which equates to about $2.76 million in lost ex-vessel revenue and additional economic benefits for coastal communities.

The Council reviewed the information provided by the GMT and by fishery stakeholders and discussed options to provide relief to commercial fishermen in this sector from economic losses as a result of the recent unforeseen events associated with the ongoing COVID–19 pandemic that began in approximately March 2020. These unforeseen events have adversely affected commercial fishermen throughout the Council's jurisdiction for an extended period of time. These events have also caused serious management problems by making it more difficult to achieve optimum yield (OY) for sablefish.

The Council recommended that NMFS implement an emergency action to extend the sablefish primary fishery season from October 31, 2021, to December 31, 2021, to allow participants more time to harvest their full tier limits. As part of the emergency action, the Council also recommended an extension of the incidental halibut retention allowance north of Point Chehalis, Washington, to December 7, 2021. The retention allowance ensures additional economic benefits and reduces regulatory discards of commercially valuable incidental halibut.

Criteria and Justification for Emergency Action

Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) authorizes the Secretary of Commerce to implement emergency regulations to address fishery emergencies. NMFS' Policy Guidelines for the Use of Emergency Rules (62 FR 44421; August 21, 1997) list three criteria for determining whether an emergency exists. Specifically, NMFS' policy guidelines require that an emergency: (1) Result from recent, unforeseen events or recently discovered circumstances; (2) present serious conservation or management problems in the fishery; and (3) can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process.

NMFS has evaluated all relief mechanisms, and given the limited time remaining in the sablefish primary fishery season, an emergency action to extend the season is the only mechanism sufficient to provide participants access to their quota. NMFS is issuing this emergency rule in compliance with these guidelines to prevent significant direct economic loss and preserve economic opportunities that otherwise might be foregone.

This emergency action will help the fishery achieve, but not exceed, the allocation of sablefish to the sablefish primary fishery, and the sablefish annual catch limit. NMFS evaluated the anticipated effects of this emergency action and determined that the effects fall within those described in the Environmental Assessment for the 2021–2022 Groundfish Harvest Specifications and Management Measures; which is tiered from the Harvest Specifications and Management Measures for 2015–2016 and Biennial Periods Thereafter Final Environmental Impact Statement (EIS) which discloses the longer-term framework and environmental impacts of the biennial specifications process. NMFS documented this decision-making process in a Supplemental Information Report (see **ADDRESSES**).

Emergency Measures

Effective October 29, 2021, this action temporarily extends the 2021 sablefish primary season for limited entry, sablefish-endorsed vessels using bottom longline gear North of 36° N lat., from October 31, 2021, to December 31, 2021. NMFS is only implementing the emergency season extension for vessels in this sector that use bottom longline gear as defined at 50 CFR 660.11.

The sablefish primary fishery includes vessels fishing with both longline and pot gear. West coast sablefish pot gear fisheries are considered Category II fisheries under the Marine Mammal Protection Act's (MMPA) List of Fisheries, indicating

occasional interactions with marine mammals, due to occasional incidental mortality and serious injury to Endangered Species Act-listed humpback whales (the CA/OR/WA stock of humpback whales). All other West Coast groundfish fisheries, including trawl and longline fisheries, are considered Category III fisheries under the MMPA, indicating a remote likelihood of, or no known serious injuries or mortalities to, marine mammals.

Because pot gear fisheries are Category II fisheries, NMFS is required to issue a MMPA section 101(a)(5)(E) permit for the taking of marine mammals after making a negligible impact determination (NID). NMFS issued a permit for the sablefish pot gear fisheries on September 4, 2013 (amended April 23, 2015 (80 FR 22709)) which expired on September 4, 2016 (78 FR 54553). The Council recommended the emergency extension for the sablefish primary fishery, which would include vessels fishing with longline and/or pot gear. While NMFS believes an emergency exists for all vessels in the sablefish primary fishery season, due to lack of a section 101(a)(5)(E) permit for sablefish pot gear, NMFS is only implementing the emergency extension for the sablefish primary fishery for those vessels using longline gear in this action. Pot/trap gear cannot be used during the season extension under this emergency rule. NMFS published a notice of proposed issuance of a MMPA section 101(a)(5)(E) permit and proposed NID on October 22, 2021 (86 FR 58641). If a new MMPA section 101(a)(5)(E) permit for sablefish pot gear is published before the end of 2021, NMFS may also extend the primary fishery season for vessels using pot gear in a subsequent rule.

This action includes some administrative changes to allow additional transfers of sablefish-endorsed limited entry permits so that these permits may be transferred more than once within a calendar year. Additionally, this emergency rule temporarily suspends the permit stacking limit in this fishery and the restriction on gear endorsements in this fishery. As such, sablefish-endorsed limited entry permits with a pot gear endorsement can be fished using bottom longline gear during this temporary extension of the season. These changes will allow fishery participants to appropriately take advantage of the extended season. This action also extends the incidental halibut retention allowance for the sablefish primary fishery North of Point Chehalis, Washington, to December 7, 2021, which is the latest date allowed by the International Pacific Halibut Commission. After December 7, any incidental halibut would need to be discarded as a prohibited species.

Classification

The NMFS Assistant Administrator has determined that this emergency rule is consistent with the PCGFMP, section 305(c) and other provisions of the Magnuson-Stevens Act, the Administrative Procedure Act (APA), and other applicable law. Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries finds good cause to waive prior notice and the opportunity for public comment because it would be impracticable and contrary to the public interest.

The Council made an emergency modification to their September 2021 meeting agenda to consider taking emergency action in response to requests from industry representatives, the GAP, and the public. These entities raised concerns that many vessels would be unable to harvest their allocations before the sablefish primary fishery season closed due to unforeseen issues resulting from restrictions associated with the COVID–19 pandemic. The Council considered and ultimately recommended NMFS initiate this action on September 14, with less than 7 weeks remaining before the closure of the sablefish primary season on October 31. Providing prior notice through proposed rulemaking and public comment period in the normal rulemaking process would be counter to public interest by delaying implementation of emergency measures intended to address a time-sensitive management problem. Further delays to extend the season through emergency action would jeopardize the ability of sablefish primary fishery participants to land allocations, and avoid economic hardship. For the reasons outlined above, NMFS finds it impracticable and contrary to the public interest to provide prior opportunity to comment on these emergency measures.

Additionally, this rule is exempt from the 30-day delayed effectiveness provision of the APA under 5 U.S.C. 553(d)(1) because it relieves a restriction that would place fishery participants at an economic disadvantage. Waiving the 30-day delayed effectiveness for this rule is necessary to allow participants in the sablefish primary fishery under emergency rules to continue fishing operations with minimal interruption beyond the status quo closure date of October 31. Not extending the sablefish primary fishery season past October 31 would present immediate serious economic impacts without contributing to the economic goals of the sablefish tier program. Because this rule alleviates a restriction, which if continued would otherwise have serious and unnecessary economic harm on tier fishery vessels, it is not subject to the 30-day delayed effectiveness provision of the APA.

This action is being taken pursuant to the emergency provision of Magnuson-Stevens Act and is exempt from OMB review. This final rule has been determined to be not significant for purposes of Executive Order 12866.

This emergency rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior notice and opportunity for public comment.

This action does not contain a collection-of-information requirements for purposes of the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian fisheries.

Dated: October 26, 2021.

Samuel D. Rauch, III,

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

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—-FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C 7001 *et seq.*

■ 2. In § 660.25, add paragraphs (b)(3)(ii)(A) and (B), (b)(3)(iv)(A)(*3*), (b)(4)(iii)(A) and (B), (b)(4)(v)(C)(*1*) and (*2*), (b)(4)(vi)(D)(*1*) and (*2*), and (b)(vii)(B)(*1*) and (*2*) to read as follows:

§ 660.25 Permits.

* * * * *

(b) * * *

(3) * * *

(ii) * * *

(A) *Emergency rule extending sablefish primary season.* Effective October 29, 2021, until December 31, 2021, notwithstanding any other section of these regulations, vessels assigned to a limited entry ''A''-endorsed permit with a pot (trap) endorsement can use longline gear during the primary sablefish season described at § 660.231.

(B) [Reserved].

* * * * *

(iv) * * *

(A) * * *

(*3*) *Emergency rule extending sablefish primary season.* Effective

October 29, 2021, until December 31, 2021, notwithstanding any other section of these regulations, permit stacking limits for limited entry permits with sablefish endorsements will be unlimited.

* * * * *

(4) * * *

(iii) * * *

(A) *Emergency rule extending sablefish primary season.* Effective October 29, 2021, until December 31, 2021, notwithstanding any other section of these regulations, permit stacking limits for limited entry permits with sablefish endorsements will be unlimited.

(B) [Reserved]

* * * * *

(v) * * *

(C) * * *

(*1*) *Emergency rule extending sablefish primary season.* Effective October 29, 2021, until December 31, 2021, notwithstanding any other section of these regulations, the primary sablefish season described at § 660.231 is April 1 through December 31 for vessels registered to a sablefish-endorsed limited entry permit using bottom longline gear, as defined at § 660.11.

(2) [Reserved]

* * * * *

(vi) * * *

(D) * * *

(1) *Emergency rule extending sablefish primary season.* Effective October 29, 2021, until December 31, 2021, notwithstanding any other section of these regulations, the primary sablefish season described at § 660.231 is April 1 through December 31 for vessels registered to a sablefish-endorsed limited entry permit using bottom longline gear, as defined at § 660.11.

(2) *Temporary changes in vessel registration.* Effective October 29, 2021, until December 31, 2021, a change in vessel registration that causes the new vessel to exceed the permit stacking limits will expire at 11:59 p.m. on December 31, 2021. At 11:59 p.m. on December 31, 2021, NMFS will return any sablefish-endorsed limited entry permit exceeding the permit stacking limit to the original vessel.

* * * * *

(vii) * * *

(B) * * *

(*1*) *Emergency rule extending sablefish primary season.* Effective October 29, 2021, until December 31, 2021, notwithstanding any other section of these regulations, Sablefish-endorsed limited entry fixed gear permits (without MS/CV or C/P endorsements) may be registered for use with a different vessel up to five times per calendar year.

(2) [Reserved]

* * * * *

■ 3. In § 660.213, add paragraphs (d)(2)(i) and (ii) to read as follows:

§ 660.213 Fixed gear fishery—recordkeeping and reporting.

* * * * *

(d) * * *

(2) * * *

(i) *Emergency rule extending sablefish primary season.* Effective October 29, 2021, until December 31, 2021, notwithstanding any other section of these regulations, the primary sablefish season described at § 660.231 is April 1 through December 31 for vessels registered to a sablefish-endorsed limited entry permit using bottom longline gear, as defined at § 660.11.

(ii) [Reserved]

* * * * *

■ 4. In § 660.231, add paragraphs (b)(1)(i) and (ii), (b)(2)(i) and (ii), (b)(3)(i)(A) and (B), and (b)(3)(iv)(A) and (B) to read as follows:

§ 660.231 Limited entry fixed gear sablefish primary fishery.

* * * * *

(b) * * *

(1) * * *

(i) *Emergency rule extending sablefish primary season.* Effective October 29, 2021, until December 31, 2021, notwithstanding any other section of these regulations, North of 36° N lat., the sablefish primary season for the limited entry, fixed gear, sablefish-endorsed vessels using bottom longline gear, as defined at § 660.11, closes at 12 noon local time on December 31, or closes for an individual vessel owner when the tier limit for the sablefish endorsed permit(s) registered to the vessel has been reached, whichever is earlier, unless otherwise announced by the Regional Administrator through the routine management measures process described at § 660.60(c).

(ii) [Reserved]

(2) * * *

(i) *Emergency rule extending sablefish primary season.* Effective October 29, 2021, until December 31, 2021, notwithstanding any other section of these regulations, all vessels authorized to fish in that season under paragraph (a) of this section, when fishing against primary season cumulative limits, may fish for sablefish with bottom longline gear, as defined at § 660.11, whether or not they are registered to a limited entry sablefish-endorsed permit with a longline endorsement.

(ii) [Reserved]

(3) * * *

(i) * * *

(A) *Emergency rule extending sablefish primary season.* Under emergency measures effective October 29, 2021, until December 31, 2021, notwithstanding any other section of these regulations, an unlimited number of permits may be registered for use with a single vessel during the primary season.

(B) [Reserved]

* * * * *

(iv) * * *

(A) *Emergency rule extending sablefish primary season.* Under emergency measures effective October 29, 2021, until December 7, 2021, notwithstanding any other section of these regulations, vessels authorized to participate in the sablefish primary fishery, licensed by the International Pacific Halibut Commission for commercial fishing in Area 2A (waters off Washington, Oregon, California), and fishing with longline gear north of Pt. Chehalis, WA (46°53.30′ N lat.) may possess and land up to 225 pounds (113 kg) dressed weight of Pacific halibut for every 1,000 pounds (454 kg) dressed weight of sablefish landed and up to two additional Pacific halibut in excess of the 225-pounds-per-1,000-pound limit per landing. Pacific halibut taken and retained in the sablefish primary fishery north of Pt. Chehalis may only be landed north of Pt. Chehalis and may not be possessed or landed south of Pt. Chehalis.

(B) [Reserved]

* * * * *

[FR Doc. 2021–23650 Filed 10–28–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 201204–0325]

RIN 0648–BK95

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; 2021–2022 Biennial Specifications and Management Measures; Inseason Adjustments

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

ACTION: Final rule; inseason adjustments to biennial groundfish management measures.

SUMMARY: This final rule announces routine inseason adjustments to management measures in commercial groundfish fisheries. This action is intended to allow commercial fishing vessels to access more abundant groundfish stocks while protecting rebuilding and depleted stocks.

DATES: This final rule is effective October 26, 2021.

FOR FURTHER INFORMATION CONTACT: Sean Matson, email: *sean.matson@noaa.gov.*

ADDRESSES:

Electronic Access

This rule is accessible via the internet at the Office of the Federal Register website at *https://www.federalregister.gov.* Background information and documents are available at the Pacific Fishery Management Council's website at *http://www.pcouncil.org/.*

SUPPLEMENTARY INFORMATION:

Background

The Pacific Coast Groundfish Fishery Management Plan (PCGFMP) and its implementing regulations at title 50 in the Code of Federal Regulations (CFR), part 660, subparts C through G, regulate fishing for over 90 species of groundfish off the coasts of Washington, Oregon, and California. The Pacific Fishery Management Council (Council) develops groundfish harvest specifications and management measures for 2 year periods (*i.e.,* a biennium). NMFS published the final rule to implement harvest specifications and management measures for the 2021–2022 biennium for most species managed under the PCGFMP on December 11, 2020 (85 FR 79880). In general, the management measures set at the start of the biennial harvest specifications cycle help the various sectors of the fishery attain, but not exceed, the catch limits for each stock. The Council, in coordination with Pacific Coast Treaty Indian Tribes and the States of Washington, Oregon, and California, recommends adjustments to the management measures during the fishing year to achieve this goal.

At its meeting on September 9–15, 2021, the Council recommended increasing trip limits for the Limited Entry (LE) and Open Access (OA) Fixed Gear (FG) sablefish, Daily Trip Limit (DTL) fisheries north of 36° N latitude. The Council also recommended increasing trip limits for the fixed gear lingcod fishery, north of 42° N latitude (LE and OA), beginning as soon as possible, for the remainder of the 2021 fishing year and for subsequent September–December periods in later years until superseded.

Pacific Coast groundfish fisheries are managed using harvest specifications or limits (*e.g.,* overfishing limits [OFL], acceptable biological catch [ABC], annual catch limits [ACL] and harvest guidelines [HG]) recommended biennially by the Council and based on the best scientific information available at that time (50 CFR 660.60(b)). During development of the harvest specifications, the Council also recommends management measures (*e.g.,* trip limits, area closures, and bag limits) that are meant to manage catch so as not to exceed the harvest specifications. The harvest specifications and management measures developed for the 2021–2022 biennium used data through the 2020-fishing year. Each of the adjustments to management measures discussed below are based on updated fisheries information that was unavailable when the analysis for the current harvest specifications was completed. As new fisheries data becomes available, projected impacts of management measures are updated, and the management measures themselves may need to be adjusted so as to help harvesters achieve but not exceed the harvest limits.

Sablefish is an important commercial species on the West Coast, targeted by vessels using both bottom trawl and fixed gear (longlines and pots/traps). The sablefish stock is managed with a coast-wide OFL and ABC, but with separate ACLs, north and south of 36° N latitude. In 2021, the ACL for sablefish north of 36° N latitude is 6,892 metric tons (mt) with a fishery HG of 6,165 mt. The fishery HG north of 36° N latitude is further divided between the LE FG and OA sectors with 90.6 percent, or 5,586 mt, going to the LE sector and 9.4 percent, or 580 mt, going to the OA sector. The LE share is divided so that 58 percent goes to trawl and 42 percent goes to FG. The LE FG share is further divided between the sablefish primary (tier) fishery (85% or 1,994 mt) and the daily trip limit (DTL) fisheries (15% or 352 mt), as shown in Table 1c. to Title 50, part 660, subpart C of the CFR. The sablefish DTL fisheries are individually managed using landing targets (Table 1), which have accounted for discard mortality a priori, by subtracting 4.5 percent from the DTL catch share. This same method of accounting for discard mortality to calculate the landing target is also used in managing the OA sablefish DTL fishery, north of 36° N latitude (Table 1).

Lingcod is another important commercial species on the West Coast, and like sablefish, caught by vessels with both trawl and fixed gear (longlines and pots/traps). The lingcod stock is managed separately north and south of 40°10′ N latitude, with a northern ACL of 5,369 mt in 2021, a fishery HG of 5,090.6 mt, and a northern trawl fixed gear allocation of 2,290.8, or 45 percent of the HG, and a northern non-trawl allocation of 2,799.8, or 55 percent. Lingcod north of 40°10′ N latitude are additionally managed north and south of 42° N latitude, typically with different trip limits set north and south of that management line.

Request, Analysis, and Council Recommendation

At the September 2021 Council meeting, the Council's Groundfish Management Team (GMT) received requests from industry members and members of the Council's Groundfish Advisory Subpanel to examine the potential to increase sablefish trips limits for the fixed gear, LE and OA DTL fisheries north of 36° N lat., and to increase trip limits for lingcod north of 42° N latitude. The intent of increasing the sablefish limits is to increase harvest opportunities for vessels targeting sablefish, under a mix of daily, weekly, and bimonthly landings accumulation limits (commonly referred to collectively as ''trip limits''); attainment of harvest targets for each DTL fishery, and the northern fixed gear HG for sablefish have been trending much lower than anticipated throughout 2021. To evaluate potential increases to sablefish trip limits, the GMT made model-based projections of landings under current regulations, as well as alternative sablefish trip limits, including the limits ultimately recommended by the Council, through the remainder of the year. Table 1 shows the projected sablefish landings, the sablefish harvest targets, and the projected attainment percentage by fishery under both the current trip limits and the Council's recommended adjusted trip limits. These projections were based on the most recent catch information available through early September 2021. Industry did not request changes to sablefish trip limits for the LE or OA DTL fisheries south of 36° N latitude. Therefore, NMFS and the Council did not consider changes for those fisheries at this time.

As shown in Table 1, under the current trip limits, models predict that landings of sablefish will be far below the harvest targets for LE, and OA fixed

gear sablefish DTL fisheries north of 36° N lat. Under the Council's recommended trip limits, sablefish attainment is projected to increase in the LE DTL fishery north of 36° N latitude, from between 54–59 percent attainment, up to between 86 and 95 percent. For the OA DTL fishery, north of 36° N latitude, the projected gains are more modest (from between 53 and 60 percent attainment, to between 57 and 66 percent); however, the OA model is more uncertain and less well informed than the LE model, the changes (both to LE and OA) should allow some beneficial increase in attainment, while being sufficiently precautionary.

Gear Restriction Necessary To Implement Council Recommended Trip Limits

These fixed gear, sablefish and lingcod fisheries include vessels fishing with both hook-and-line and pot gears. West Coast groundfish sablefish pot gear fisheries are considered Category II fisheries under the Marine Mammal Protection Act List of Fisheries, indicating occasional interactions with marine mammals, due to occasional incidental mortality and serious injury to ESA-listed humpback whales (the CA/OR/WA stock of humpback whales).

Because sablefish pot gear fisheries are Category II fisheries, NMFS is required to issue a MMPA 101(a)(5)(E) permit for the taking of marine mammals after making a negligible impact determination (NID). NMFS issued a permit for the sablefish pot gear fisheries on September 4, 2013 (amended April 23, 2015 (80 FR 22709)), which expired on September 4, 2016 (78 FR 54553). NMFS published a notice of proposed issuance of a MMPA 101(a)(5)(E) permit and proposed NID on October 22, 2021 (86 FR 58641).

Due to lack of a final 101(a)(5)(E) permit, in this action NMFS is only implementing the inseason increases to trip limits for those vessels using non-pot/trap, fixed gears (*e.g.,* longline and other hook-and-line gears), in the LE and OA FG sablefish, DTL fisheries north of 36° N latitude, as well as the fixed gear lingcod fishery, north of 42° N latitude (LE and OA). Pot/trap gear cannot be used in the affected sectors to land up to the higher September through December trip limits for sablefish or lingcod, and vessels using pot/trap gear are instead subject to the lower January through August limits.

Gear restrictions are common routine accountability measures (AMs) in groundfish fisheries (50 CFR 660.60). Additionally, analogous restrictions for vessels to adhere to the lower of two trip limits, in situations of mixed limits for one species during the same period exist in crossover provisions in the groundfish fishery, found at 50 CFR 660.60(h)(7). Crossover provisions normally apply to three activities: Fishing on different sides of a management line, fishing in both the limited entry and open access fisheries, or fishing in both the Shorebased IFQ Program and the limited entry fixed gear fishery. Under the most common scenario, crossover provisions hold a vessel that fishes in areas with two different trip limits for the same species, to the more restrictive of the two limits. The gear specific trip limits implemented through this rule will be managed similar to cross-over provisions.

Providing the trip limit increases with the additional gear restriction still enables substantial additional opportunity as a result of this action for those fishery participants who use longline and other non-pot gear, although it may cause some reduction in benefit versus without the gear restriction. The percentage contributions of pot/trap versus longline gear types to landings over the past five years provides some information about an upper bounds of potential reduction in benefit due to the gear restriction on access to the higher trip limits. Among fixed gear fisheries, in the LE DTL fishery north of 36° N lat., pot gear only accounted for 6.8 percent of sablefish landings from 2016–2020 (some permits are dual-endorsed, for both gear types), while in the OA DTL fishery north of 36° N lat., pot gear accounted for 46 percent of sablefish landings. Just 22 percent of lingcod fixed gear landings (mt) were made using pot gear over the same years in the DTL fishery, while 78 percent were made with longline gear. In the FG OA fishery, only 0.6 percent of lingcod landings were made with pot gear, and 99.4 percent with longline gear. Given these gear distributions for landings in the affected sectors, the GMT's analysis from the September meeting is still valid for this inseason action, even though it was conducted using data that included pot gear as well as longline, and trace amounts of other fixed gears. Thus for both species, the majority of landings overall will be subject to the increased trip limits, and this will provide substantial additional opportunity, despite the gear restriction.

Table 1 -- Projected landings of sablefish, north of 36° N. lat., sablefish harvest target, and projected percentage of sablefish attained through the end of 2021 by fishery and trip limit.

Fishery	Trip Limits	Projected Landings (mt)	Landing Target (mt)	Projected Attainment (Percent)
LE FG DTL North of 36° N. lat.	Current: 1,700 lb (771 kg)/week, not to exceed 5,100 lb (2,313 kg)/two months	180-197	336	54-59
	Recommended: 4,500 lb (2,041 kg)/week, not to exceed 9,000 lb (4,082 kg)/two months	290-320		86-95
OA FG DTL North of 36° N. lat.	Current: 600 lb (272 kg)/day, or 1 landing per week of up to 2,000 lb (907 kg), not to exceed 4,000 lb (1,814 kg)/two months	291-331	553	53-60
	Recommended: 600 lb (272 kg), or 1 landing per week of up to 3,000 lb (1,361 kg), not to exceed 6,000 lb (2,722 kg)/ two months	315-363		57-66

The Council also recommended changes to trip limits for lingcod north of 42° N latitude, after request from industry and analysis by the GMT, in order to reduce regulatory discard, which results in waste and lost revenue. Table 2 shows the current and recommended trip limits for lingcod north of 42° N latitude. Table 3 shows the projected impacts of those limits to total mortality, and percent attainment of the non-trawl allocation, north of 40° 10′ N latitude. Projected impacts to total fishing mortality are nearly identical, and well within the margin for error, but based on the analysis by the GMT, the higher landing limits are predicted to convert lost fish as discard, into landings and revenue, rather than inspire additional effort. By maintaining the same level of effort, and total fishing mortality, this increase in trip limits is not predicted to increase bycatch of yelloweye rockfish, which is managed under a rebuilding plan, and is a constraint to this fixed gear lingcod attainment.

Table 2 -- Current and recommended trip limits for lingcod north of 42° N. latitude.

Option	Fishery	Area	Trip limit
Current	LE	N. of 42° N. lat.	4,000 lb (1,814 kg) / 2 months
	OA	N. of 42° N. lat.	2,000 lb (907 kg) / month
Recommended	LE	N. of 42° N. lat.	5,000 lb (2,268 kg) / 2 months
	OA	N. of 42° N. lat.	2,500 lb (1,134 kg) / month

Table 3 -- Projected impacts for current and recommended trip limits, compared to the non-trawl allocation for lingcod north of 42° N. latitude.

Option	Fishery	Area	Mortality Estimate (mt)	LE + OA (mt)	Non-Trawl Allocation (mt)	Attainment of Allocation (Percent)
Current	LE	North of 42° N lat.	31.8	131.4	2,799.8	4.7%
	OA		99.6			
Recommended	LE		32.7	132.8	2,799.8	4.7%
	OA		100.2			

Summary of Changes

Trip limit increases for sablefish are intended to increase attainment of the LE and OA DTL fisheries, which each contribute to attainment of the non-trawl HG for sablefish north of 36° N latitude. The trip limit increases do not change projected impacts to co-occurring rebuilding species as analyzed in the 2021–2022 harvest specifications because the projected impacts to those species assume that the entire sablefish ACL is harvested. Recommended increases to lingcod north of 42° N latitude are intended to convert regulatory discards into landings and associated revenue, and are not predicted to increase effort or bycatch of co-occurring rebuilding species. NMFS is only implementing the Council-recommended trip limits for vessels fishing with fixed gear types other than pot/trap, due to the lack of a final MMPA101(a)(5)(E) permit. Therefore, the Council recommended, and NMFS is implementing, by modifying Table 2, North and South to part 660, subpart E, trip limit changes for the LEFG fishery north of 40°10′ N lat., as well as Table 3, North and South to part 660, subpart F to increase the limits as shown in tables 4 and 5 in this rule.

Table 4 – Trip limits by gear type for sablefish North of 36° N. Latitude for the remainder of 2021 and September-December periods thereafter until superseded.

	Non-pot gear	Pot gear
LEFG	4,500 lb (2,041 kg)/week, not to exceed 9,000 lb (4,082 kg)/two months	1,700 lb (771 kg)/week, not to exceed 5,100 lb (2,313 kg)/two months
OA	600 lb (272 kg), or 1 landing per week of up to 3,000 lb (1,361 kg), not to exceed 6,000 lb (2,722 kg)/ two months	600 lb (272 kg)/day, or 1 landing per week of up to 2,000 lb (907 kg), not to exceed 4,000 lb (1,814 kg)/two months

Table 5 – Trip limits by gear type for lingcod North of 42° N. latitude for the remainder of 2021 and September-December periods thereafter until superseded.

	Non-pot	Pot
LEFG	5,000 lb (2,268 kg) / 2 months	4,000 lb (1,814 kg) / 2 months
OA	2,500 lb (1,134 kg) / month	2,000 lb (907 kg) / month

Classification

This final rule makes routine inseason adjustments to groundfish fishery management measures, based on the best scientific information available, consistent with the PCGFMP and its implementing regulations.

This action is taken under the authority of 50 CFR 660.60(c) and is exempt from review under Executive Order 12866.

The aggregate data upon which these actions are based are available for public inspection by contacting Dr. Sean Matson in the West Coast Region (see **FOR FURTHER INFORMATION CONTACT**, above), or view at the NMFS West Coast Groundfish website: *http://www.westcoast.fisheries.noaa.gov/fisheries/groundfish/index.html.*

Pursuant to 5 U.S.C. 553(b), NMFS finds good cause to waive prior public notice and an opportunity for public

comment on this action, as notice and comment would be impracticable and contrary to the public interest. The adjustments to management measures in this document increase trip limits for fisheries off of Washington, Oregon, and California to allow for greater attainment of allocations. No aspect of this action is controversial, and changes of this nature were anticipated in the final rule for the 2021–2022 harvest specifications and management measures which published on December 11, 2020 (85 FR 79880).

As stated earlier, the Council recommended sablefish limit changes to increase fisher opportunity to attain harvest targets and allocations for their respective fisheries, and contribute to attainment of the ACL. New information became available at the September 2021 meeting showing that harvest was tracking much lower than projections made during the harvest specifications process due to changing fishery conditions. The updated trip limits being implemented in this rule are anticipated to increase landings and fishing community revenue, while maintaining harvest within scientifically informed conservation limits, concomitant with the goals of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson Stevens Act).

The Council recommended increased lingcod landing limits to reduce regulatory discard; new information became available at the 2021 September meeting indicating that current levels of landing limits were having the unintended consequence of causing fishers to discard substantial amounts of catch. Implementing the recommended trip limits is projected to ameliorate this, without changing attainment rate of the allocation, by enabling those fish to be landed rather than wasted, and produce fisher and community revenue.

Delaying implementation to allow for public comment would reduce the economic benefits to the commercial fishing industry and the businesses that rely on that industry because it is unlikely the new regulations would publish and could be implemented before the end of the calendar year. Therefore, providing a comment period for this action could significantly limit the economic benefits to the fishery, and would hamper the achievement of optimum yield from the affected fisheries.

Therefore, NMFS finds reason to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d)(1) so that this final rule may become effective upon publication in the **Federal Register**. The adjustments to management measures in this document affect commercial fisheries by increasing opportunity and relieving participants of the lower trip limits in light of information showing lower than usual attainment. These adjustments were requested by the Council's advisory bodies, as well as members of industry during the September 2021 meeting, and recommended unanimously by the Council. No aspect of this action is controversial, and changes of this nature were anticipated in the biennial harvest specifications and management measures established through a notice and comment rulemaking for 2021–2022 (85 FR 79880).

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian fisheries.

Authority: 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

Dated: October 26, 2021.

Jennifer M. Wallace,

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

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

■ 2. Revise Table 2 (North) to part 660, subpart E, to read as follows:

BILLING CODE 3510–22–P

Table 2 (North) to Part 660, Subpart E -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear North of 40°10' N. lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table 10/7/2021

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:						
1	North of 46°16' N. lat.	shoreline - 100 fm line[1/]					
2	46°16' N. lat. - 40°10' N. lat.	40 fm line[1/] - 100 fm line[1/]					
3		30 fm line [1/]- 40 fm line [1/2/]					
	See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.						
4	**Minor Slope Rockfish[3/] & Darkblotched rockfish**	8,000 lb/ 2 month					
5	**Pacific ocean perch**	3,600 lb/ 2 months					
6	**Sablefish**	1,700 lb/week, not to exceed 5,100 lb/ 2 months				4,500 lb/week, not to exceed 9,000 lb/ 2 months	
	Higher Sep-Dec sablefish trip limits do not apply to pot/trap gear. Sept-Dec landings with pot/trap gear are subject to the lower Jan-Aug limits.						
7	**Longspine thornyhead**	10,000 lb/ 2 months					
8	**Shortspine thornyhead**	2,000 lb/ 2 months			2,500 lb/ 2 months		
9	**Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other Flatfish[4/8/]**	10,000 lb/ month					
10							
11							
12	**Whiting**	10,000 lb/ trip					
13	**Minor Shelf Rockfish[3/]**	800 lb / month					
14	**Shortbelly Rockfish**	200 lb / month					
15	**Widow rockfish**	4,000 lb/ 2 month					
16	**Yellowtail rockfish**	3,000 lb/ month					
17	**Canary rockfish**	3,000 lb/ 2 months					
18	**Yelloweye rockfish**	CLOSED					
19	**Minor Nearshore Rockfish, Oregon black/blue/deacon rockfish & CA black rockfish[5/]**						
20	North of 42°00' N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish or blue/deacon rockfish[4/]					
21	42°00' N. lat. - 40°10' N. lat.	7,000 lb/ 2 months, no more than 2,000 lb of which may be species other than black rockfish					
22	**Lingcod[6/]**						
23	North of 42°00' N. lat.	4,000 lb/ 2 months				5,000 lb/ 2 months	
	Higher Sep-Dec lingcod trip limits do not apply to pot/trap gear. Sept-Dec landings with pot/trap gear are subject to the lower Jan-Aug limits.						
24	42°00' N. lat. - 40°10' N. lat.	2,000 lb/2 months					
25	**Pacific cod**	1,000 lb/ 2 months					
26	**Spiny dogfish**	200,000 lb / 2 months		150,000 lb / 2 months	100,000 lb / 2 months		
27	**Longnose skate**	Unlimited					
28	**Other Fish[7/]& Cabezon in California**	Unlimited					
29	**Oregon Cabezon/Kelp Greenling**	Unlimited					
30	**Big skate**	Unlimited					

TABLE 2 (North)

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ Between 46°16' N. lat. and 40°10' N. lat. and the 30 fm and 40 fm lines, fishing is only allowed with hook-and-line gear except bottom longline and dinglebar gear, as defined in §660.11

3/ Bocaccio, chilipepper and cowcod are included in the trip limits for Minor Shelf Rockfish and splitnose rockfish is included in the trip limits for Minor Slope Rockfish.

4/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, fathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

5/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. there is an additional limit of 100 lb or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.(46°38.17' N. lat.),

6/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.

7/ "Other Fish" are defined at § 660.11 and include kelp greenling off California and leopard shark.

8/ LEFG vessels are allowed to fish inside groundfish conservation areas using hook and line only. See section 660.230 (d) of the regulations for more information.

■ 3. Revise Table 2 (South) to part 660, subpart E, to read as follows:

Table 2 (South) to Part 660, Subpart E -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear South of 40°10' N. lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table 10/7/2021

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:						
1	40°10' N. lat. - 38°57.5' N. lat.	40 fm line[1/] - 125 fm line[1/]					
2	38°57.5' N. lat. - 34°27' N. lat.	50 fm line[1/] - 125 fm line[1/]					
3	South of 34°27' N. lat.	100 fm line[1/] - 150 fm line[1/] (also applies around islands)					
	See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.						
4	**Minor Slope rockfish[2/] & Darkblotched**	40,000 lb/ 2 months, of which no more than 6,000 lb may be blackgill rockfish					
5	**Splitnose rockfish**	40,000 lb/ 2 months					
6	**Sablefish**						
7	40°10' N. lat. - 36°00' N. lat.	1,700 lb/week, not to exceed 5,100 lb/ 2 months				4.500 lb/week, not to exceed 9,000 lb/ 2 months	
	Higher Sep-Dec sablefish trip limits do not apply to pot/trap gear. Sept-Dec landings with pot/trap gear are subject to the lower Jan-Aug limits.						
8	South of 36°00' N. lat.	2,500 lb/ week					
9	**Longspine thornyhead**	10,000 lb/ 2 months					
10	**Shortspine thornyhead**						
11	40°10' N. lat. - 34°27' N. lat.	2,000 lb/ 2 months			2,500 lb/ 2 months		
12	South of 34°27' N. lat.	3,000 lb/ 2 months					
13	**Dover sole, arrowtooth flounder, petrale**	10,000 lb/ month					
14	**sole, English sole, starry flounder, Other**						
15	**Flatfish[3/&8/]**						
16	**Whiting**	10,000 lb/ trip					
17	**Minor Shelf Rockfish[2/]**						
18	40°10' N. lat. - 34°27' N. lat.	8,000 lb. / 2 months, of which no more than 500 lb. may be vermilion					
19	South of 34°27' N. lat.	5,000 lb. / 2 months, of which no more than 3,000lb. may be vermilion					
20	**Widow**						
21	40°10' N. lat. - 34°27' N. lat.	10,000 lb. / 2 months					
22	South of 34°27' N. lat.	8,000 lb. / 2 months					
23	**Chilipepper**						
24	40°10' N. lat. - 34°27' N. lat.	10,000 lb. / 2 months					
25	South of 34°27' N. lat.	8,000 lb. / 2 months					
26	**Shortbelly Rockfish**						
27	South of 40°10' N. lat.	200 lb/ month					
28	**Canary rockfish**	3,500 lb/ 2 months					
29	**Yelloweye rockfish**	CLOSED					
30	**Cowcod**	CLOSED					
31	**Bronzespotted rockfish**	CLOSED					
32	**Bocaccio**	6,000 lb/ 2 months					
33	**Minor Nearshore Rockfish**						
34	Shallow nearshore[4/]	2,000 lb/ 2 months					
35	Deeper nearshore[5/]	2,000 lb/ 2 months					
36	**California Scorpionfish**	3,500 lb/ 2 months					
37	**Lingcod[6/]**	1,600 lb / 2 months					
38	**Pacific cod**	1,000 lb/ 2 months					
39	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
40	**Longnose skate**	Unlimited					
41	**Other Fish[7/] & Cabezon in California**	Unlimited					
42	**Big Skate**	Unlimited					

TABLE 2 (South)

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ POP is included in the trip limits for Minor Slope Rockfish. Blackgill rockfish have a species specific trip sub-limit within the Minor Slope Rockfish cumulative limit. Yellowtail rockfish are included in the trip limits for Minor Shelf Rockfish. Bronzespotted rockfish have a species specific trip limit.

3/ "Other Flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ "Shallow Nearshore" are defined at § 660.11 under "Groundfish" (7)(i)(B)(1).

5/ "Deeper Nearshore" are defined at § 660.11 under "Groundfish" (7)(i)(B)(2).

6/ The commercial mimimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.

7/ "Other Fish" are defined at § 660.11 and include kelp greenling off California and leopard shark.

8/ LEFG vessels are allowed to fish inside groundfish conservation areas using hook and line only. See section 660.230 (d) of the regulations for more information.

■ 4. Revise Table 3 (North) to part 660, subpart F, to read as follows:

Table 3 (North) to Part 660, Subpart F -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears North of 40°10' N. lat.

Other limits and requirements apply – Read §§660.10 through 660.399 before using this table

10/7/2021

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)[1/]:							
1	North of 46°16' N. lat.	shoreline - 100 fm line[1/]					
2	46°16' N. lat. - 40°10' N. lat.	40 fm line[1/] - 100 fm line[1/]					
3		30 fm line [1/]- 40 fm line [1/2/]					
See §§660.60, 660.330 and 660.333 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Bank, and EFHCAs).							
State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.							
4	**Minor Slope Rockfish[3/] & Darkblotched rockfish**	2,000 lb / months					
5	**Pacific ocean perch**	100 lb/ month					
6	**Sablefish**	600 lb/day, or 1 land/week up to 2,000 lb, not to exceed 4,000 lb / 2 months				600 lb/day, or 1 land/week up to 3,000 lb, not to exceed 6,000 lb / 2 months	
Higher Sep-Dec sablefish trip limits do not apply to pot/trap gear. Sept-Dec landings with pot/trap gear are subject to the lower Jan-Aug limits.							
7	**Shortpine thornyheads**	50 lb/month					
8	**Longspine thornyheads**	50 lb/month					
9 10 11	**Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other Flatfish[4/5/]**	5,000 lb/ month					
12	**Whiting**	300 lb/ month					
13	**Minor Shelf Rockfish[3/]**	800 lb / month					
14	**Widow rockfish**	2,000 lb/ 2 months					
15	**Shortbelly Rockfish**	200 lb / month					
16	**Yellowtail rockfish**	1,500 lb/ month					
17	**Canary rockfish**	1,000 lb/ 2 months					
18	**Yelloweye rockfish**	CLOSED					
19	**Minor Nearshore Rockfish, Oregon black/blue/deacon rockfish & CA black rockfish**						
20	North of 42°00' N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish or blue/deacon rockfish[5/]					
21	42°00' N. lat. - 40°10' N. lat.	7,000 lb/ 2 months, no more than 2,000 lb of which may be species other than black rockfish					
22	**Lingcod[6/]**						
23	North of 42°00' N. lat.	2,000 lb/ month				2,500 lb/ month	
Higher Sep-Dec lingcod trip limits do not apply to pot/trap gear. Sept-Dec landings with pot/trap gear are subject to the lower Jan-Aug limits.							
24	42°00' N. lat. - 40°10' N. lat.	1,000 lb / month					
25	**Pacific cod**	1,000 lb/ 2 months					
26	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
27	**Longnose skate**	Unlimited					
28	**Big skate**	Unlimited					
29	**Other Fish[7/] & Cabezon in California**	Unlimited					
30	**Oregon Cabezon/Kelp Greenling**	Unlimited					
31	**SALMON TROLL** *(subject to RCAs when retaining all species of groundfish, except for yellowtail rockfish and lingcod, as described below)*						
32	North	*Salmon trollers may retain and land up to 500 lb of yellowtail rockfish per month as long as salmon is on board, both within and outside of the RCA. Salmon trollers may retain and land up to 1 lingcod per 2 Chinook per trip, plus 1 lingcod per trip, up to a trip limit of 10 lingcod, on a trip where any fishing occurs within the RCA. The lingcod limit only applies during times when lingcod retention is allowed, and is not "CLOSED." Theses limits are within the per month limits described in the table above, and not in addition to those limits. All groundfish species are subject to the open access limits, seasons, size limits and RCA restrictions listed in the table above, unless otherwise stated here.*					
33	**PINK SHRIMP NON-GROUNDFISH TRAWL** *(not subject to RCAs)*						
34	North	Effective April 1 - October 31: Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/month (minimum 24 inch size limit); sablefish 2,000 lb/month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.					

TABLE 3 (North)

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ Between 46°16' N. lat. and 40°10' N. lat. and the 30 fm and 40 fm lines, fishing is only allowed with hook-and-line gear except bottom longline and dinglebar gear, as defined in §660.11

3/ Bocaccio, chilipepper and cowcod rockfishes are included in the trip limits for Minor Shelf Rockfish. Splitnose rockfish is included in the trip limits for Minor Slope Rockfish.

4/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, fathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

5/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

6/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.

7/ "Other fish" are defined at § 660.11 and include kelp greenling off California and leopard shark.

8/ Open access vessels are allowed to fish inside groundfish conservation areas using hook and line only. See section 660.330 (d) of the regulations for more information.

■ 5. Revise Table 3 (South) to part 660, subpart F, to read as follows:

Table 3 (South) to Part 660, Subpart F -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears South of 40°10' N. lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table 10/7/2021

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:						
1	40°10' N. lat. - 38°57.5' N. lat.	40 fm line[1/] - 125 fm line[1/]					
2	38°57.5' N. lat. -34°27' N. lat.	50 fm line[1/] - 125 fm line[1/]					
3	South of 34°27' N. lat.	100 fm line[1/] - 150 fm line[1/] (also applies around islands)					
	See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.						
4	**Minor Slope Rockfish[2/] & Darkblotched rockfish**	10,000 lb/ 2 months, of which no more than 2,500 lb may be blackgill rockfish					
5	**Splitnose rockfish**	200 lb/ month					
6	**Sablefish**						
7	40°10' N. lat. - 36°00' N. lat.	600 lb/day, or 1 land/week up to 2,000 lb, not to exceed 4,000 lb/2 months				600 lb/day, or 1 land/week up to 3,000 lb, not to exceed 6,000 lb/2 months	
	Higher Sep-Dec sablefish trip limits do not apply to pot/trap gear. Sept-Dec landings with pot/trap gear are subject to the lower Jan-Aug limits.						
8	South of 36°00' N. lat.	2,000 lb/week, not to exceed 6,000 lb/2 months					
9	**Shortpine thornyheads**						
10	40°10' N. lat. - 34°27' N. lat.	50 lb/ month					
11	**Longspine thornyheads**						
12	40°10' N. lat. - 34°27' N. lat.	50 lb/ month					
13	**Shortpine thornyheads and longspine**						
14	South of 34°27' N. lat.	100 lb/day, no more than 1,000 lb/ 2 months					
15	**Dover sole, arrowtooth flounder, petrale**						
16	**sole, English sole, starry flounder, Other**	5,000 lb/ month					
17	**Flatfish[3/8/]**						
18	**Whiting**	300 lb/ month					
19	**Minor Shelf Rockfish[2/]**						
20	40°10' N. lat. - 34°27' N. lat.	4,000 lb. / 2 months, of which no more than 400 lb. may be vermilion					
21	South of 34°27' N. lat.	3,000 lb. / 2 months, of which no more than 1,200lb. may be vermilion					
22	**Widow**						
23	40°10' N. lat. - 34°27' N. lat.	6,000 lb. / 2 months					
24	South of 34°27' N. lat.	4,000 lb. / 2 months					
25	**Chilipepper**						
26	40°10' N. lat. - 34°27' N. lat.	6,000 lb. / 2 months					
27	South of 34°27' N. lat.	4,000 lb. / 2 months					
28	**Shortbelly Rockfish**						
29	South of 40°10' N. lat.	200 lb/ month					
22	**Canary rockfish**	1,500 lb/ 2 months					
23	**Yelloweye rockfish**	CLOSED					
24	**Cowcod**	CLOSED					
25	**Bronzespotted rockfish**	CLOSED					
26	**Bocaccio**	4,000 lb/ 2 months					
30	**Minor Nearshore Rockfish**						
31	Shallow nearshore[4/]	2,000 lb/ 2 months					
32	Deeper nearshore[5/]	2,000 lb/ 2 months					
33	**California Scorpionfish**	3,500 lb/ 2 months					
34	**Lingcod[6/]**	700 lb / months					
35	**Pacific cod**	1,000 lb/ 2 months					
36	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
37	**Longnose skate**	Unlimited					
38	**Big skate**	Unlimited					
39	**Other Fish[7/] & Cabezon in California**	Unlimited					

TABLE 3 (South)

Table 3 (South) Continued

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table — 10/7/2021

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:						
40	40°10' N. lat. - 38°57.5' N. lat.	40 fm line[1/] - 125 fm line[1/]					
41	38°57.5' N. lat. -34°27' N. lat.	50 fm line[1/] - 125 fm line[1/]					
42	South of 34°27' N. lat.	100 fm line[1/] - 150 fm line[1/] (also applies around islands)					
	See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
43	**SALMON TROLL** *(subject to RCAs when retaining all species of groundfish, except for yellowtail rockfish, as described below)*						
44	South of 40°10' N. lat.	Salmon trollers may retain and land up to 1 lb of yellowtail rockfish for every 2 lb of Chinook salmon landed, with a cumulative limit of 200 lb/month, both within and outside of the RCA. This limit is within the 4,000 lb per 2 month limit for minor shelf rockfish between 40o10' and 34o27' N lat., and not in addition to that limit. All groundfish species are subject to the open access limits, seasons, size limits and RCA restrictions listed in the table above, unless otherwise stated here.					
45	**RIDGEBACK PRAWN AND, SOUTH OF 38°57.50' N. LAT., CA HALIBUT AND SEA CUCUMBER NON-GROUNDFISH TRAWL**						
46	**NON-GROUNDFISH TRAWL Rockfish Conservation Area (RCA) for CA Halibut, Sea Cucumber & Ridgeback Prawn:**						
47	*40°10' N. lat. - 38°00' N. lat.*	*100 fm line[1/] - 200 fm line[1/]*	*100 fm line[1/] - 150 fm line[1/]*				*100 fm line[1/] - 200 fm line[1/]*
48	*38°00' N. lat. - 34°27' N. lat.*	*100 fm line[1/] - 150 fm line[1/]*					
49	*South of 34°27' N. lat.*	*100 fm line[1/] - 150 fm line[1/]*					
50		Groundfish: 300 lb/trip. Species-specific limits described in the table above also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt. Conception and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip. Vessels participating in the California halibut fishery south of 38o57.50' N. lat. are allowed to (1) land up to 100 lb/day of groundfish without the ratio requirement, provided that at least one California halibut is landed and (2) land up to 3,000 lb/month of flatfish, no more than 300 lb of which may be species other than Pacific sanddabs, sand sole, starry flounder, rock sole, curlfin sole, or California scorpionfish (California scorpionfish is also subject to the trip limits and closures in line 29).					
51	**PINK SHRIMP NON-GROUNDFISH TRAWL GEAR** *(not subject to RCAs)*						
52	South	Effective April 1 - October 31: Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/ month (minimum 24 inch size limit); sablefish 2,000 lb/ month; canary rockfish, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of all groundfish species count toward the per day, per trip or other species-specific sublimits described here and the species-specific limits described in the table above do not apply. The amount of groundfish landed may not exceed the amount of pink shrimp landed.					

Table 3 (South) Continued

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ POP is included in the trip limits for minor slope rockfish. Blackgill rockfish have a species specific trip sub-limit within the minor slope rockfish cumulative limits. Yellowtail rockfish is included in the trip limits for minor shelf rockfish. Bronzespotted rockfish have a species specific trip limit.

3/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ "Shallow Nearshore" are defined at § 660.11 under "Groundfish" (7)(i)(B)(1).

5/ "Deeper Nearshore" are defined at § 660.11 under "Groundfish" (7)(i)(B)(2).

6/ The commercial minimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.

7/ "Other fish" are defined at § 660.11 and includes kelp greenling off California and leopard shark.

8/ Open access vessels are allowed to fish inside groundfish conservation areas using hook and line only. See section 660.330 (d) of the regulations for more information.

[FR Doc. 2021–23653 Filed 10–28–21; 8:45 am]

BILLING CODE 3510–22–C

Proposed Rules

Federal Register
Vol. 86, No. 207
Friday, October 29, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[NRC–2020–0036]

RIN 3150–AK71

Reporting Requirements for Nonemergency Events at Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Public meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) plans to hold a public meeting to discuss a rulemaking activity related to reporting requirements for nonemergency events at nuclear power plants. The purpose of the meeting is to provide information on the background and status of the rulemaking and to obtain input from interested stakeholders.

DATES: The public meeting will be held on November 4, 2021. See Section II, Public Meeting, of this document for more information on the meeting.

ADDRESSES: Please refer to Docket ID NRC–2020–0036 when contacting the NRC about the availability of information regarding this public meeting. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0036. Address questions about NRC dockets to Dawn Forder; telephone: 301–415–3407; email: *Dawn.Forder@nrc.gov.* For technical questions contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.*
- *Attention:* The Public Document Room, where you may examine and order copies of public documents, is currently closed. You may submit your request via email at *PDR.Resource@nrc.gov* or call 1–800–397–4209 between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: George Tartal, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–0016, email: *George.Tartal@nrc.gov,* U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Background

On August 12, 2021, the NRC published a notice in the **Federal Register** informing the public that it will consider in the rulemaking process the issues raised in a petition for rulemaking regarding reporting requirements for nonemergency events at nuclear power plants (86 FR 44290). The NRC is in the early stages of developing a regulatory basis document that will discuss the regulatory issues, alternatives to resolve those issues, and the NRC staff's recommended alternative. The NRC will consider the information shared at the meeting in the development of the regulatory basis document.

II. Public Meeting

The public meeting will be on November 4, 2021, from 2:00 p.m. to 5:00 p.m. (ET). Interested stakeholders may attend via telephone or online seminar. The purpose of the meeting is to provide background information on this rulemaking activity and obtain stakeholder input to enhance the NRC's understanding of the associated issues. Further, the staff will describe the various opportunities for the public to participate in the rulemaking process. The NRC will not provide formal written responses to the oral comments made at this meeting.

Information for the teleconference and online seminar is available in the meeting notice, which can be accessed through the NRC's public website at: *https://www.nrc.gov/pmns/mtg* or in ADAMS under accession number ML21288A427. The meeting notice includes questions for discussion to support development of the regulatory basis.

Dated: October 25, 2021.

For the Nuclear Regulatory Commission.

John R. Tappert,

Director, Division of Rulemaking, Environmental, and Financial Support, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2021–23550 Filed 10–28–21; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 431

[EERE–2014–BT–CE–0019]

RIN 1904–AD25

Energy Conservation Program: Certification, Compliance, Labeling, and Enforcement for Electric Motors and Small Electric Motors; Withdrawal

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

ACTION: Proposed rule; withdrawal.

SUMMARY: The U.S. Department of Energy (''DOE'' or the ''Department'') is withdrawing a notice of proposed rulemaking (NOPR) issued on June 24, 2016 that proposed to revise its certification, compliance, and enforcement regulations for electric motors and small electric motors to conform to the enforcement regulations for all other covered products and equipment and to consolidate, to a limited extent, the certification and compliance regulations for electric motors and small electric motors with those for other types of covered products and equipment.

DATES: The proposed rule that published in the **Federal Register** on June 24, 2016 at 81 FR 41377 is withdrawn as of October 29, 2021.

ADDRESSES: The docket for this rulemaking, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *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?D=EERE-2014-BT-CE-0019.* The docket web page contains simple instructions on how to access all documents, including public comments, in the docket.

FOR FURTHER INFORMATION CONTACT:

Mr. Jeremy Dommu, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–9870. Email: *Jeremy.Dommu@ee.doe.gov.*

Ms. Lucy Lee, U.S. Department of Energy, Office of the General Counsel, GC–32, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–6395. Email: *lucy.lee@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Energy Policy and Conservation Act of 1975, as amended (''EPCA'' or, in context, ''the Act'') sets forth a variety of provisions designed to improve energy efficiency. Part B of Title III (42 U.S.C. 6291–6309) provides for the Energy Conservation Program for Consumer Products Other Than Automobiles. The National Energy Conservation Policy Act (NECPA), Public Law 95–619, amended EPCA to add Part C of Title III, which established an energy conservation program for certain industrial equipment. (42 U.S.C. 6311–6317) [1] Included among the various equipment types addressed by EPCA [2] are electric motors and small electric motors.

As relevant here, DOE's 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. The testing requirements consist of test procedures that manufacturers of covered products and covered equipment must use as the basis for: (1) Certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA; and (2) making representations about the efficiency of those products. Similarly, DOE must use these test procedures to determine whether the products comply with any relevant standards promulgated under EPCA.[3] Further, 42 U.S.C. 6299–6305, 6316, and 6317 authorize DOE to enforce compliance with the energy conservation standards related to a variety of consumer products and commercial equipment, including electric motors and small electric motors.

On June 24, 2016, DOE published a notice of proposed rulemaking (NOPR) proposing to revise its certification and enforcement regulations for electric motors and small electric motors. 81 FR 41377. DOE proposed to: (1) Move and amend certification and sampling provisions for electric motors to 10 CFR 429.12 and 10 CFR 429.63, (2) replace the currently used compliance certification number with a new manufacturer's identification number (3) move the sampling and certification testing provisions for small electric motors to 10 CFR 429.12 and 10 CFR 429.64, (4) add certification provisions specific to small electric motors to 10 CFR 429.64, (5) move and amend existing AEDM provisions for electric motors and for small electric motors to 10 CFR 429.70, (6) move and amend the administrative process for recognizing certification programs to new sections 10 CFR 429.73 and 10 CFR 429.75, (7) add an administrative process for recognizing testing laboratories, either directly or through recognition of accreditation organizations, to new sections 10 CFR 429.74 and 10 CFR 429.75, (8) move the electric motor labeling requirements from 10 CFR 431.31 to 10 CFR 429.76, (9) add labeling requirements for small electric motors, (10) add a definition for ''independent'' to describe how DOE would evaluate the independence of testing laboratories and certification programs, (11) revise the definition of basic model for electric motors and small electric motors, (12) add a definition for ''equipment class'', (13) remove definitions related to accreditation as a result of the proposed changes regarding laboratory accreditation, (14) apply the enforcement procedure found at subpart C of part 429 to electric motors and small electric motors, (15) address how to treat electric motors and small electric motors that are capable of operation at multiple voltages, and (16) clarify the exclusion for small electric motors found at 42 U.S.C. 6317(b)(3).

DOE received negative comment on a variety of its proposals, and DOE had expected to solicit further comment on those issues. For the proposals on which DOE received supportive comment, DOE prepared a final rule, which was issued on January 11, 2017 (''pre-publication final rule''). On January 20, 2017, the heads of executive departments were directed to withdraw any rules immediately that were not yet published. 82 FR 8346 (January 24, 2017). Accordingly, DOE withdrew the pre-publication final rule from the **Federal Register** for further review. On March 9, 2017, NEMA requested that DOE not return the pre-publication final rule to the **Federal Register** for publication. The pre-publication final rule was never published in the **Federal Register**.

In the intervening time, DOE has undertaken a few different rulemakings and activities related to electric motors and small electric motors. For example, DOE published a final rule pertaining to test procedures for electric motors and small electric motor. 86 FR 4 (January 4, 2021). DOE also classified North Carolina Advanced Energy Corporation as a nationally recognized certification program. 85 FR 40270 (July 6, 2020).

In addition, Issue 14 from the NOPR is now being addressed through a new enforcement rulemaking. *See* Docket EERE–2019–BT–CE–0015 (available at *https://www.regulations.gov/docket?D=EERE-2019-BT-CE-0015*). On that issue, DOE published a notice of proposed rulemaking proposing changes to enforcement procedures for all products, including electric motors and small electric motors. 85 FR 53691 (August 31, 2020).

Over four years have passed since the drafting of the pre-publication final rule and even more time has passed since DOE received comment on its proposals. In addition, commenters opposed the publication of the pre-publication final rule in the **Federal Register**.

After consideration of comments and the prolonged interlude since the publication of DOE's proposals, the Department is withdrawing this rulemaking proposal. The purpose of this rulemaking was to provide more consistency in DOE's certification and enforcement regulations across all types of covered products and covered equipment. It was also intended to provide greater clarity with respect to a number of issues industry and test facilities had raised. While the Department believes that there is a benefit to addressing certification of electric motors and small electric motors, DOE also takes seriously industry concerns about the potential burden of this proposal. DOE also notes that the enforcement regulations will be

[1] For editorial reasons, Parts B (consumer products) and C (commercial equipment) of Title III of EPCA were codified as parts A and A–1, respectively, in the United States Code.

[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] The test procedures for electric motors are described in appendix B to subpart B of 10 CFR part 431; the test procedures for small electric motors are described in 10 CFR 431.444.

addressed through a different rulemaking.

Accordingly, DOE withdraws the June 24, 2016 NOPR published at 81 FR 41377.

Signing Authority

This document of the Department of Energy was signed on October 26, 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 October 26, 2021.

Treena V. Garrett,

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

[FR Doc. 2021–23595 Filed 10–28–21; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2017–BT–STD–0014]

RIN 1904–AD98

Energy Conservation Program: Energy Conservation Standards for Residential Clothes Washers, Webinar and Availability of the Preliminary Technical Support Document

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

ACTION: Extension of public comment period.

SUMMARY: The U.S. Department of Energy (''DOE'') is extending the public comment period for the preliminary analysis regarding proposals to amend the energy conservation standards for residential clothes washers. DOE published the notification of a webinar and availability of preliminary technical support document in the **Federal Register** on September 29, 2021, establishing a 75-day public comment period ending December 13, 2021. On October 11, 2021, DOE received a comment requesting extension of the comment period by an additional 64 days to February 15, 2022. DOE is extending the public comment period for submitting comments and data on the preliminary analysis documents by an additional 45 days, to January 27, 2022, for a total of a 120-day comment period.

DATES: The comment period for the preliminary analysis published on September 29, 2021 (86 FR 53886), is extended. DOE will accept comments, data, and information regarding this preliminary analysis no later than January 27, 2022.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments by email to the following address: *ConsumerClothes Washer2017STD0014@ee.doe.gov.* Include the docket number EERE–2017–BT–STD–0014 and/or RIN number 1904–AD98 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 and hand delivery/courier, the Department has found it necessary to make temporary modifications to the comment submission process in light of the ongoing corona virus (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 Appliance Standards Program staff at (202) 586–1445 to discuss the need for alternative arrangements. Once the COVID–19 pandemic health emergency is resolved, DOE anticipates resuming all of its regular options for public comment submission, including postal mail and hand delivery/courier.

No telefacsimilies (faxes) will be accepted.

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

The docket web page can be found at *www.regulations.gov/docket/EERE-2017-BT-STD-0014.* The docket web page contains instructions on how to access all documents, including public comments in the docket.

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

Ms. Kathryn McIntosh, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–2002. Email: *KathrynMcIntosh@hq.doe.gov.*

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

SUPPLEMENTARY INFORMATION: On September 29, 2021, DOE published the notification of a webinar and availability of preliminary technical support document in the **Federal Register** soliciting public comment on its proposed amendments to the energy conservation standards for residential clothes washers. 86 FR 53886. Comments were originally due on December 13, 2021. On October 11, 2021, DOE received a comment from the Association of Home Appliance Manufacturers to extend the comment period by an additional 64 days to February 15, 2022.[1]

DOE has reviewed the request and considered the benefit to stakeholders in providing additional time to review the preliminary analysis and gather information/data that DOE is seeking. Accordingly, DOE has determined that an extension of the comment period is appropriate and is hereby extending the comment period by an additional 45 days to January 27, 2022 for a total of a 120 day comment period.

Signing Authority

This document of the Department of Energy was signed on October 19, 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

[1] DOE has posted this comment to the docket at *www.regulations.gov/comment/EERE-2016-BT-TP-0011-0020.*

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 October 20, 2021.

Treena V. Garrett,

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

[FR Doc. 2021–23251 Filed 10–28–21; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0948; Project Identifier MCAI–2020–00394–R]

RIN 2120–AA64

Airworthiness Directives; Leonardo S.p.a. (Type Certificate Previously Held by Agusta S.p.A.) Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Leonardo S.p.a. Model (type certificate previously held by Agusta S.p.A.) A109A and A109A II helicopters. This proposed AD was prompted by a report of internal corrosion on a main rotor (M/R) blade. This proposed AD would require repetitively inspecting affected M/R blades and accomplishing film analysis and repair in accordance with certain approved methods. 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 December 13, 2021.

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

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

For service information identified in this NPRM, contact Leonardo S.p.A. Helicopters, Emanuele Bufano, Head of Airworthiness, Viale G.Agusta 520, 21017 C.Costa di Samarate (Va) Italy; telephone +39–0331–225074; fax +39–0331–229046; or at *https://customer portal.leonardocompany.com/en-US/.* You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0948; 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 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: Kristi Bradley, Program Manager, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *kristin.bradley@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–2021–0948; Project Identifier MCAI–2020–00394–R'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Kristi Bradley, Program Manager, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *kristin.bradley@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 2020–0065, dated March 20, 2020 (EASA AD 2020–0065), to correct an unsafe condition for all Leonardo S.p.A., Agusta S.p.A., Costruzioni Aeronautiche Giovanni Agusta Model A109A and A109AII helicopters. EASA advises of a report of internal corrosion on an M/R blade. Leonardo Helicopters advises that the corrosion was on the spar near the inertia weights between STA1250 and STA1630. Leonardo Helicopters further advises that the issue is related to design and production processes of the M/R blades. This condition, if not addressed, could result in failure of an M/R blade and subsequent loss of control of the helicopter.

Accordingly, EASA AD 2020–0065 requires inspecting M/R blades with part number (P/N) 109–0103–01–115 and depending on the results, corrective action. EASA AD 2020–0065 also prohibits installation of an affected M/R blade unless it passed the required

inspection within 24 months prior to installation on a helicopter.

FAA's Determination

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in its AD. The FAA is proposing this AD after evaluating all known relevant information and determining that the unsafe condition described previously is likely to exist or develop on other helicopters of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Leonardo Helicopters Alert Service Bulletin No. 109–155, dated March 13, 2020 (ASB 109–155), for Leonardo S.p.a Model A109A and A109AII helicopters. This service information specifies procedures for X-ray inspecting M/R blades P/N 109–0103–01–115 and sending the films to Leonardo Helicopters S.p.a. for analysis. Depending on the outcome, ASB 109–155 specifies procedures for re-identifying the M/R blades.

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

For each affected M/R blade, this proposed AD would require within 50 hours time-in-service or 3 months after the effective date of this AD, whichever occurs first, unless already done within the last 24 months for the M/R blade, and thereafter, at intervals not to exceed 24 months for the M/R blade, radiographic inspecting the M/R blade and accomplishing film analysis and repair in accordance with certain approved methods.

Differences Between This Proposed AD and the EASA AD

The compliance time in EASA AD 2020–0065 is time-in-service of the airframe, whereas the compliance time in this proposed AD would be time-in-service of the affected M/R blade as installed on the airframe. EASA AD 2020–0065 requires sending developed films to Leonardo Helicopters S.p.a. for analysis and contacting Leonardo for approved corrective action(s) instructions, whereas this proposed AD would require film analysis and repair of an affected blade in accordance with a method approved by the Manager, General Aviation & Rotorcraft Section, International Validation Branch, FAA; or EASA; or Leonardo S.p.a Helicopters' EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

Interim Action

The FAA considers this proposed AD interim action. The design approval holder is currently developing a modification that will address the unsafe condition identified in this proposed AD. Once this modification is developed, approved, and available, the FAA might consider additional rulemaking.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 28 helicopter of U.S. registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this proposed AD.

Inspecting the M/R blades would take about 10 work-hours for an estimated cost of $850 per helicopter and $23,800 for the U.S. fleet, per inspection cycle. Sending the film for analysis, which is considered a reporting requirement in this proposed AD, would take about 1 work-hour for an estimated cost of $85 per helicopter and $2,380 for the U.S. fleet, per inspection cycle.

The FAA has no way of determining the costs pertaining to the film analysis or any necessary repairs.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Leonardo S.p.a. (Type Certificate Previously Held by Agusta S.p.A.): Docket No. FAA–2021–0948; Project Identifier MCAI–2020–00394–R.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by December 13, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Leonardo S.p.a (type certificate previously held by Agusta S.p.A.). Model A109A and A109A II helicopters, certificated in any category, with a main rotor (M/R) blade part number 109–0103–01–115 installed.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 6210, Main Rotor Blades.

(e) Unsafe Condition

This AD was prompted by a report of internal corrosion of the spar of an M/R blade. The FAA is issuing this AD to prevent failure of an M/R blade due to corrosion on the internal surface of the spar. The unsafe condition, if not addressed, could result in loss of control of the helicopter.

(f) Compliance

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

(g) Required Actions

For each M/R blade identified in paragraph (c) of this AD:

(1) Within 50 hours time-in-service or 3 months after the effective date of this AD, whichever occurs first, unless already done within the last 24 months for the M/R blade, and thereafter, at intervals not to exceed 24 months for the M/R blade, inspect the M/R blade by following the Accomplishment Instructions, paragraphs 1. through 5., of Leonardo Helicopters Alert Service Bulletin No. 109–155, dated March 13, 2020.

(2) Before further flight, send the film for analysis and accomplish repair in accordance with a method approved by the Manager, General Aviation & Rotorcraft Section, International Validation Branch, FAA; or EASA; or Leonardo S.p.a Helicopters' EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(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 Kristi Bradley, Program Manager, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *kristin.bradley@faa.gov.*

(2) For service information identified in this AD, contact Leonardo S.p.A. Helicopters, Emanuele Bufano, Head of Airworthiness, Viale G.Agusta 520, 21017 C.Costa di Samarate (Va) Italy; telephone +39–0331–225074; fax +39–0331–229046; or at *https://customerportal.leonardocompany.com/en-US/.* You may view this referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

(3) The subject of this AD is addressed in European Union Aviation Safety Agency (EASA) AD 2020–0065, dated March 20, 2020. You may view the EASA AD at *https://www.regulations.gov* in Docket No. FAA–2021–0948.

Issued on October 22, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–23510 Filed 10–28–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0947; Project Identifier MCAI–2021–00195–R]

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 all Airbus Helicopters Model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350D, EC130B4, and EC130T2 helicopters; Model AS355E, AS355F, AS355F1, AS355F2, AS355N, and AS355NP helicopters; and Model SA–365C1, SA–365C2, SA–365N, SA–365N1, AS–365N2, and AS 365 N3 helicopters. This proposed AD was prompted by a report of increased vibration during flight. This proposed AD would require the application of alignment markings on, and repetitive inspections of, the main rotor (MR) pitch rod upper links and, depending on findings, the accomplishment of applicable corrective actions, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by December 13, 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 EASA material that is proposed for 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 the EASA material on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. The EASA material is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0947.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0947; 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 EASA AD, any comments received, and other information. The

street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228–7330; email *andrea.jimenez@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–2021–0947; Project Identifier MCAI–2021–00195–R'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228–7330; email *andrea.jimenez@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0048, dated February 16, 2021 (EASA AD 2021–0048), to correct an unsafe condition for Airbus Helicopters (formerly Eurocopter, Eurocopter France, Aérospatiale) Model AS 350 B, AS 350 BA, AS 350 BB, AS 350 B1, AS 350 B2, AS 350 B3, AS 350 D, EC 130 B4, and EC 130 T2 helicopters; Model AS 355 E, AS 355 F, AS 355 F1, AS 355 F2, AS 355 N, and AS 355 NP helicopters; and Model SA 365 C1, SA 365 C2, SA 365 C3, SA 365 N, SA 365 N1, AS 365 N2, and AS 365 N3 helicopters; all serial numbers. Model AS 350 BB and SA 365 C3 helicopters are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this proposed AD therefore does not include those helicopters in the applicability.

This proposed AD was prompted by a report of increased vibration during flight by the crew of an Airbus Helicopters Model AS 365 helicopter. Subsequent investigation found a total loss of tightening torque of one screw connecting the MR pitch rod to the horn of its upper link, which led to abnormal wear of the screw and consequently increased the vibrations coming from the MR control chain to the pilot's flight controls. The MR pitch rod upper link installation is identical on Model AS 350, EC 130, AS 355, SA 365 and AS 365 helicopters, therefore, these models may be subject to the unsafe condition revealed on the Model AS 365 helicopter. The FAA is proposing this AD to address loss of tightening torque of the screws connecting the MR pitch rods to the horns of the upper links. This condition, if not addressed, could result in loss of one or more MR pitch rod upper links, possibly resulting in loss of control of the helicopter. See EASA AD 2021–0048 for additional background information.

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0048 requires the application of alignment markings on the screw, washer, nut, and horn on both sides of each MR pitch rod upper link, and repetitive visual inspections of the two alignment markings to determine if the markings are aligned on both sides. If, during any inspection the markings on one or both sides of a MR pitch rod upper link are found misaligned, the additional actions and corrective actions include the following.

- Measuring the tightening torque value of the nut of the pitch rod upper link and adjusting the nut if it does not meet the specified criteria.
- Inspecting the pitch rod upper link to determine the condition of the bush (bushing) and spherical bearing and to determine if the cups are tight (paint mark in place), and measuring the play. If there is seizing, carbide chips, or the cups are loose (paint mark not in place), the corrective actions include replacing the spherical bearing. If the play measurement is greater than the specified measurement the corrective action is replacing the rod end fitting. Additional actions include checking the bonding and condition of the retaining ring and inspecting the pitch rod bodies for evidence of any impact, scratch, strike, or corrosion.
- Inspecting the pitch rods for chipped finish paint, scratches, impacts, and cracking, and measuring the play. If paint is chipped the corrective action is repair (sanding the affected area and applying touch-up primer and paint). If there is any scratch, an impact with a depth equal to or greater than the specified measurement, or any crack, the corrective action is replacing the pitch rod. If the play measurement is greater than 0.25 mm or there is cracking, the corrective action is replacing the spherical bearing. An additional action, if a helicopter was involved in an incident, is inspecting the straightness of the rod body ''R'' and replacing the pitch rod if the straightness of the rod body is greater than 0.5 mm.
- Inspecting the pitch horn for any evidence of impact, scratch, corrosion, chipped paint, cracking, and any elongated attachment hole; and inspecting the bonding of the retaining ring and measuring dimension ''X'' of the retaining ring. If there is any evidence of impact, scratch, or corrosion, and the depth meets the specified criteria, the corrective actions include touching up the affected area with an abrasive cloth and applying a protective coating and a coat of primer. If there is any cracking, elongated attachment hole, or the impact, scratch, or corrosion depth exceeds the specified criteria, the corrective action is replacing the pitch horn. If paint is chipped the corrective actions include sanding the affected area and applying touch-up primer and paint. If the retaining ring has debonded the corrective action is to rebond the retaining ring. If dimension ''X'' of the retaining ring exceeds the specified

criteria, the corrective action is replacing the retaining ring.

- Measuring the geometry of ''G'' of the pitch horn and replacing the pitch horn if the dimension is not within the specified range.
- Installing new split pins, nuts, washers, and a screw on the pitch rod upper link.

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

FAA's Determination

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in its AD. The FAA is proposing this AD after evaluating all known relevant information and determining that the unsafe condition described previously is likely to exist or develop on other helicopters of these same type designs.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2021–0048, described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2021–0048 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2021–0048 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2021–0048 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2021–0048. Service information required by EASA AD 2021–0048 for compliance will be available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0947 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 1,266 helicopters of U.S. Registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS *

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	0.50 work-hour × $85 per hour = $42.50 per inspection cycle.	$0	$42.50 per inspection cycle.	$53,805 per inspection cycle.

* The FAA has determined that application of alignment markings would take a minimal amount of time at a nominal cost.

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

ON-CONDITION COSTS *

Action	Labor cost	Parts cost	Cost per product
Screw, Washer, Nut, and Split Pin Replacement	1 work-hour × $85 per hour = $85	$40	$125
Spherical Bearing Replacement	4 work hours × $85 per hour = $340	$500	$840
Pitch Rod Replacement	4 work hours × $85 per hour = $340	$3,000	$3,340
Pitch Horn Replacement	16 work hours × $85 per hour = $1360	$4,000	$5,360

* The FAA has determined that ''repair'' of chipped paint would take a minimal amount of time at a nominal cost.

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:

Airbus Helicopters: Docket No. FAA–2021–0947; Project Identifier MCAI–2021–00195–R.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by December 13, 2021.

(b) Affected ADs

None.

(c) Applicability

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

(1) Model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350D, EC130B4, and EC130T2 helicopters.

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

(3) Model SA–365C1, SA–365C2, SA–365N, SA–365N1, AS–365N2, and AS 365 N3 helicopters.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report of increased vibration during flight on an Airbus Helicopters Model AS 365 helicopter. Subsequent investigation found a total loss of tightening torque of one screw connecting the main rotor (MR) pitch rod to the horn of its upper link, which led to abnormal wear of the screw and consequently increased the vibrations coming from the MR control chain to the pilot's flight controls. The FAA is issuing this AD to address loss of tightening torque of the screws connecting the MR pitch rods to the horns of the upper links. The unsafe condition, if not addressed, could result in loss of one or more MR pitch rod upper links, possibly resulting in loss of control of the helicopter.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021–0048, dated February 16, 2021 (EASA AD 2021–0048).

(h) Exceptions to EASA AD 2021–0048

(1) Where EASA AD 2021–0048 requires compliance in terms of flight hours, this AD requires using hours time-in-service.

(2) Where EASA AD 2021–0048 refers to its effective date, this AD requires using the effective date of this AD.

(3) Where the service information referenced in EASA AD 2021–0048 specifies discarding parts, this AD requires removing those parts from service.

(4) This AD does not mandate compliance with the ''Remarks'' section of EASA AD 2021–0048.

(5) Where a work card in the service information referenced in EASA AD 2021–0048 specifies returning a part to the manufacturer, this AD does not include that requirement.

(6) *For Model AS350 helicopters:* For the visual inspection of the pitch rod upper link, where a work card in the service information referenced in EASA AD 2021–0048 specifies to do an inspection of a pitch rod body for any dent, impact, scratch, or corrosion, and any dent, impact, scratch, or corrosion is found, this AD requires replacing the pitch rod before further flight.

(7) *For Model AS355 helicopters:* For the visual inspection of the pitch rod upper link, where a work card in the service information referenced in EASA AD 2021–0048 specifies to do an inspection of a pitch rod body for any impact, scratch, strike, or corrosion, and any impact, scratch, strike, or corrosion is found, this AD requires replacing the pitch rod before further flight.

(8) *For Model SA365 helicopters:* For the visual inspection of the pitch rod upper link, where a work card in the service information referenced in EASA AD 2021–0048 specifies to ''check bonding and state retaining ring on the pitch rods,'' and any discrepancy (*e.g.,* disbonding) is found and no corrective action is specified, before further flight, contact the Manager, General Aviation & Rotorcraft Section, International Validation Branch FAA; or EASA; or Airbus Helicopters' EASA Design Organization Approval (DOA); for approved corrective actions, and accomplish those actions before further flight. If approved by the DOA, the approval must include the DOA-authorized signature.

(9) *For Model SA365 helicopters:* For the visual inspection of the pitch horn, if any discrepancy (corrosion, scratch, impact, crack, or debonded retaining ring) is found during the inspection of the pitch horn and there is no corrective action specified in the work card in the service information referenced in EASA AD 2021–0048, before further flight, contact the Manager, General Aviation & Rotorcraft Section, International Validation Branch, FAA; or EASA; or Airbus Helicopters' EASA DOA; for approved corrective actions, and accomplish those actions before further flight. If approved by the DOA, the approval must include the DOA-authorized signature.

(10) *For Model AS365 helicopters:* For the visual inspection of the pitch horn, where a work card in the service information referenced in EASA AD 2021–0048 specifies to do a dye penetrant inspection ''if in doubt,'' this AD requires doing a dye penetrant inspection.

(11) *For Model AS350 and EC130 helicopters:* Where a work card in the service information referenced in EASA AD 2021–0048 refers to ''the pitch change lever,'' for this AD, that term is equivalent to ''pitch horn.''

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2021–0048 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Special Flight Permit

Special flight permits, as described in 14 CFR 21.197 and 21.199, are prohibited.

(k) 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 (l)(2) 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.

(l) Related Information

(1) For EASA AD 2021–0048, 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 view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. This material may be found in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0947.

(2) For more information about this AD, contact Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228–7330; email *andrea.jimenez@faa.gov.*

Issued on October 22, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–23515 Filed 10–28–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0945; Project Identifier MCAI–2021–01033–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2021–11–23, which applies to certain Airbus SAS Model A350–941 and –1041 airplanes. AD 2021–11–23 requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, and, for certain airplanes, and updating the hydraulic monitoring system to include additional redundancy. Since the FAA issued AD 2021–11–23, the FAA has determined that new or more restrictive airworthiness limitations are necessary. This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, as specified in a European Union Aviation Safety Agency (EASA). This proposed AD would also revise the applicability to include different airplanes. 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 December 13, 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 EASA material that will be 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. EASA material is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0945.

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–2021–0945; 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: Dan Rodina, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3225; email *dan.rodina@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–2021–0945; Project Identifier MCAI–2021–01033–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this 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 Dan Rodina, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3225; email *dan.rodina@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2021–11–23, Amendment 39–21585 (86 FR 40932, July 30, 2021) (AD 2021–11–23), for certain Airbus SAS Model A350–941 and –1041 airplanes. AD 2021–11–23 requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations and, for certain airplanes, updating the hydraulic monitoring system to include additional redundancy. The FAA issued AD 2021–11–23 to address the overheat failure mode of the hydraulic engine-driven pump, which may cause a fast temperature rise of the hydraulic fluid, and, if combined with an inoperative fuel tank inerting system, could lead to an uncontrolled overheat of the hydraulic fluid, possibly resulting in ignition of the fuel-air mixture of the affected fuel tank.

Actions Since AD 2021–11–23 Was Issued

Since the FAA issued AD 2021–11–23, the FAA has determined that new or more restrictive airworthiness limitations are necessary.

EASA, which is the Technical Agent for the Member States of the European

Union, has issued EASA AD 2021–0209, dated September 15, 2021 (EASA AD 2021–0209) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for all Airbus SAS Model A350–941 and –1041 airplanes. EASA AD 2021–0209 refers to Airbus A350 Airworthiness Limitations Section (ALS), Part 5, ''Fuel Airworthiness Limitations (FAL),'' Revision 05, dated June 30, 2021, which includes updating the hydraulic monitoring system. Airplanes with an original airworthiness certificate or original export certificate of airworthiness issued after June 30, 2021, must comply with the airworthiness limitations specified as part of the approved type design and referenced on the type certificate data sheet; this proposed AD therefore does not include those airplanes in the applicability. EASA AD 2021–0209 supersedes EASA AD 2020–0268, dated December 4, 2020 (which corresponds to FAA AD 2021–11–23).

This proposed AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is proposing this AD to address the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0209 describes new or more restrictive airworthiness limitations related to fuel tank ignition prevention and fuel tank flammability reduction.

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

FAA's Determination and Requirements of This Proposed AD

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

Proposed AD Requirements

This proposed AD would also require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, which are specified in EASA AD 2021–0209 described previously, as incorporated by reference. Any differences with EASA AD 2021–0209 are identified as exceptions in the regulatory text of this AD. This proposed AD would also require accomplishing a certain airworthiness limitation using the Airbus service information described previously.

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

This proposed AD does not restate the requirements of AD 2021–11–23 due to an error in the applicability of that AD. The applicability of AD 2021–11–23 identified airplanes having an original airworthiness certificate or original export certificate of airworthiness issued ''after'' September 15, 2020, instead of ''on or before'' September 15, 2020. The affected airplanes are correctly identified in the applicability of this new proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2021–0209 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2021–0209 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2021–0209 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2021–0209.

Service information required by EASA AD 2021–0209 for compliance will be available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0945 after the FAA final rule is published.

Airworthiness Limitation ADs Using the New Process

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

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

The previous format of the airworthiness limitation ADs included a paragraph that specified that no alternative actions (*e.g.,* inspections), intervals, or CDCCLs may be used unless the actions, intervals, and CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in the AMOCs paragraph under ''Other FAA Provisions.'' This new format includes a ''New Provisions for Alternative Actions, Intervals, and CDCCLs'' paragraph that does not specifically refer to AMOCs, but operators may still request an AMOC to use an alternative action, interval, or CDCCL.

Costs of Compliance

The FAA estimates that this proposed AD affects 24 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate.

The FAA estimates the total cost per operator for the proposed maintenance or inspection program revision to be $7,650 (90 work-hours J $85 per work-hour).

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2021–11–23, Amendment 39–21585 (86 FR 40932, July 30, 2021); and

■ b. Adding the following new AD:

Airbus SAS: Docket No. FAA–2021–0945; Project Identifier MCAI–2021–01033–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by December 13, 2021.

(b) Affected ADs

This AD replaces AD 2021–11–23, Amendment 39–21585 (86 FR 40932, July 30, 2021) (AD 2021–11–23).

(c) Applicability

This AD applies Airbus SAS Model A350–941 and –1041 airplanes, certificated in any category; with an original airworthiness certificate or original export certificate of airworthiness issued on or before June 30, 2021.

(d) Subject

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

(e) Reason

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

(f) Compliance

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

(g) Maintenance or Inspection Program Revision

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021–0209, dated September 15, 2021 (EASA AD 2021–0209).

(h) Exceptions to EASA AD 2021–0209

(1) The requirements specified in paragraphs (1) and (2) of EASA AD 2021–0209 do not apply to this AD.

(2) Paragraph (3) of EASA AD 2021–0209 specifies revising ''the AMP [aircraft maintenance program]'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, to incorporate the ''limitations, tasks and associated thresholds and intervals'' specified in paragraph (3) of EASA AD 2021–0209 within 90 days after the effective date of this AD.

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2021–0209 is at the applicable ''associated thresholds'' specified in paragraph (3) of EASA AD 2021–0209, or within 90 days after the effective date of this AD, whichever occurs later.

(4) The provisions specified in paragraphs (4) and (5) of EASA AD 2021–0209 do not apply to this AD.

(5) The ''Remarks'' section of EASA AD 2021–0209 does not apply to this AD.

(i) Provisions for Alternative Actions, Intervals, and CDCCLs

After the maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections), intervals, and critical design configuration control limitations (CDCCLs) are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2021–0209.

(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)(2) 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 Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* Except as required by paragraph (j)(2) of this AD, if any service information contains procedures or tests that are identified as RC, those

procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(k) Related Information

(1) For information about EASA AD 2021–0209, 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.* For Airbus service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *continued-airworthiness.a350@airbus.com;* internet *https://www.airbus.com.* 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–2021–0945.

(2) For more information about this AD, contact Dan Rodina, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3225; email *dan.rodina@faa.gov.*

Issued on October 21, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–23345 Filed 10–28–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0440; Project Identifier 2016–SW–077–AD]

RIN 2120–AA64

Airworthiness Directives; Scotts-Bell 47 Inc. (Type Certificate Previously Held by Bell Helicopter Textron Inc.) Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: The FAA is withdrawing a notice of proposed rulemaking (NPRM) that proposed to adopt a new airworthiness directive (AD) that would have applied to Scotts-Bell 47 Inc. (Scotts-Bell) (type certificate previously held by Bell Helicopter Textron Inc.) Model 47, 47B, 47B3, 47D, 47D1, 47E, 47G, 47G–2, 47G–2A, 47G–2A–1, 47G–3, 47G–3B, 47G–3B–1, 47G–3B–2, 47G–3B–2A, 47G–4, 47G–4A, 47G–5, 47G–5A, 47H–1, 47J, 47J–2, 47J–2A, and 47K helicopters. The NPRM would have required repetitively inspecting and adjusting the throttle linkage. The NPRM was prompted by reports of the throttle linkage separating from the engine carburetor shaft, which could result in loss of throttle control. Since issuance of the NPRM, the FAA has determined, based upon the available information, that there is not an unsafe condition in the product that is likely to develop in other products of the same type design. Accordingly, the NPRM is withdrawn.

DATES: As of October 29, 2021 the proposed rule, which was published in the **Federal Register** on May 18, 2018 (83 FR 23240), is withdrawn.

ADDRESSES:

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–2018–0440; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD action, any comments received, and other information. The street address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Surinder Sangha, COS Program Manager, FAA, Chicago ACO Branch, Room 107, 2300 E Devon Ave., Des Plaines, IL 60018; telephone 847–294–7010; email *surinder.sangha@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued an NPRM that proposed to amend 14 CFR part 39 by adding an AD that would have applied to certain Scotts-Bell Model 47, 47B, 47B3, 47D, 47D1, 47E, 47G, 47G–2, 47G–2A, 47G–2A–1, 47G–3, 47G–3B, 47G–3B–1, 47G–3B–2, 47G–3B–2A, 47G–4, 47G–4A, 47G–5, 47G–5A, 47H–1, 47J, 47J–2, 47J–2A, and 47K helicopters. The NPRM published in the **Federal Register** on May 18, 2018 (83 FR 23240). The NPRM was prompted by reports of the throttle linkage separating from the engine carburetor shaft, which could result in loss of throttle control.

In the NPRM, the FAA proposed to require repetitively inspecting and adjusting the throttle linkage. The proposed actions were intended to address separation of the throttle linkage from an engine carburetor shaft, which could result in loss of throttle control and subsequent forced landing of the helicopter.

Actions Since the NPRM Was Issued

Since issuance of the NPRM, the FAA has not received any additional reports of the throttle linkage separating from the engine carburetor shaft. The FAA's assessment indicates that there have been few reports of the throttle linkage separating from the engine carburetor shaft in the more than 70-year operational history of the Model 47G–3B–1 helicopter. In addition, the FAA determined that in this incident the throttle linkage separating from the engine carburetor shaft resulted from maintenance actions that did not follow the established maintenance standards and were not performed by a certified mechanic. Based on this information the FAA concluded that an unsafe condition does not exist on the identified Scotts-Bell helicopter models that is likely to develop in other products of the same type design. Therefore, the FAA has determined that AD action is not appropriate.

Withdrawal of the NPRM constitutes only such action and does not preclude the FAA from further rulemaking on this issue, nor does it commit the FAA to any course of action in the future.

Comments

The FAA gave the public the opportunity to comment on the NPRM and received several comments from Scott's-Bell 47, Inc. You may examine the comments received in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0440.

Request To Expand the Applicability

Scott's-Bell 47, Inc. requested that the applicability in the proposed AD be revised to include helicopter models that are listed in the ''Serial Numbers Eligible'' section of Type Certificate Data Sheets (TCDS) H–1, 2H1, and 2H3. The commenter noted that in the proposed AD only Scotts-Bell Model 47 helicopters are identified. The commenter stated that many other helicopter models are listed in TCDS H–1, 2H1, and 2H3 and provided an example that due to a conformity inspection TCDS H1 lists the Rebel Rotors serial number (S/N) B–101–R

helicopter as eligible to operate as a Model 47D1. The commenter explained that the Rebel Rotors S/N B–101–R helicopter is not a Scott's-Bell Model 47D1 helicopter, and as the proposed AD was written, would not be captured in the applicability, despite the fact that it likely had the same unsafe condition addressed in the proposed AD. The commenter suggested that the applicability be changed to mirror what is in the Scott's-Bell 47, Inc. service information ''All Helicopters listed on Type Certificate Data Sheets H–1, 2H1, and 2H3, which have Marvel Schebler carburetors models . . . installed.''

The FAA acknowledges this comment to the NPRM. However, because the FAA is withdrawing the NPRM, the commenter's request is no longer necessary.

Request To Clarify the Compliance Time

Scott's-Bell 47, Inc. also requested that the compliance time in paragraph (e)(3) of the proposed AD be revised to state ''Within 100 hours time-in-service or at the next annual or 100-hour inspection, whichever occurs first, and thereafter any time the throttle linkage connection is disassembled.'' The commenter explained that, as written in the proposed AD, this compliance time does not address disassembly and, if disassembly were to occur after the first flight of the day and the helicopter was returned to service on the same day, the current wording would not require proper rigging to be performed for the second and subsequent flights of that day. The commenter suggested that its proposed wording would capture all variables and eliminate unnecessary re-rigging of the helicopter.

The FAA acknowledges this comment to the NPRM. However, because the FAA is withdrawing the NPRM, the commenter's request is no longer necessary.

Request To Include Additional Required Actions

Furthermore, Scott's-Bell 47, Inc. requested that paragraphs (e)(3)(i) and (ii) of the proposed AD be revised to include additional required actions. The commenter stated that paragraph (e)(3)(i) of the proposed AD requires operators to ''adjust and secure the throttle linkage as specified in Appendix 1 of the Scott's-Bell Maintenance and Overhaul Instructions Temporary Revision . . . .'' but other vital functions, including a functionality check after adjusting and securing, followed by applying anti-sabotage lacquer, are not included, and, therefore, would not be required. The commenter recommended that paragraph (e)(3)(i) be revised to ''Adjust, secure, perform functionality check, and apply anti-sabotage lacquer to the throttle linkage, as specified in Appendix 1 of the Scott's-Bell Maintenance and Overhaul Instructions Temporary Revision that is applicable to your helicopter, as listed in Table 1 of Scott's-Bell Alert Service Bulletin 47–15–27 R1, dated November 1, 2016.''

In regard to paragraph (e)(3)(ii) of the proposed AD, the commenter proposed that this paragraph be revised to state ''. . . and 47K helicopters, adjust, secure, perform functionality check and apply anti-sabotage lacquer to the throttle linkage using a method approved . . . .''

The FAA acknowledges this comment to the NPRM. However, because the FAA is withdrawing the NPRM, the commenter's request is no longer necessary.

FAA's Conclusions

Upon further consideration of the available information, the FAA has determined that the NPRM is unnecessary. Accordingly, the NPRM is withdrawn.

Regulatory Findings

Since this action only withdraws an NPRM, it is neither a proposed nor a final rule. This action therefore is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

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

The Withdrawal

■ Accordingly, the notice of proposed rulemaking, Docket No. FAA–2018–0440, which was published in the **Federal Register** on May 18, 2018 (83 FR 23240), is withdrawn.

Issued on October 22, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–23514 Filed 10–28–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0570; Project Identifier 2019–SW–091–AD]

RIN 2120–AA64

Airworthiness Directives; Leonardo S.p.a. Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM); reopening of comment period.

SUMMARY: The FAA is revising a notice of proposed rulemaking (NPRM) that applied to certain Leonardo S.p.a. Model AW169 helicopters. This action revises the NPRM by requiring modification of certain pilot and co-pilot yaw pedal assemblies with an improved design and re-identification of the affected parts, as specified in a European Union Aviation Safety Agency (EASA) airworthiness directive (AD), which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products. Since these actions would impose an additional burden over those in the NPRM, the agency is requesting comments on this SNPRM.

DATES: The comment period for the NPRM published in the **Federal Register** on July 28, 2021 (86 FR 40371), is reopened.

The FAA must receive comments on this SNPRM by December 13, 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 EASA material that is proposed for 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 the EASA material at the

FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of the EASA material at the FAA, call (817) 222–5110. The EASA material is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0570.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0570; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, this SNPRM, the EASA AD, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Kristi Bradley, Program Manager, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5485; email *kristin.bradley@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–2021–0570; Project Identifier 2019–SW–091–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 Kristi Bradley, Program Manager, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5485; email *kristin.bradley@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued an NPRM to amend 14 CFR part 39 by adding an AD that would apply to certain Leonardo S.p.a. Model AW169 helicopters. The NPRM published in the **Federal Register** on July 28, 2021 (86 FR 40371). In the NPRM, the FAA proposed to require modification of the pilot and co-pilot yaw pedal assemblies. The NPRM was prompted by EASA AD 2019–0252, dated October 10, 2019 (EASA AD 2019–0252), issued by EASA, which is the Technical Agent for the Member States of the European Union, to correct an unsafe condition for Leonardo S.p.a. (formerly Finmeccanica S.p.A and AgustaWestland S.p.A) Model AW169 helicopters, all serial numbers. EASA advised that there was a report of a broken adjustable device that is part of the pilot and co-pilot yaw pedal assemblies. This condition, if not addressed, could result in failure of a yaw pedal adjuster, which could result in reduced yaw control of the helicopter.

Accordingly, EASA AD 2019–0252 required modification (rework) of the affected pilot and co-pilot assemblies and re-identification of each affected part after it has been modified. The modification included the installation of additional end stroke stops on the pilot and co-pilot pedal assemblies. EASA considered EASA AD 2019–0252 an interim action and stated that further EASA AD action may follow.

Actions Since the NPRM Was Issued

Since the NPRM was issued, EASA issued AD 2021–0199, dated August 27, 2021 (EASA AD 2021–0199), which supersedes EASA AD 2019–0252. EASA advises that three additional events have been reported where the universal joint of the adjusting mechanism on the yaw pedals failed. Prompted by these findings, Leonardo S.p.a. developed a new modification that introduces upgraded pilot and co-pilot pedal assemblies with an improved design, which removes the failure modes. Accordingly, EASA AD 2021–0199 requires modification (rework) of the affected pilot and co-pilot assemblies and re-identification of each affected part after it has been modified. The modification includes replacing the pedal main support assembly, adjuster screw assembly, knob assembly, and spring pin, and removing the additional end stroke stops that were installed on the pilot and co-pilot pedal assemblies using the modification specified in EASA AD 2019–0252. EASA AD 2021–0199 also provides an option to replace an affected part with a non-affected part instead of doing the modification.

In addition, the FAA revised the applicability of this proposed AD from Leonardo S.p.a. Model AW169 helicopters with an affected part installed (as specified in the NPRM), to all Leonardo S.p.a. Model AW169 helicopters. This revised applicability matches EASA AD 2021–0199.

Comments

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

FAA's Determination

This helicopter has been approved by EASA and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in its AD. The FAA is proposing this AD after evaluating all known relevant information and determining that the unsafe condition described previously is likely to exist or develop on other helicopters of the same type design. Certain changes described above expand the scope of the NPRM. As a result, it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this SNPRM.

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0199 requires modification of the affected pilot and co-pilot assemblies and re-identification of each affected part after it has been modified. EASA AD 2021–0199 also

provides an option to replace an affected part with a non-affected part instead of doing the modification. EASA AD 2021–0199 also prohibits the installation of affected parts.

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.

Proposed AD Requirements in This SNPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2021–0199, described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use certain civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, EASA AD 2021–0199 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2021–0199 in its entirety, through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2021–0199 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2021–0199. Service information specified in EASA AD 2021–0199 that is required for compliance with it will be available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0570 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 10 helicopters of U.S. Registry. The FAA estimates the following costs to comply with this proposed AD.

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Modify and re-identify affected parts	25 work-hours × $85 per hour = $2,125	$0	$2,125	$21,250

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:

Leonardo S.p.a.: Docket No. FAA–2021–0570; Project Identifier 2019–SW–091–AD.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by December 13, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Leonardo S.p.a. Model AW169 helicopters, certificated in any category.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 6700, Rotorcraft Flight Control.

(e) Unsafe Condition

This AD was prompted by a report of a broken adjustable device that is part of the pilot and co-pilot yaw pedal assemblies. The FAA is issuing this AD to address failure of a yaw pedal adjuster, which could result in reduced yaw control of the helicopter.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in

accordance with, European Union Aviation Safety Agency (EASA) AD 2021–0199, dated August 27, 2021 (EASA AD 2021–0199).

(h) Exceptions to EASA AD 2021–0199

(1) Where EASA AD 2021–0199 refers to flight hours, this AD requires using hours time-in-service.

(2) Where EASA AD 2021–0199 refers to its effective date, this AD requires using the effective date of this AD.

(3) Where the service information referenced in EASA AD 2021–0199 specifies discarding certain parts, this AD requires removing those parts from service.

(4) This AD does not mandate compliance with the ''Remarks'' section of EASA AD 2021–0199.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2021–0199 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Special Flight Permit

Special flight permits, as described in 14 CFR 21.197 and 21.199, are prohibited.

(k) 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 (l)(2) 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.

(l) Related Information

(1) For EASA AD 2021–0199, 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 view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. This material may be found in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0570.

(2) For more information about this AD, contact Kristi Bradley, Program Manager, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5485; email *kristin.bradley@faa.gov*.

Issued on October 20, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–23264 Filed 10–28–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0944; Project Identifier MCAI–2020–00800–G]

RIN 2120–AA64

Airworthiness Directives; Fiberglas-Technik Rudolf Lindner GmbH & Co. KG (Type Certificate Previously Held by GROB Aircraft AG, Grob Aerospace GmbH i.l., Grob Aerospace GmbH, Burkhart Grob Luft-und Raumfahrt GmbH & Co. KG) Gliders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Fiberglas-Technik Rudolf Lindner GmbH & Co. KG (type certificate previously held by GROB Aircraft AG, Grob Aerospace GmbH i.l., Grob Aerospace GmbH, Burkhart Grob Luft-und Raumfahrt GmbH & Co. KG) Model G102 ASTIR CS, G103 TWIN ASTIR, G103 TWIN II, G103A TWIN II ACRO, G103C TWIN III ACRO, and G 103 C TWIN III SL gliders. This proposed AD was prompted by mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as corrosion on the elevator control pushrod. This proposed AD would require inspecting the elevator control pushrod for water and corrosion and replacing the pushrod 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 December 13, 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 Fiberglas-Technik Rudolf Lindner GmbH & Co. KG, Steige 3, D–88487 Walpertshofen, Germany; phone: +49 (0) 7353 22 43; email: *info@LTB-Lindner.com;* website: *https://www.ltb-lindner.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–2021–0944; 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.

FOR FURTHER INFORMATION CONTACT: Jim Rutherford, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 901 Locust, Room 301, Kansas City, MO 64106; phone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@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–2021–0944; Project Identifier MCAI–2020–00800–G'' 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 Jim Rutherford, Aviation Safety Engineer, FAA, 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 European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2020–0138, dated June 19, 2020 (referred to after this as ''the MCAI''), to address an unsafe condition on Fiberglas-Technik R. Lindner GmbH & Co. KG Model ASTIR CS, ASTIR CS 77, ASTIR CS Jeans, CLUB ASTIR II, STANDARD ASTIR II, TWIN ASTIR, TWIN ASTIR TRAINER, GROB G 103 ''TWIN II,'' GROB G 103 A ''TWIN II ACRO,'' GROB G 103 C ''TWIN III,'' GROB G 103 C ''TWIN III ACRO,'' GROB G 103 C TWIN III SL, ASTIR CS 77 TOP, ASTIR CS JEANS TOP, and ASTIR CS TOP gliders. The MCAI states:

> During a routine inspection, a severely corroded elevator control pushrod was found in the vertical fin on a Grob TWIN ASTIR sailplane. The technical investigation results revealed that water had soaked into the elevator control pushrod, causing the corrosion damage and subsequent considerable weakening of the steel tube pushrod.
>
> This condition, if not detected and corrected, could lead to failure of the elevator control pushrod, possibly resulting in loss of control of the sailplane.
>
> To address this unsafe condition, Fiberglas-Technik R. Lindner GmbH & Co.KG published the [technische mitteilung/service bulletin] TM/SB and [anweisung/instructions] A/I–G09, at original issue, providing instructions for elevator control pushrod inspection and replacement. Prompted by this development, EASA issued AD 2020–0121 to require a one-time inspection of the elevator control pushrod in the vertical fin and, depending on findings, replacement.
>
> After EASA AD 2020–0121 was issued, it was determined that Grob G 103 ''TWIN II'' sailplanes, and additional Grob G 103 A ''TWIN II ACRO'' sailplanes, are also prone to elevator control pushrod corrosion and Fiberglas-Technik R.Lindner GmbH & Co.KG issued the TM/SB to make the inspection instructions applicable to these sailplane models.
>
> For the reasons described above, this [EASA] AD retains the requirements of EASA AD 2020–0121, which is superseded, and expands the Applicability.

You may examine the MCAI in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0944.

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 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 Fiberglas-Technik Rudolf Lindner Anweisung/Instructions (A/I–G09), Revision 1, dated May 14, 2020. This service information provides instructions to inspect the elevator control pushrod for water and corrosion, replace the elevator control pushrod if any water or corrosion is found, and apply corrosion prevention if no water and no corrosion are found. 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 also reviewed Fiberglas-Technik Rudolf Lindner Service Bulletin (SB–G09), Revision 1, dated May 14, 2020. This service information refers to the instructions in A/I–G09 to inspect and replace the elevator control pushrod on various gliders.

The FAA reviewed Grob TFE Service Bulletin TM 315–34, dated December 8, 1987. This service information provides effectivity, reason, and high-level instructions for inspecting and replacing the elevator control pushrod on certain Model G 103 A TWIN II ACRO gliders.

The FAA reviewed Grob TFE Repair Instructions No. 315–34 for Service Bulletin TM 315–34, dated December 8, 1987. This service information provides more detailed instructions for inspecting and replacing the elevator control pushrod on certain Model G 103 A TWIN II ACRO gliders.

Proposed AD Requirements

This proposed AD would require inspecting the elevator control pushrod and replacing it if water or corrosion are found.

Differences Between This Proposed AD and the MCAI

The MCAI applies to Model ASTIR CS 77, ASTIR CS Jeans, CLUB ASTIR II, STANDARD ASTIR II, TWIN ASTIR TRAINER, GROB G 103 C ''TWIN III,'' ASTIR CS 77 TOP, ASTIR CS JEANS TOP, and ASTIR CS TOP gliders. This proposed AD would not apply to these model gliders because they do not have an FAA type certificate.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 149 gliders of U.S. registry. The FAA estimates that it would take about 4 work-hours per glider to inspect the elevator control pushrod and require parts costing $100. The average labor rate is $85 per work-hour. Based on these figures, the FAA estimates the cost to inspect the elevator control pushrod on U.S. operators to be $65,560 or $440 per glider.

In addition, the FAA estimates that for gliders with water or corrosion within the elevator control pushrod, replacement would take about 8 work-hours and require parts costing $500. The average labor rate is $85 per work-hour. Based on these figures, the FAA estimates the replacement of this proposed AD to be $1,180 per glider.

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:

Fiberglas-Technik Rudolf Lindner GmbH & Co. KG (Type Certificate Previously Held by GROB Aircraft AG, Grob Aerospace GmbH i.l., Grob Aerospace GmbH, Burkhart Grob Luft-und Raumfahrt GmbH & Co. KG): Docket No. FAA–2021–0944; Project Identifier MCAI–2020–00800–G.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by December 13, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the following gliders, all serial numbers, certificated in any category:

(1) Fiberglas-Technik Rudolf Lindner GmbH & Co. KG (type certificate previously held by GROB Aircraft AG, Grob Aerospace GmbH i.l., Grob Aerospace GmbH, Burkhart Grob Luft-und Raumfahrt GmbH & Co. KG, GROB TFE, GROB–WERKE GMBH & CO KG (a division of Burkhart Grob Flugzeugbau)) Model G102 ASTIR CS.

(2) Fiberglas-Technik Rudolf Lindner GmbH & Co. KG (type certificate previously held by GROB Aircraft AG, Grob Aerospace GmbH i.l., Grob Aerospace GmbH, Burkhart Grob Luft-und Raumfahrt GmbH & Co. KG)) Model G103 TWIN ASTIR, G103 TWIN II, G103A TWIN II ACRO, G103 C TWIN III ACRO, and G 103 C TWIN III SL.

(d) Subject

Joint Aircraft System Component (JASC) Code 2730, Elevator Control System.

(e) Unsafe Condition

This AD was prompted by mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as corrosion on the elevator control pushrod. The unsafe condition, if not addressed, could result in failure of the elevator control pushrod and loss of control of the glider.

(f) Compliance

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

(g) Required Actions

(1) Within 25 hours time in service (TIS) after the effective date of this AD, inspect the elevator control pushrod in the vertical fin for water and corrosion, and replace the elevator control pushrod before further flight if there is any water or corrosion in accordance with the Actions and Instructions, paragraph 3, of Fiberglas-Technik Rudolf Lindner Anweisung/Instructions (A/I–G09), Revision 1, dated May 14, 2020.

(2) If no water and no corrosion is detected, before further flight, treat the inside of the elevator control pushrod with corrosion preventative LPS 3 or equivalent.

(3) If required by paragraph (g)(1) of this AD, you must replace the elevator control pushrod before further flight with an elevator control pushrod that has zero hours TIS or with an elevator control pushrod that has passed the inspection in accordance with paragraphs (g)(1) and (2) of this AD.

(h) Credit for Previous Actions

You may take credit for the actions required by paragraphs (g)(1) and (2) of this AD if you performed these actions before the effective date of this AD using Fiberglas-Technik Rudolf Lindner Anweisung/Instructions (A/I–G09), dated April 8, 2020.

(i) Alternative Methods of Compliance (AMOCs)

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

(j) Related Information

(1) For more information about this AD, contact Jim Rutherford, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 901 Locust, Room 301, Kansas City, MO 64106; phone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov*.

(2) Refer to European Union Aviation Safety Agency (EASA) AD 2020–0138, dated June 19, 2020, for more information. You may examine the EASA AD in the AD docket at *https://www.regulations.gov* by searching for and locating it in Docket No. FAA–2021–0944.

(3) For service information identified in this AD, contact Fiberglas-Technik Rudolf Lindner GmbH & Co. KG, Steige 3, D–88487 Walpertshofen, Germany; phone: +49 (0) 7353 22 43; email: *info@LTB-Lindner.com*; website: *https://www.ltb-lindner.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 October 21, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–23325 Filed 10–28–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 6

Public Health Service

42 CFR Part 1

Centers for Medicare and Medicaid Services

42 CFR Part 404

Office of the Inspector General

42 CFR Part 1000

Office of the Secretary

45 CFR Part 8

Administration for Children and Families

45 CFR Parts 200, 300, 403, 1010, and 1300

[Docket No. HHS–OS–2020–0012]

RIN 0991–AC24

Securing Updated and Necessary Statutory Evaluations Timely; Proposal To Withdraw or Repeal

AGENCY: Department of Health and Human Services (HHS).

ACTION: Proposed rule.

SUMMARY: The Department of Health and Human Services (HHS or Department) is proposing to withdraw or repeal a final rule entitled ''Securing Updated and Necessary Statutory Evaluations Timely'' (SUNSET final rule) and published in the **Federal Register** of January 19, 2021. The SUNSET final rule was originally scheduled to take effect on March 22, 2021. However, after a lawsuit was filed on March 9, 2021, seeking to overturn the SUNSET final rule, HHS issued an administrative delay of effective date that extended the effective date of the SUNSET final rule until March 22, 2022. HHS is now proposing to withdraw or repeal the SUNSET final rule.

DATES: Submit either electronic or written comments on the proposed rule by 11:59 p.m. on December 28, 2021.

ADDRESSES: You may submit comments through the Federal eRulemaking Portal: *https://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

Warning: Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the internet and can be retrieved by most internet search engines. No deletions, modifications, or redactions will be made to comments received.

Inspection of Public Comments: All comments received before the close of the comment period will be available for viewing by the public, including personally identifiable or confidential business information that is included in a comment. You may wish to consider limiting the amount of personal information that you provide in any voluntary public comment submission you make. HHS may withhold information provided in comments from public viewing that it determines 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 *https://www.regulations.gov.* Follow the search instructions on that website to view the public comments.

FOR FURTHER INFORMATION CONTACT: Daniel J. Barry, Acting General Counsel, 200 Independence Avenue SW, Washington, DC 20201; or by email at *reviewnprm@hhs.gov;* or by telephone at 1–877–696–6775.

SUPPLEMENTARY INFORMATION:

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I. Executive Summary

A. Purpose of the Proposed Rule

HHS issued the SUNSET final rule on January 19, 2021. 86 FR 5694. The SUNSET final rule provides, among other things, that all regulations, subject to certain exceptions, issued by the Secretary of the Department of Health and Human Services (Secretary) or his delegates or sub-delegates shall expire at the end of (1) five calendar years after the year that the SUNSET final rule first becomes effective, (2) ten calendar years after the year of the regulation's promulgation, or (3) ten calendar years after the last year in which the Department ''Assessed'' and, if required, ''Reviewed'' the regulation, whichever is latest.[1] The SUNSET final rule was scheduled to take effect on March 22, 2021. However, after a lawsuit seeking to overturn the SUNSET final rule was filed on March 9, 2021, HHS issued an administrative delay of effective date, effective as of March 19, 2021, which postponed the effective date of the SUNSET final rule, pending judicial review, until March 22, 2022. 86 FR 15404 (Mar. 23, 2021).

After reconsideration of the comments submitted on the SUNSET proposed rule (85 FR 70096 (Nov. 4, 2020)), HHS is now issuing this notice of proposed rulemaking to withdraw or repeal the SUNSET final rule.

B. Summary of Major Provisions

We are proposing to withdraw or repeal the SUNSET final rule in its entirety.

C. Legal Authority

The primary statutory authorities supporting this proposed rule are the general rulemaking authorities for the various substantive areas under the Department's umbrella, as well as a general authorization for agencies to issue regulations regarding the administrative processes to be followed by that agency. These provisions include: 21 U.S.C. 371(a); 42 U.S.C. 216; 42 U.S.C. 1302; 42 U.S.C. 1395hh; 42 U.S.C. 2003; and 5 U.S.C. 301.

[1] The terms ''Section,'' ''Assess,'' and ''Review'' were capitalized in the preamble to the final rule where those terms have the definitions ascribed to them in the text of the final rule. For ease of readability, these terms are not capitalized in the following discussion of this proposed rule unless directly quoting or paraphrasing the final rule.

D. Costs and Benefits

This proposed regulatory action would reduce the time spent by the Department performing retrospective assessments and reviews of its regulations as required by the SUNSET final rule, and time spent by regulated entities and other stakeholders, including the general public, small and large businesses, non-governmental organizations, Tribes and state and local governments, on comments related to these assessments and reviews. We monetize the likely reductions in time spent by the Department and the general public as cost savings. Our primary estimate of these cost savings in 2020 dollars, annualized over 10 years, using a 3% discount rate, totals $69.9 million. Using a 7% discount rate, we estimate $75.5 million in annualized cost savings. Table 1 reports these primary estimates alongside a range of estimates that capture uncertainty in the amount of time it will take the Department to perform each regulatory assessment and review, and uncertainty in the amount of time the public will spend on comments. The impact of the proposed withdrawal provisions is analyzed in the Preliminary Economic Analysis of Impacts for this proposed rule. We seek comment on these preliminary estimates and analysis.

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

As used in this preamble, the following terms and abbreviations have the meanings noted below.

Term	Meaning
ACA	Affordable Care Act.
ACF	Administration for Children and Families.
ACUS	Administrative Conference of the United States.
APA	Administrative Procedure Act.
CFR	Code of Federal Regulations.
CHIP	Children's Health Insurance Program.
CMS	Centers for Medicare & Medicaid Services.
COVID–19	Coronavirus Disease 2019.
EO	Executive Order.
FD&C Act	Federal Food, Drug, and Cosmetic Act.
FDA	Food and Drug Administration.
FSMA	FDA Food Safety Modernization Act.
HHS or Department	U.S. Department of Health and Human Services.
IHS	Indian Health Service.
OCR	Office for Civil Rights.
OIRA	Office of Information and Regulatory Affairs.
PDV	Present Daily Value.
PHS Act	Public Health Service Act.
RFA	Regulatory Flexibility Act.
SAMSHA	Substance Abuse and Mental Health Services Administration.
SBA	Small Business Administration.
SEISNOSE	Significant Economic Impact Upon a Substantial Number of Small Entities.
SECG	Small Entity Compliance Guide.
SUNSET	Securing Updated and Necessary Statutory Evaluations Timely.
UA	Unified Agenda.

III. Background

The SUNSET final rule, if implemented, would significantly alter the operations of HHS with considerable repercussions for a diverse array of stakeholders. We note that the process to promulgate the rule was extremely unusual, if not unprecedented. The rule is expansive in scope and impact, faced considerable opposition from stakeholders (and very little support), and lacked a public health or welfare rationale for expediting rulemaking. In contrast to the Department's historical approach to rulemaking in these circumstances, HHS completed the rulemaking—from the publication of the proposal to publication of the final rule—in less than three months. Upon a thorough review of the rule, we find that, given the lack of a public health or welfare reason to expedite the rulemaking and other procedural shortcomings, the Department should now reconsider the commenters' significant objections to the proposal. Moreover, based on a reanalysis of the regulatory impact of the rule, we now believe that the rule rested on a flawed understanding of the resources required for this undertaking, which implicates the likelihood that HHS regulations would expire if the final rule were to go into effect. That in turn will require the Department to make resource allocation decisions which could impede the Department's routine operations and hamper its ability to carry out other key priorities and goals, particularly during an ongoing public health emergency. Now that we have reconsidered the public comments and the regulatory impact analysis, including a consideration of the impacts that are not quantified or monetized, we believe that the rule prioritized regulatory review over other Department operations to a degree that may negatively impact many stakeholders and the general public in a variety of ways. We disagree with that approach as a matter of policy and therefore are proposing to withdraw the rule in its entirety.

A. History of the SUNSET Rulemaking

1. Proposed Rule, Comment Period, and Final Rule

On November 4, 2020, HHS published a notice of proposed rulemaking entitled ''Securing Updated and Necessary Statutory Evaluations Timely'' (SUNSET proposed rule). 85 FR 70096. Under the proposed rule, subject to certain exceptions, Department regulations would expire at the end of (1) two calendar years after the year that the SUNSET rule first became effective, (2) ten calendar years after the year of the regulation's promulgation, or (3) ten calendar years after the last year in which the Department ''Assessed'' and, if required, ''Reviewed'' the regulation, whichever was latest. Thus, under the SUNSET proposed rule, unless HHS assessed and, if required, reviewed most of its regulations within a certain timeframe specified in the rule (for most existing regulations, within two years) and every ten years thereafter, the regulations would automatically expire.

The SUNSET proposed rule also provided that if a review led to a finding that a regulation should be amended or rescinded, the Department must amend or rescind the regulation within a specified timeframe (generally two years). In addition, the SUNSET proposed rule contained certain publication requirements, including that (1) the Department publish the results of all ''Assessments'' and ''Reviews,'' including the full underlying analyses and data used to support the results, in the **Federal Register**, and (2) the Department announce the commencement of an ''Assessment'' or ''Review'' of a particular regulation on the agency website, with an opportunity for public comment. The SUNSET proposed rule provided that comments to the proposed rule had to be submitted by December 4, 2020, except for comments on the portion of the rule amending 42 CFR parts 400–429 and parts 475–499 (Medicare program regulations), which were to be submitted by January 4, 2021.

On November 16, 2020, HHS announced a public hearing, scheduled for November 23, 2020, to receive information and views on the proposed rule (Public Hearing). 85 FR 73007. Despite the short notice, over twenty interested parties provided oral comments at the Public Hearing. *See* Transcript, Public Hearing on the Securing Updated and Necessary Statutory Evaluations Timely Notice of Proposed Rulemaking (Nov. 23, 2020) (available at *https://www.regulations.gov/document/HHS-OS-2020-0012-0501*) (Public Hearing Transcript). All of the commenters, which included industry/trade organizations, medical organizations, and public interest organizations,[2] criticized the proposed rule in its substance, the rulemaking process, or both.

In addition to the oral comments, a wide range of stakeholders submitted over 500 comments on the proposed rule. Almost all of the comments opposed the proposal. Comments opposing the rule were submitted by, for example, health care and medical organizations; Federally Qualified Health Centers and advocates for beneficiaries of Federal health care programs; State Attorneys General and other state government representatives; Tribal governments and Tribal organizations; large industry associations and trade associations; consumer and public interest groups; and interested individuals. Only a handful of commenters supported the rule, and two of those comments were submitted by an individual who, under an agreement with HHS, also provided a draft regulatory impact analysis for the SUNSET final rule. *See* 86 FR 5737 n.210. Other commenters supporting the rule included independent business advocacy organizations and a nonprofit legal organization.

On December 18, 2020, the Office of Information and Regulatory Affairs (OIRA) in the White House Office of Management and Budget received the SUNSET final rule for review and clearance and posted on the OIRA dashboard for E.O. 12866 Regulatory review (Ref. 1). This preceded the January 4, 2021, conclusion of the comment period for the parts of the proposed rule relating to 42 CFR parts 400–429 and parts 475–499.

HHS issued the SUNSET final rule on January 19, 2021. 86 FR 5694. The final rule provides that all regulations issued by the Secretary or their delegates or sub-delegates in titles 21, 42, and 45 of the Code of Federal Regulations (CFR), subject to certain exceptions, shall expire at the end of (1) five calendar years after the year that the SUNSET final rule first becomes effective, (2) ten calendar years after the year of the regulation's promulgation, or (3) ten calendar years after the last year in which the Department ''Assessed'' and, if required, ''Reviewed'' the regulation, whichever is latest. Thus, the final rule contains the same basic expiration framework as the proposed rule, but extends the timeframe for assessment and any applicable review of most existing regulations from two calendar years to five calendar years. The final rule also provides for a one-time ''continuation'' of a regulation that is subject to expiration if the Secretary makes a written determination that the public interest requires continuation. The continuation period, stated in the determination, is not to exceed one year. In addition, the final rule contains exemptions for a small set of HHS regulations applicable to the Food and Drug Administration (FDA), the Centers for Disease Control and Prevention (CDC), and the Centers for Medicare & Medicaid Services (CMS). The final rule maintains the timeframe for amendment or rescission of regulations, and includes a new **Federal Register** publication requirement in addition to the publication requirements proposed in the SUNSET proposed rule.[3]

2. Litigation and Delay of Effective Date

On March 9, 2021, the County of Santa Clara and several other plaintiffs sued the Department seeking to overturn the SUNSET final rule under the Administrative Procedure Act (APA). Complaint, *County of Santa Clara* v. *HHS*, Case No. 5:21–cv–01655–BLF (N.D. Cal. Mar. 9, 2021) (*Santa Clara*) (Ref. 2).

On March 18, 2021, the Acting Secretary of HHS signed, pursuant to 5 U.S.C. 705 of the APA, an administrative delay of effective date (Administrative Delay Order), effective as of March 19, 2021, which extended the effective date of the SUNSET final rule until March 22, 2022. 86 FR 15404.

B. The Department's Review

The Department has reexamined the SUNSET final rule in light of the allegations in the *Santa Clara* complaint, the many comments submitted to the docket and raised at the Public Hearing, and changed policy views in the current Administration. This review has considered the processes followed in issuing the rule, its policy goals and objectives, the projected effects and analysis of impacts in its implementation, and the legal evaluation of and support for its provisions, including whether the rule is consistent with HHS statutory obligations and its mission to promote and protect the public health. It should be noted at the outset that HHS already conducts retrospective reviews, and the Department is open to feedback regarding how to improve these existing processes. The purpose of this review, however, has been to reconsider whether the new requirements imposed in the SUNSET final rule would achieve the goals of retrospective review in a manner that best serves the Department's public health and welfare mission. As described further below, based on our review, we now believe that the SUNSET final rule should be withdrawn in its entirety. However, we request comment on whether, consistent with the goals of retrospective review as well as other current policy priorities and considerations discussed in this proposed rule, the Department should

[2] Commenters at the Public Hearing included: National Health Law Program, Center for Science in the Public Interest, Consumer Federation of America, Food & Water Watch and Food & Water Action, American Frozen Food Institute, American College of Obstetricians and Gynecologists, Lambda Legal, Center on Budget and Policy Priorities, American Lung Association, United Fresh Produce Association, Consumer Brands Association, Campaign for Tobacco-Free Kids, The National Confectioners Association, National Immigration Law Center, Prevent Blindness, American Feed Industry Association, Disability Rights New Mexico, Pet Food Institute, Public Citizen, American Medical Association, and Service Employees International Union.

[3] The final rule also moved the location of some of the regulatory text from having a general provision covering an entire title to having a separate, duplicate provisions in different chapters of HHS regulations.

consider modifying, rather than withdrawing or repealing, the SUNSET final rule.

Our current view is that, to be consistent with the Department's usual practices when engaging in rulemaking, the Department should have engaged in a more robust consideration of the comments, should have more thoroughly examined the factual and legal basis of the rule, and should have given greater weight to the potential harms to stakeholders and the public health. Our thinking is informed by a reevaluation of the factual premises and conclusions in the SUNSET final rule that are central to the Department's analysis of the rule's implications and effects. In particular, based on a reanalysis of the regulatory impact of the rule, we now believe that the rule likely rested on a flawed understanding of the resources required for this undertaking, which implicates the likelihood that HHS regulations would expire, and which in turn will require the Department to make resource allocation decisions which could impede the Department's ability to carry out other key priorities. That diversion of resources will likely impede efforts to adopt new rules to address national priorities and advance equity for all, including historically underserved and marginalized communities. It is therefore potentially inconsistent with the current Administration's policies that aim to empower agencies to use appropriate tools to achieve those ends. In this section, we summarize the key considerations, addressed in greater detail throughout the preamble, that have led us to change our view of the overall merit of the SUNSET final rule and to propose to withdraw the rule in its entirety.

As an initial matter, based on our review, we have found that there were several procedural shortcuts taken in the rulemaking process which may have impeded full consideration of the commenters' significant objections to the proposal. The SUNSET final rule was issued on an unusually expedited timeline of less than three months for a rule of this significance, with potential impacts not just on small businesses but also the general public, larger businesses, Tribes, States, non-governmental organizations, and other regulated entities and stakeholders across a wide range of industrial sectors. The SUNSET rule was also unusually expansive in scope, requiring review and possibly regulatory or deregulatory activity across a variety of distinct substantive statutes [4] within the jurisdiction of a several operating divisions (*e.g.,* CMS, FDA, CDC, Substance Abuse and Mental Health Services Administration (SAMSHA), the Office for Civil Rights (OCR), and the Administration for Children and Families (ACF)). Furthermore, it appears that the comments were not adequately considered (as evidenced by the summary mention in the preamble to the SUNSET final rule, as discussed further elsewhere in this preamble), and, contrary to policy, the Department did not consult with tribal governments.

As for the substance, we note initially that the resources required to comply with the assessment and review requirements would be substantial. For each regulation covered by the SUNSET final rule, HHS agencies would need to: Collect data to conduct the relevant evaluation (which may require time for public notice and comment, and Office of Management and Budget (OMB) review and approval, under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* in addition to the time needed for data collection and analysis); engage subject matter experts and others to complete an assessment (and possibly a review); consult with state and local jurisdictions and Tribes; open and publicize public dockets for each assessment or review that the Department conducts; consider any comments to the public docket related to the evaluation; participate in interagency review; and publish the results of this process in the **Federal Register**, ''including the full underlying analyses and data used to support the results.'' 86 FR 5712. If warranted by the results of this process, HHS agencies would then need to complete a rulemaking to amend or rescind the regulation, which would require an additional investment of agencies' resources and public input. If the Department cannot complete this extensive process within the final rule's timeframes, the regulations would then automatically expire. In addition, after that lengthy process, the Department would likely then need to revise guidance documents associated with both expiring regulations and regulations still in effect.

It appears that the SUNSET final rule made at least two errors in its justification for establishing this mandatory review process. First, based on the preliminary regulatory impact analysis for this proposed rule, it appears to have miscalculated the extent of the resources needed for this undertaking. In particular, we now believe that HHS underestimated the costs of complying with the rule at least by a factor of four. Second, and relatedly, it assumed that regulations would not simply expire. *See, e.g.,* 86 FR 5710 (''HHS does not intend to allow a regulation to simply expire''); *id.* at 5712 (''the Department is committed to dedicating adequate resources to timely Assess and Review its regulations''); *id.* at 5714 (''the Department intends to timely complete the necessary Assessments and Reviews and has built in safeguards to mitigate the risk of inadvertent expiration''). Preventing the automatic expiration of regulations, however, would require prioritizing retrospective review above many other Department programs and missions. Based on our reconsideration and expert judgment, we no longer consider that resource prioritization to be in the best interests of the public health and well-being and therefore believe that this assumption—that no regulations would expire—was not well founded.

Because we now believe that the SUNSET final rule underestimated the burden on the Department and its agencies imposed by the regulatory review required by the rule and dismissed the likelihood that rules would expire, it similarly did not adequately acknowledge the difficult resource allocations decisions that the Department would confront in implementing the rule. With its finite set of resources, the Department would be faced with a quandary of how best to triage the needs of its existing programs (as well as new public health priorities) and the new regulatory review process under the SUNSET final rule. On the one hand, given the large scale of resources that would be required to conduct the required reviews, compliance with these new review requirements would lead to the diversion of resources from existing and new priority programs to the detriment of the other programs. This diversion of resources would degrade HHS' capabilities to carry out mission-critical objectives such as protecting the health of Americans, strengthening their economic and social well-being, and fostering sound, sustained advances in the sciences. On the other hand, the automatic expiration of regulations could also undermine mission-critical objectives. The Department's ability to redirect resources may be further complicated by statutory directives regarding programs and their funding as well as difficulties in finding, hiring, training, and transferring personnel to ensure adequate familiarity and technical expertise to conduct the analyses. Our reanalysis of the rule's regulatory impact, and particularly the estimated hours per assessment and

[4] *See* section IV below.

review, indicates that such staffing measures likely would be needed in order to comply with the rule.

It is not feasible at this time to determine with any specificity how the Department would make these difficult choices on when to divert resources from existing programs, to the extent permitted by statute and logistics, and when to let regulations expire without review. However, as described elsewhere in this proposed rule, we now predict, contrary to the statements in the SUNSET final rule, that it is very likely that some regulations will automatically expire without substantive review.

This quandary has several implications. Both the potential for automatic expiration of rules, as well as the diversion of resources from existing regulatory programs, would create regulatory uncertainty, and that uncertainty could have several negative repercussions for stakeholders, including interference with planning, contracting, and product development. Further, the actual expiration of regulations could lead to confusion among stakeholders, undermine predictability and confidence in many sectors regulated by the Department, and could harm the public health in numerous ways, discussed in greater detail below.

Commenters suggested that the legal analysis in the SUNSET final rule wrongly concluded that the final rule was consistent with the APA's requirements. As discussed further below (in section V.D), under the APA, HHS must consider the relevant factors and provide an adequate basis and explanation in the rulemaking record for its decision. Commenters asserted that the Department did not adequately consider the potential harms of each affected regulation automatically expiring, such as the facts and circumstances that would no longer be addressed upon automatic expiration of that regulation. In light of that absence, among other things, there may be a plausible argument that HHS's justification was inadequate under the APA.

The SUNSET final rule is also based on policies that are contrary to several policy goals of the current Administration. The SUNSET final rule cited for support an Executive Order entitled ''Reducing Regulation and Controlling Regulatory Costs'' (E.O. 13771), which placed limits on agencies' ability to issue new regulations. 86 FR 5696 (citing 82 FR 9339 (Jan. 30, 2017)). President Biden, on his first day in office, issued an Executive order entitled ''Revocation of Certain Executive Orders Concerning Federal Regulation,'' which revoked E.O. 13771.[5] 86 FR 7049 (Jan. 25, 2021) (E.O. 13992). As stated in E.O. 13992, the current Administration's policy is to equip executive departments and agencies with flexibility to use available tools such as robust regulatory action to confront the urgent challenges facing the Nation, including the coronavirus disease 2019 (COVID–19) pandemic, economic recovery, racial justice, and climate change. Accordingly, E.O. 13992 revoked ''harmful policies and directives that threaten to frustrate the Federal Government's ability to confront these problems and empowers agencies to use appropriate regulatory tools to achieve these goals.'' *Id.*

Upon review, we now believe that the burdens imposed by the SUNSET final rule could undermine the Department's ability to fulfill its public health and human services missions, promote national priorities, and confront the challenges facing the nation—contrary to the policies expressed in E.O. 13992. Although the Department is committed to exploring ways to improve its processes for conducting retrospective reviews under the Regulatory Flexibility Act (RFA) and identify and retire obsolete rules, the approach in the SUNSET final rule appears to go beyond what is needed to meet those objectives, as noted by several commenters at the Public Hearing. *See, e.g.,* Public Hearing Transcript, Comments by the Consumer Federation of America, American Frozen Food Institute, and Disability Rights New Mexico. In essence, the SUNSET final rule would likely have led to a sharply diminished role for the Department in providing Federal leadership in public health and human services, a position with which the current Administration fundamentally disagrees.

Based on the many comments opposing the rule, the SUNSET final rule also appears to undercut the policy expressed on the first day of the current Administration in E.O. 13985 entitled ''Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,'' which lays out the current Administration's policy for the Federal Government to ''pursue a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality.'' 86 FR 7009 (Jan. 25, 2021). In addition, on January 26, 2021, the current Administration issued a ''Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships,'' directing the heads of executive departments and agencies to make respect for Tribal sovereignty and self-governance, commitment to fulfilling Federal trust and treaty responsibilities to Tribal Nations, and regular, meaningful, and robust consultation with Tribal Nations cornerstones of Federal policy pertaining to American Indians and Alaska Natives. 86 FR 7491. The current administration also issued an E.O. titled ''Strengthening Medicaid and the Affordable Care Act,'' 86 FR 7793 (Feb. 2, 2021) (E.O. 14009), states that it is the policy of the Biden-Harris Administration for the Federal Government to protect and strengthen Medicaid and the ACA and to make high-quality healthcare accessible and affordable for every American. The E.O. directs HHS, among others, to examine its regulations, policies, and the like to ensure that they are consistent with the policy of providing high quality and accessible health care for all, and do not undermine protections for people with pre-existing conditions under the ACA, reduce coverage under or otherwise undermine Medicaid or the ACA, or undermine the Health Insurance Marketplace or the individual, small group, or large group markets for health insurance in the United States.

If implemented, we now believe that the SUNSET final rule could negatively impact diverse groups of stakeholders, including historically underserved, marginalized, and adversely affected communities, and undermine the Department's public health mission. For example, as discussed in more detail below, numerous commenters expressed concern about the anticipated impacts on various populations including children, the elderly, the disabled, those living in poverty, and communities marginalized by racism and prejudice, who could lose eligibility for programs and services if the regulations underpinning the eligibility requirements were to expire. Public commenters, including Tribes and tribal representatives, assert that the SUNSET final rule would threaten the regulatory underpinnings of the Indian health system, completely disrupt the ability of that system's mission to provide care to tribal communities, undermine the delivery of HHS public health and social service programs for tribal members, and generate a level of uncertainty that is the antithesis of the goals of the HHS Tribal Consultation

[5] The SUNSET final rule also cited ''Regulatory Relief To Support Economic Recovery,'' (May 19, 2020) (E.O. 13924), which was revoked in Executive Order 14018. 86 FR 11855 (Feb. 24, 2021).

Policy.[6] Furthermore, HHS now acknowledges that the SUNSET final rule does not provide for advance notice of regulations that might automatically expire, which we believe conflicts with the Department's policy to engage in meaningful consultation with Tribal Nations.

IV. Legal Authority

The primary statutory authorities supporting this proposed rule are the general rulemaking authorities for the various substantive areas under the Department's umbrella, as well as a general provision authorizing agencies to issue regulations regarding the administrative processes to be followed by that agency. These include:

- Section 701(a) of the Federal Food, Drug, and Cosmetic Act (FD&C Act), 21 U.S.C. 371(a), which authorizes the Secretary to ''promulgate regulations for the efficient enforcement of [the FD&C Act], except as otherwise provided in this section;''
- Section 215 of the Public Health Service Act (PHS Act), 42 U.S.C. 216, which provides that ''The Surgeon General, with the approval of the Secretary, unless specifically otherwise provided, shall promulgate all other regulations necessary to the administration of the Service[ ];''
- Section 1102 of the Social Security Act, 42 U.S.C. 1302, which provides that the Secretary ''shall make and publish such rules and regulations, not inconsistent with this Act, as may be necessary to the efficient administration of the functions with which [they are] charged under this Act;''
- Section 1871 of the Social Security Act, 42 U.S.C. 1395hh, which provides that ''the Secretary shall prescribe such regulations as may be necessary to carry out the administration of the insurance programs under this title;''
- 42 U.S.C. 2003, which provides that ''the Secretary of Health and Human Services is also authorized to make such other regulations as [they] deem desirable to carry out the provisions of this subchapter [transferring to the Indian Health Service (IHS) the authority to provide health care services to American Indians and Alaska Natives];'' and
- 5 U.S.C. 301, which provides that ''[t]he head of an Executive department or military department may prescribe regulations for the government of his department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property. This section does not authorize withholding information from the public or limiting the availability of records to the public.''

Congress' grant of broad, discretionary rulemaking authority necessarily includes the authority not to promulgate—and therefore also to withdraw or repeal—a proposed or final rule. *See Natural Res. Def. Council, Inc.* v. *SEC,* 606 F.2d 1031, 1045 (D.C. Cir. 1979); *see also* 5 U.S.C. 551(5) (defining ''rule making'' to include formulating, amending, and repealing a rule).

V. Explanation of Proposed Rule To Withdraw or Repeal the SUNSET Final Rule

The Department proposes to withdraw or repeal the SUNSET final rule based on the following concerns: (A) Implementation of the rule could create burdens on the Department and on stakeholders that would divert resources from pressing public health matters and thus harm the public; (B) both the possibility of automatic expiration of HHS regulations, and the actual expiration of HHS regulations, could harm the public; (C) the final rule may be harmful to small entities, inconsistent with Congress' intent in enacting the RFA, and unnecessary to achieve the RFA's objectives or to incentivize the Department to conduct reviews of regulations; and (D) ambiguity in the definitions and exceptions in the final rule may increase the burden of the regulation and the risk of regulations automatically expiring. In addition, questions were raised as to whether the final rule is consistent with the APA, which merit further consideration.

A. Implementation Burdens on the Department and Stakeholders

1. Burden on the Department

The framework set forth in the SUNSET final rule would create a tremendous economic and workload burden on the Department, and would pursue the objective of regulatory review at great expense to the public and to the small business community it purports to benefit. As explained in more detail below, these harms are likely to be greater than any benefits of the retrospective review framework in the SUNSET rule. Although the SUNSET final rule acknowledged the submission of a large number of comments stating that the rule would burden the Department, divert its personnel resources, and adversely affect the Department's ability to administer programs, and issue and modify regulations, the final rule essentially concluded that these concerns were outweighed by its finding that ''widespread retrospective review is a worthwhile enterprise.'' 86 FR 5705. As previously discussed, that finding was predicated on what we now believe to be a flawed understanding of the regulatory impact of the rule. Our reanalysis of the burden of the SUNSET rule fundamentally alters any evaluation of the merits of the rule and gives new force to the comments concerning the burden. Also, as discussed, this Administration has different policy goals than the previous Administration, and these differences impact how these various issues, concerns, and goals are weighed. We now believe that the SUNSET final rule did not give sufficient consideration and weight to the large number of comments, discussed immediately below, raising concerns regarding the burdens on the Department's ability to effectively carry out its missions.

Numerous commenters opposed the proposed rule out of concern that the burden and the diversion of resources to assessments and reviews would negatively impact public health activities. Several commenters referred to the burden imposed on the Department as ''undue,'' ''unreasonable,'' ''unnecessary,'' ''onerous,'' and ''misguided.'' In response to these comments on the proposed rule, the SUNSET final rule attempted to minimize these concerns by extending the period for the automatic expiration of regulations from two to five years, and ultimately concluded that its retrospective review scheme is sensible ''even if it takes some time away from issuing new regulations.'' 86 FR 5705. We now believe that assertion rested on a flawed understanding of the resources required to implement the SUNSET final rule. The rule did not explain how HHS could devote numerous employees to full-time retrospective review without compromising the Department's and its sub-agencies' many other crucial tasks, such as protecting the country from future pandemics or other public health emergencies. We now believe that the SUNSET final rule underestimated the rule's regulatory impact and failed to appreciate the scope of its effects on the Department, including that the rule could compromise some of the Department's most important initiatives.

Commenters also emphasized particular apprehension about the impact of the rule on the Department's ability to address public health emergencies such as COVID–19 and the

[6] U.S. Department of Health and Human Services, HHS Tribal Consultation Policy (December 12, 2010) (available at *https://www.hhs.gov/about/agencies/iea/tribal-affairs/consultation/index.html).*

opioid crisis. The SUNSET final rule ultimately concluded that the new retrospective review requirements would not hamper the response to the pandemic because by that time the COVID–19 Public Health Emergency ''is likely to have subsided.'' 86 FR 5748. However, as explained further below, many commenters expected that implementation of the rule—by diverting staff and resources—would create immediate disruption to programs essential to the COVID–19 response for patients, beneficiaries of HHS health programs, and the larger health system. Commenters also expected that these demands would continue to evolve during the remainder and aftermath of the current pandemic, and noted that the same problems could occur with other public health emergencies in the future. Bolstering the commenters predictions, the trajectory of the COVID–19 pandemic seems far less certain than when the SUNSET final rule was published.

HHS has reconsidered these comments and now believes that the Department must continue to remain flexible and focused on the management and utilization of HHS resources to address COVID–19 and its impacts as well as future public health emergencies. The challenges of the continued current public health emergency suggest a risk of future harm because the SUNSET rule provides no good cause exception to avert the expiration of a regulation in the event of a pandemic, a public health emergency, or another declared national emergency. Although the final rule added a provision to permit the Secretary to extend the period for assessments and reviews, the extension can only be applied one time, for up to one year, per each section of regulation, and the extension can only be exercised through a determination published in the **Federal Register**. 86 FR 5725. Given the brief extension available for the assessment and review and the potential duration of an emergency (as evidenced by the current 18-month plus duration of the COVID–19 pandemic), the final rule was likely incorrect to conclude that this option would be sufficient to avoid the diversion of resources and the automatic expiration of regulations in the event of a pandemic, emergency, or other development that prevents the Department from timely assessing or reviewing certain sections. *Id.* at 5726.

As noted in public comments, the SUNSET final rule imposes multiple types of burdens on the Department. First, the rule's assessment and review processes have substantial resource implications. Such processes require Department evaluations of regulations based on certain criteria, which would involve information collection and analysis (potentially including public notice and comment, and OMB review and approval, under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*), engagement with subject matter experts, and consultation with state and local jurisdictions and Tribes. In addition, the Department would need to solicit and consider public comment related to those evaluations, participate in interagency review, and publish results in the **Federal Register**, including the full underlying analyses and data used to support the results.[7] Completing these steps for the thousands of regulations currently issued by the Department, and for future regulations, would be a colossal undertaking on any timeframe. But the SUNSET rule requires these processes on a compressed timeframe, meaning many assessments and reviews would need to occur simultaneously, thereby compounding the impact. Data collection may be infeasible under the timeframes required under the rule, which could compromise the quality and completeness of the work. As noted in the final rule, approximately 12,400[8] of the Department's estimated 18,000 sections in the CFR are over ten years old, and each of these are regulations that could automatically expire five years after the SUNSET final rule's effective date unless assessment and, as applicable, reviews are completed.[9] For example, under the timeline and definitions provided in the final rule, over 7,000 sections of the CFR that were promulgated by the FDA are more than ten years old, or would become more than ten years old during the first five years the rule would be in effect, representing over 95 percent of this agency's current regulations. Although there are limited categorical exceptions and some specific regulations excepted from the rule, the enumerated exceptions are very limited and likely would not make a meaningful difference in the burden on the agency, including because HHS has yet to assess the applicability of these exceptions.[10]

Furthermore, this burden is recurring. As soon as the Department reviewed all the current rules, it would start having to review them again within a 10-year timeframe. And the expertise needed to conduct assessments and reviews and achieve the pace and scope set forth in the rule would require a reallocation of staff including subject matter experts, regulatory counsels, economists, and attorneys. This reallocation effort alone would entail a significant burden and would draw resources away from other public health and welfare activities.

Second, if a review concludes that a regulation should be amended or rescinded, the rule requires the Department to amend or rescind the regulation within two years of the date that the review results are published. The development of regulations is a deliberative and resource-intensive process that requires consideration of a wide range of factors, including current relevant facts, statutory obligations, and public-health and -welfare goals. Requiring the Department not only to assess and review its regulations, but also to amend or rescind them (in applicable circumstances) on a specific timeframe, amplifies the burden on the Department.

Third, as discussed further below, the SUNSET final rule contains ambiguities that would need to be clarified in order to operationalize the rule. This creates another hurdle to implementing the SUNSET final rule that is separate from the assessment, review, and rulemaking requirements. For example, under the rule, it is not clear when certain regulations would need to be assessed and whether the regulation falls within a categorical exception. The Department would need to develop processes and standard operating procedures to try to bring consistency and transparency to this process. While the Department expressed an intent to create a dashboard for monitoring assessments and reviews, the development,

[7] These analyses and data would need to be reviewed in light of any applicable privilege, protections for confidential business information, or explicit legal prohibition on disclosure, thereby adding to the burden.

[8] 85 FR 5705.

[9] The SUNSET final rule defines ''Section'' as ''a section of the Code of Federal Regulations'' and provides the following example, 42 CFR 2.13 is a Section, and 42 CFR 2.14 is another Section (*see* 1 CFR 21.11). 86 FR 5751.

[10] In addition, based on a count from an HHS website that provides a listing of the rulemakings promulgated by HHS and includes the date that each regulation was first issued in title 21, title 42, and title 45 of the CFR, U.S. Department of Health and Human Services, *List of HHS Rulemakings by Date of Promulgation* (available at *https://www.hhs.gov/regulations/federal-registry/index.html*), over 3,000 sections of the CFR were promulgated by HHS before the enactment of the RFA in 1980, which required the rulemaking process to include an analysis of whether regulations have a significant economic impact upon a substantial number of small entities (SEISNOSE). Although the final rule acknowledges that additional resources would be needed to review regulations that predate the RFA, the rule does not reflect the additional work to assess these regulations to determine if a review is necessary. For older regulations enacted before the RFA that are not otherwise exempt from the rule, the assessment phase would not necessarily have analysis or information from the original rulemaking record to inform an assessment.

monitoring, and updating of this dashboard would add to the burden on HHS. Collectively, these activities would likely delay the initiation of assessments and further strain the Department's ability to prevent regulations from automatically expiring.

Fourth, the SUNSET rule imposes on HHS the task of determining where to redirect resources to support assessments and reviews and thereby preserve regulations. Multiple, complex considerations would likely be relevant to this effort, including public health and legal considerations. Furthermore, to the extent that any regulations would expire under the SUNSET final rule—which the Department now predicts would be likely—HHS would need to consider how to prioritize its assessment and review processes to manage that risk. Overall, the economic and workforce burdens imposed on the Department by the SUNSET final rule are significant.

As noted above, commenters opposed to the rule expressed concern that the diversion of resources would disrupt public health activities and social service programs administered by specific HHS operating divisions. For example, commenters expressed concern that, in order to review or assess regulations within the rule's timeframe, FDA staff could be diverted from the review of medical product applications, food additive petitions, efforts to promote medical product innovation, competition, and access to medicine, and the regulation of the food and medicine supply for humans and animals. Commenters also described impacts on the administration of HHS social services programs, expressing concern that there will not be enough time and staff to efficiently review regulations and to serve citizens at the same time, including those who depend on safety net programs under the auspices of the ACF such as Head Start and the Low Income Home Energy Assistance Program. Multiple commenters who advocate for mental health issues also opposed the diversion of staff resources away from programmatic work that addresses inequities in access to health and mental health care.

Commenters nationwide who represent state and county health departments, as well as legal and social service organizations who advocate for beneficiaries, individual beneficiaries themselves, and concerned citizens, expressed concern that the CMS would be hampered in the day-to-day administration of public health programs for millions enrolled in the Children's Health Insurance Program (CHIP), Medicaid, and Medicare. Some noted the burden of retrospective reviews could put a strain on the administration of the Affordable Care Act (ACA) and the development of new regulations and guidance to: Support health care coverage, innovation, and competition; enhance patient safety; and combat waste, fraud, and abuse. Commenters representing Federally Qualified Health Centers (FQHCs) expressed opposition to the rule because it would result in the diversion of resources from programs that support particular populations served by FQHCs such as Community Health Centers, Migrant Health Centers, Health Care for the Homeless, and Health Centers for Residents of Public Housing. Commenters representing or affiliated with American Indians and Alaska Natives described the potential impact of resource diversion from the administrative and operational activities of the IHS, which could diminish access to critical safety net programs for American Indians and Alaska Natives and decrease programmatic staff available to administer programs that provide critical protections for tribal youth. Some commenters also noted that the focus on the activities required by the SUNSET rule would impair the Department's ability to issue new regulations that would modernize the healthcare system, improve service delivery, and promote equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty.

Therefore, based on review of these comments and the Department's new cost estimates for the SUNSET rule, HHS now believes that the SUNSET final rule may have significantly underestimated the burden on the Department resources to comply with the rule and incorrectly evaluated the Department's ability to expend the necessary resources to prevent the automatic expiration of regulations. The Department also thinks it likely that these burdens would result in the diversion of significant resources from other HHS initiatives and priorities. The Department now believes that the harm and the costs resulting from this diversion are likely greater than any benefits of the retrospective review framework in the SUNSET rule. Department initiatives are each intended to further the health and well-being of Americans. Often, these respond to the most pressing issues of the day, which are diverse and range from foodborne illness to the opioid crisis to the COVID–19 global pandemic to dealing with humanitarian crises, such as the care and custody of unaccompanied children at the border. Redirecting resources away from these types of initiatives in order to fully implement the SUNSET rule could mean neglecting the areas of greatest public health need, contrary to the Department's mission. As discussed above, many commenters identified examples of important programs threatened by the diversion of resources of SUNSET final rule, and the Department agrees with those examples. Ultimately, the Department no longer believes that the analysis of existing regulations, which may have little practical effect in many cases, should be elevated over HHS's other important regulatory initiatives.

2. Potential Burden on Stakeholders

HHS has also reexamined the burden the SUNSET final rule places on stakeholders to prevent the automatic expiration of regulations and the final rule's estimation that ''the cost of monitoring Assessments will be relatively trivial.'' 86 FR 5744. The final rule describes ''safeguards to mitigate the risk of inadvertent expiration,'' such as enabling the public to submit comments requesting that the Department commence an assessment or review, and making a dashboard that would be available on an HHS website that would enable stakeholders to monitor the status of assessment and reviews of regulatory sections that may expire. *Id.* at 5714. Various public commenters, however, opined that it is inappropriate and unfair to place such a heavy burden on the public. More than one commenter posited that the automatic expiration of regulations resulting from the Department's failure to complete assessments and reviews would constitute a penalty to the regulated, and not the regulators.

Many commenters opposed to the rule expressed concern that the monitoring burden would be overwhelming, particularly for health care providers, public health advocates, caregivers, and beneficiaries, among other stakeholders, who would have to divert time and effort from providing direct health care. In addition, commenters representing a wide range of industry stakeholders anticipated a higher burden on small entities that would not have the personnel and resources to both monitor the status of thousands of regulations being assessed contemporaneously, and simultaneously provide comments about data and information that should be considered in an assessment or review. Similarly, commenters expressed concern that members of the

general public would not have the ability or awareness to participate in the process envisioned, so that the construct would favor well-funded special interests who would have the resources to hire lawyers and lobbyists to advocate for their favored outcomes. Several commenters associated with trade associations and advocacy organizations described the immense effort that would be needed to engage organization membership and to research, draft, review, and submit consensus-driven comments with members and partner organizations. Some commenters noted that they expected the monitoring process to be chaotic as stakeholders seek the Department's prioritization of the assessment or review of regulations they are concerned might expire.

The Department believes that any retrospective review process should not impose an undue burden on the public. Based on these comments and the Department's new cost estimates for the SUNSET rule, the Department now believes that the SUNSET final rule likely underestimated the burden on stakeholders to monitor and comment on potentially expiring regulations.

B. Potential Harm From the Possible and Actual Expiration of Regulations

1. Potential Harm From Uncertainty

HHS has given further consideration to the harms to the public health from the regulatory uncertainty created by the SUNSET final rule. Because of the above-described substantial burdens imposed on the Department by the breadth and scope of the regulatory review process required by the SUNSET final rule, the Department now acknowledges that, despite statements in the final rule that HHS did not intend to allow any regulations to simply expire, *see, e.g.,* 86 FR 5710, it is unrealistic to assume that no regulations would automatically expire as a result of the final rule. In fact, given the complicated resource allocation decisions discussed above, HHS is unable to forecast the number or identity of specific regulations that may expire without a completed review and assessment. It may therefore be difficult for stakeholders to know which regulations will remain in place because that will depend on whether the Department will actually be able, and will choose, to complete each regulation's assessment and/or review by the assessment or the review deadline. The potential automatic expiration of large swathes of rules, or even one complex rule, without a reasoned justification such as a change in the governing law or a change in circumstances, could create uncertainty and unpredictability regarding regulatory programs going forward.

Several commenters supported the Department's efforts to explore ways to improve its processes for conducting retrospective reviews to reassess, update, and amend regulations. As discussed further in section V.3.C., HHS already exercises its authority to conduct retrospective reviews, and comments suggested improvements to achieve the goals of retrospective review productively and efficiently. However, as the comments explained, there is a stark difference, particularly from a planning standpoint, between thoughtful reconsideration of individual rules, with stakeholder participation and a reasoned justification, and automatic expiration of rules from lack of sufficient resources (by either or both stakeholders and the Department). Rather than the current baseline assumption that regulations will remain the same, absent a specific notice providing a basis for possible change, the new baseline would be uncertainty regarding the future validity of numerous regulations.

Commenters explained that the uncertainty created by the potential automatic expiration of countless rules could have numerous repercussions for stakeholders and for the public health. Public commenters explained the importance of a relatively steady regulatory environment. For example, several commenters explained that rules that implement HHS policies and programs, such as Medicaid and CHIP, establish the national standards for Federal/State partnership programs, so that States in turn can design processes and run programs on a day-to-day basis based upon these standards. Predictable and reliable communication and guidelines facilitate effective implementation of these programs, so that providers can understand what their obligations are, and beneficiaries can understand what they are entitled to receive. Further, many participants in the health care ecosystem have structured their financial arrangements and business operations to satisfy the myriad conditions set forth in the current regulations. The uncertainty regarding the future of those regulations could upset the assurance of regulatory continuity underlying those arrangements and therefore disrupt planning and entering into longer-term commitments. And, for programs that rely on Federal funding, commenters asserted that potentially expired regulations could impact the ability to apply for, or receive, funding sources governed by those rules, which in turn would disrupt longer-term planning.

Commenters also contended that the increased unpredictability of the future of regulations under the SUNSET final rule would impede product development and innovation. Commenters asserted that uncertainty in regulation would be particularly harmful for drug development: Because new therapeutic products may require decades to develop and review, and because this process is expensive, drug sponsors rely on a predictable regulatory environment to plan their development programs. For instance, FDA has extensive regulations that address standards for clinical trials and premarket submissions, requests for orphan designation, patent term restoration, and exclusivity determinations. Although statutory provisions govern these programs, the statute does not specify in detail the substance or processes for these premarket submissions. As a result, the potential for expiration of the regulations, which clarify the application pathway and requirements, could curtail drug development, including progress on cancer therapies and therapies for those with unmet medical needs. Similarly, one commenter noted that the development of digital health care platforms typically takes 5 to 10 years, and the developers will need to understand the regulatory environment in which they will be developing their business. Another commenter asserted that investments are made in industrial biotechnology innovations based on the assumption that regulations will be in place for at least 10 years; consequently, some emerging industrial biotechnology companies will have difficulty finding investors in the face of regulatory uncertainty. Thus, as one commenter opined, ''[i]nstead of innovation, this rule could easily lead to stasis.''

We question whether the SUNSET final rule adequately considered the potential costs of regulatory uncertainty created by the rule. The final rule states that it ''does not believe uncertainty among the regulated community will add significantly to the costs of this rulemaking'' because ''there is always a possibility that regulations could be amended or rescinded, even absent this rule.'' 86 FR 5709. HHS now believes the final rule's automatic expiration of regulations could instead be more haphazard and unpredictable, and therefore more disruptive, than the existing possibility of targeted changes to regulations based on a reasoned justification such as a change in the

governing law, technology, or other circumstances.

The Department also notes that E.O. 13563, ''Improving Regulation and Regulatory Review,'' which the SUNSET final rule cited for support, includes among general principles of regulation that our regulatory system ''must promote predictability and reduce uncertainty.'' [11] Upon reconsideration of the comments received, we now believe that, by introducing significant uncertainty about whether regulations will expire, the final rule may undermine these objectives.

2. Potential Harm From the Actual Expiration of Regulations

After further consideration, HHS believes that, because the SUNSET rule failed to appropriately consider the likelihood that any regulations would expire, it likewise did not take into account the harm to stakeholders and the public health that could result from regulations expiring. The resources needed to prevent the automatic expiration of regulations are now estimated to be significantly higher than identified in the SUNSET final rule. Given statutory spending directives and other statutory obligations, it could be difficult, and in some cases prohibited, for the Department to redirect sufficient resources to prevent expiration of certain HHS regulations. Further, any attempt to divert the amount of resources necessary to prevent the expiration of regulations would degrade HHS' capabilities to carry out mission-critical objectives such as protecting the health of Americans, strengthening their economic and social well-being, and fostering sound, sustained advances in the sciences. As a result, these constraints make it likely that regulations could expire without review.

This expiration is unlike the standard processes that agencies undertake to change rules. In general, it is more common for rules to be amended to account for a change in statutory authority or change in relevant circumstances; they are not simply rescinded in their entirety without a rule-specific justification or an opportunity for the public to comment on that justification, including identifying harms associated with the repeal.

Because the final rule did not acknowledge the substantial risk of expiration of regulations, it did not examine the wide array of harmful effects that could arise in this situation including: Causing serious harm to millions of stakeholders who rely upon HHS programs, including underserved populations; upending established understandings across the public health spectrum as to how to comply with statutory requirements; and disrupting established industry standards that protect public health, create a level playing field for businesses, and boost consumer confidence.

The breadth and complexity of some regulatory programs with interdependent regulatory provisions, and their integration into programs run by State and local authorities, could magnify the repercussions of many automatically expiring regulations. For example, as one commenter explained, Medicare is the largest payor in the U.S. health care system and the largest piece of a system comprised of thousands of interlocking moving parts; thus, the entire health care system is impacted by the Medicare program and therefore relies on Medicare regulations to function. The Medicare regulations were not contemporaneously enacted and therefore are subject to different potential expiration dates under the SUNSET final rule. If some individual Medicare regulations not subject to exceptions in the SUNSET final rule begin to expire, it could be difficult for regulated entities to disentangle the downstream effects to ascertain the remaining regulatory requirements. The expiration of these regulations also increases the potential for bad actors to try to exploit the lack of regulations, potentially resulting in increased fraud and abuse.

Commenters explained that the confusion about what, if any, standards would govern in the event of a lapse in Federal regulations is likely to result in significantly increased regulatory complexity and implementation. Another commenter predicted that, if States will be directed to abandon expiring rules, and/or to suddenly implement new interpretations of statutory requirements in the event regulations automatically expire, they will be faced with enormous administrative costs such as computer system upgrades, staff training, amended services contracts, and public education on new requirements.

Commenters provided numerous examples of harms to stakeholders and the public health that could arise from the actual expiration of regulations. States Attorneys General commented that States depend on HHS to administer trillions of dollars in Federal funding to support their healthcare systems and the health and safety of their residents, which would be disrupted by the expiration of regulations. Many commenters expressed particular concern about the anticipated impacts on various communities including children, the elderly, the disabled, those living in poverty, the LGBTQ community, patients living with HIV/AIDS, tribal members, communities of color who are often more reliant upon HHS programming as a result of systemic racism, and people who live in rural areas who rely more heavily on federally funded HHS programs. According to the commenters, these individuals will suffer worse outcomes in terms of health and well-being if they were to lose eligibility for programs and services upon expiration of regulations. This loss in program coverage could in turn increase the economic costs to public assistance organizations, which would need to devote more time, energy, and resources to finding ways to assist individuals absent these protections from the Federal Government.

For example, commenters asserted that implementation of Medicaid and the ACA depends heavily on regulations to clarify coverage requirements, program implementation, and the obligations of state programs serving people with low incomes. As discussed above, Federal regulations play an important role in HHS' partnership with States in implementing Medicaid, which, as one commenter described, has helped communities respond to economic downturns, natural disasters, epidemics, and public health emergencies since the program was enacted in 1965. Another commenter described the importance of detailed Federal regulations in implementing the accountable care organization program, which increases the quality of care for Medicare beneficiaries while reducing unnecessary costs, and that expiration of the governing regulations would interfere with those program goals. Another example included regulations that protect Medicare beneficiaries from misleading and high-pressure marketing tactics; expiration of those regulations could end compliance and enforcement actions against these bad actors. If the governing regulations were to expire, HHS programs and other programs reliant on HHS regulations might be free to operate without standards, consistency, or accountability, which could lead to real harm to, for example, the millions of children who rely on those programs. Similarly, advocates for HIV services commented that the SUNSET rule's potential to cause confusion over the validity and enforceability of Medicaid regulations

[11] 76 FR 3821 (January 21, 2011).

could lead to service and coverage delays, which, for people with HIV, can be detrimental, causing irreversible disease progression and prescription drug resistance. Commenters expressed concern regarding the expiration of other programs that support particular populations, which expiration could be devastating for the populations they serve.[12]

Numerous tribes and tribal organizations commented that the Indian health system relies on a number of regulations that tribes have worked for decades on with the Department to promulgate on a government-to-government basis. These include the regulations governing the IHS, Tribal Self-Governance, and Indian specific provisions in the Medicaid, Medicare, CHIP, and ACA Health Insurance Marketplace regulations. Commenters asserted that the SUNSET final rule would threaten the regulatory underpinnings of the Indian health system and completely disrupt the ability of that system's mission to provide care to tribal communities.

Other commenters asserted that HHS regulations are essential to maintaining consumer confidence in the Nation's supply of consumer products, as well as a level playing field among industries. Some commenters noted that there are many rules setting industry standards that have remained untouched for years—not through neglect—but because they work as intended. For example, as described in several comments, the food industry relies on FDA regulations to provide clarity on statutory requirements, to maintain relationships of trust between all members of the supply chain, to protect public health by providing safe and nutritious food, and to support both domestic consumer and worldwide confidence in the safety of the U.S. food products. Under the FDA Food Safety Modernization Act (FSMA), FDA over the last decade has promulgated, with considerable stakeholder input, an extensive set of detailed regulations governing prevention of foodborne illness throughout the production and delivery in the global food supply. Industry members have devoted significant resources to develop food safety plans consistent with the new regulations and in many instances have made significant capital investments in equipment, personnel, and facilities. Expiration of the FSMA regulations (while FSMA's statutory obligations remain in effect) could create confusion and uncertainty with regard to what standards apply, particularly because the statute required rulemaking for implementation and interpretation of the food protection provisions. It also could create inefficiencies given the time and resources that have been invested by the industry in recent years to ensure the highest levels of compliance.

In addition to food safety regulations, commenters identified other longstanding food regulations—involving nutrition and food labeling and food ingredients—that set essential standards for the food industry. A food manufacturing association asserted that, if food regulations are rescinded, consumers may become distrustful of the U.S. food supply and, as a result, individual States might feel the need to pass their own laws and regulations, meaning manufacturers would have to comply with a patchwork of potentially conflicting new rules. Compliance with a patchwork of State rules nationally can be costly to industry, and those costs may be passed to consumers or may put food companies out of business, reducing competition and consumer options. Additionally, another commenter asserted that any loss in confidence in the safety of U.S. pet food could result in lost sales and new requirements by foreign regulators seeking assurances that the pet foods they import from the U.S. are safe.

Many other effective regulations, some of which are decades old, bring similar efficiencies to the industry by clarifying applicable statutory obligations. As a commenter explained, heavily regulated manufacturers benefit from regulatory certainty that provides clarity for manufacturers and fosters consumer confidence that the products are properly regulated. By contrast, if the regulations expire, disreputable companies will be tempted to cut corners to gain economic advantage over responsible companies, with the risk that consumers will be harmed and will lose confidence in the products. For example, as another commenter explained, color additive regulations, many of which are decades old, are fundamental to the industry's operation in the U.S., and provide confidence that color additives are safe in food, drugs, cosmetics, and medical devices. The expiration of those regulations could lead to significant confusion.

Commenters also explained that FDA issues many regulations relating to food, drugs, devices, cosmetics, and tobacco products that are essential to protecting the public health. To list just a few additional examples, these regulations provide: Safety standards for the blood supply, access to investigational treatments, protection of clinical trial participants, protection from harmful tobacco products, and good manufacturing practices that are the linchpin of many product supply chains. The expiration of these regulations could mean that regulated entities would be unsure how to comply with long-standing statutory requirements and may no longer be compelled to comply with long-standing safety standards.

Commenters also raised concerns that the SUNSET final rule could impede responses to public health emergencies. For example, the regulations established in 2006 to implement the Pandemic and All Hazards Preparedness Act took years to develop and have been essential to addressing the COVID–19 pandemic. The expiration of those rules could leave the Department unprepared to respond to future emergencies and result in unnecessary human suffering and loss of life.

HHS now believes that commenters have raised credible concerns that the SUNSET final rule would likely result in actual expiration of regulations and that these expirations would adversely impact them. Although these comments were raised regarding the SUNSET proposed rule, the SUNSET final rule discounted their seriousness, and did not give them sufficient consideration and weight. *See* 86 FR 5709. As discussed in greater detail elsewhere in this preamble, we now believe that the rejection of these comments was in error because, given the resources demands that would be required by the SUNSET final rule, the likelihood that regulations would automatically expire is high. Moreover, the potential automatic expiration of regulations would be contrary to the Department's role as the

[12] Specific HHS programs identified to be at risk included: The Health Care Program; Low Income Energy Assistance Program; Temporary Assistance to Needy Families; Early and Periodic Screening, Diagnostic and Treatment; Indian Child Welfare Act; Child Care and Development Fund; the Administration for Community Living; Child Care and Development Grant; Head Start; Early Head Start; Maternal Infant and Early Childhood Home Visiting Program; National School Lunch Program; School Breakfast Program; Supplemental Nutrition Program for Women, Infants, and Children; Child and Adult Care Food Program; Summer Food Service Program; Community Mental Health Services Block Grant; Supplemental Nutrition Assistance Program; the Refugee Resettlement Program; and Medicaid Waiver programs including: The Children's Autism Home and Community-Based Services Waiver Program; Adult Residential Waiver; Community Living Waiver; Adult Supports Waiver; Home and Community-Based Services Waiver for Persons with Traumatic Brain Injury; and the Frail Elder Home and Community-Based Services Waiver. More generally, commenters identified regulations protecting particular populations including those concerning Medicaid conditions of participation for nursing homes, substance use and addiction treatment and prevention programs, mental health services, access to childcare, foster care, adoption, and family violence services.

U.S. Government's principal agency for protecting the health of all Americans and providing essential human services, especially for those who are least able to help themselves.

C. RFA Considerations

1. Rule Requirements Beyond RFA Requirements

The SUNSET final rule imposes requirements beyond the requirements of the RFA. These additional requirements may not be consistent with Congressional intent. The SUNSET final rule asserts that it ''implements Congressional intent for periodic review of regulations'' and ''closely tracks the RFA's goal of minimizing undue burden on small entities'' 86 FR 5713–5714. Additionally, it asserts that, ''assuming full compliance with the RFA, th[e] rule does not impose any additional burden on the Department beyond what was already called for in the RFA'' because the RFA ''already calls for the Department to assess which of its regulations have a significant economic impact upon a substantial number of small entities, and to review those regulations every ten years.'' *Id.* at 5705. Many commenters disagreed with these assertions, and explained that the final rule would impose requirements beyond those set forth in the RFA. HHS remains committed to full compliance with the RFA, but, upon further consideration, HHS believes that the RFA does not require this final rule and finds the commenters' perspectives for repealing the rule worthy of further consideration.

First, commenters assert that the final rule exceeds the RFA's express requirements by mandating that the Department conduct assessments of thousands of HHS regulations within certain timeframes. Section 610 of the RFA is focused on the retrospective review of rules identified with a Significant Economic Impact Upon a Substantial Number of Small Entities (SEISNOSE). Section 610 contemplates periodic review of a subset of ''rules issued by the agency which have or will have a [SEISNOSE]'' and imposes certain public notice and comment procedures for such reviews.[13] Nothing in the express language of the statute requires the Department to conduct assessments of all HHS regulations in order to determine which regulations at time of reassessment have or will have a SEISNOSE. As one commenter noted, Congress ''does not[ ] . . . hide elephants in mouse holes.'' *See Whitman* v. *Am. Trucking Ass'ns,* 531 U.S. 457, 468 (2001). This principle suggests that it is unlikely that Congress intended to require widespread assessments of thousands of regulations via a requirement that the SUNSET final rule asserted was ''implicit'' in section 610. *See* 86 FR 5714. As explained below, commenters and the Small Business Administration (SBA) have identified numerous more targeted, efficient, and effective alternatives for identifying regulations that have or will have a SEISNOSE.[14]

Second, principles of statutory construction do not support a broader reading of section 610 to require agencies to simultaneously consider all regulations and to do so on a recurring basis to determine whether they have or will have a SEISNOSE. Had Congress intended to mandate this broader reading, it would have done so when it enacted the RFA or during any one of the numerous times it has amended the RFA since enactment.[15] This principle holds particularly true for section 610(a) of the RFA, given that the provision explicitly directed a one-time simultaneous review of all SEISNOSE regulations that existed on the date of enactment. *See, e.g., Salinas* v. *U.S. R.R. Retirement Bd.,* 141 S. Ct. 691, 698 (2021) (quoting *Russello* v. *United States,* 464 U.S. 16, 23 (1983) (''Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.'').

Third, the SUNSET final rule's requirements for public notice and comment procedures—such as notifying the public on a Department-managed website when it commences the process of performing an assessment, publishing a notice in the **Federal Register** within a month of commencement, and issuing a notice in the **Federal Register** to publish the results of all assessments—appear to extend beyond the RFA's notice and comment and other requirements for retrospective reviews. HHS agrees with commenters that section 610 requires notice and comment procedures for retrospective review, but it does not require notice and comment procedures to determine which regulations have or will have a SEISNOSE.[16] Similarly, the RFA provides no basis for an expedited timeline as specified in the SUNSET final rule for the completion of reviews, which was noted by commenters. Section 610(a) of the RFA provides only that the reviews required under that section be conducted ''within ten years'' of specific dates.

Fourth, the automatic expiration of any rule issued by the Department simply because it was not timely assessed or, as applicable, reviewed, appears to be contrary to Congressional intent. Section 610 neither provides for automatic expiration of rules with a SEISNOSE nor presumptively applies automatic expiration dates to regulations. Rather, section 610 contemplates informed rescission or revision of rules only if they have or will have a SEISNOSE and if the Department has determined, based on a multi-factor review, that such rules should be rescinded or revised to minimize any SEISNOSE. Additionally, we note that section 611(a) provides a remedy for agency noncompliance with the requirements of section 610: Judicial review of such noncompliance and relief deemed appropriate by the reviewing court.

Fifth, the framework for regulations to automatically expire without any consideration of the statutory objectives the rule implements appears to be inconsistent with the RFA's intent to

[13] *See* 5 U.S.C. 610(c) (requiring agencies to ''publish in the **Federal Register** a list of the rules which have a [SEISNOSE], which are to be reviewed pursuant to this section during the succeeding twelve months'' and ''invite public comment upon the rule'').

[14] We also note that the RFA expressly includes a goal of avoidance of duplicative or unnecessary analyses. *See* 5 U.S.C. 605.

[15] *See* Office of Advocacy, U.S. Small Bus. Admin., A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act 2–3 (Aug. 2017) (available at *https://advocacy.sba.gov/2017/08/31/a-guide-for-government-agencies-how-to-comply-with-the-regulatory-flexibility-act/*) (summarizing amendments enacted in 1996, 2007, and 2010).

[16] *See* 5 U.S.C. 610 (specifying factors agencies must consider in conducting reviews of rules that have or will have a SEISNOSE and requiring agencies to publish in the **Federal Register** plans for periodic reviews and a list of rules to be reviewed during the succeeding twelve months as well as invite public comment on rules to be reviewed); *see also, e.g., id.* 603(a) (requiring an initial regulatory flexibility analysis for proposed rules for which a notice of proposed rulemaking is required or published as well as public notice and comment and publication of the analysis); *id.* 604(a)(2), (b) (requiring a final regulatory flexibility analysis for final rules for which a notice of proposed rulemaking was required or published and requiring the analysis to include the agency's consideration of public comments received and to be published in full or summary form in the **Federal Register**); *id.* 605(b) (permitting an agency head to exempt a rule from the requirements of sections 603 and 604 by certifying that a rule will not have a SEISNOSE and requiring the agency to publish the certification in the **Federal Register** ''along with a statement providing the factual basis for such certification''); *id.* 608 (requiring findings supporting a waiver or delay of completion of the requirements of sections 603 and 604 to be published in the **Federal Register**); *id.* 609(a) (with respect to rules that will have a SEISNOSE, requiring agency heads to ''assure that small entities have been given an opportunity to participate in the rulemaking for the rule through the reasonable use of techniques such as'' publication in certain sources and direct notification of interested small entities).

balance the objectives of the RFA with the objectives of statutes critical to public health. The RFA's legislative history explicitly states that Congress did not intend for the RFA's requirements to ''undermine . . . important [regulatory] achievements,'' specifically those in the area of public health. 126 Cong. Rec. 21,448, 21,451 (August 6, 1980). The legislative history further states that Congress intended ''agencies to continue to enforce [substantive] laws in a fully effective fashion,'' *id.* at 21,451, and that ''environmental, health or safety catastrophes must never be made more likely because of flexible regulations.'' *Id.* at 21,455. Indeed, Congress expressed this intent in section 610 itself by providing that rescission of regulations should only occur if ''consistent with the stated objectives of applicable statutes.'' 5 U.S.C. 610(a).[17]

As described above, commenters argued that the monumental task of assessments would require diverting agency expertise and resources away from the Department's significant public health activities and would likely impair the Department's ability to respond to public health emergencies and administer critical public health programs. Commenters further argued that such results would undermine important public health statutory objectives and increase the likelihood of negative consequences for the public health. The RFA's legislative history explicitly addresses such concerns that the RFA ''might require agencies to significantly compromise the objectives of underlying statutes authorizing rulemaking,'' 126 Cong. Rec. 21,455, and, as noted above, emphasized that ''[i]t is not the intent of regulatory flexibility legislation to undermine . . . important [regulatory] achievements,'' *id.* at 21,451. Commenters also stated that the burden imposed on the Department by the final rule would impair the Department's ability to prevent the automatic expiration of regulations that would be imposed by the final rule, and, as discussed above, the actual expiration of regulations without any analysis would also undermine the objectives of those regulations' authorizing statutes contrary to Congressional intent.

HHS notes that the economic and workforce burdens impairing the Department's ability to achieve important statutory objectives related to its mission would also be inconsistent with the RFA's intent to enhance administrative efficiency in the achievement of such objectives. The RFA's legislative history emphasizes that ''regulatory flexibility should be considered a means of improving administrative effectiveness in enforcing the regulatory statutes which the Congress has enacted rather than an additional bureaucratic burden.'' 126 Cong. Rec. 21,456. One commenter noted that requiring the Department to conduct analyses of thousands of rules within a compressed time period, in addition to the already complex existing tasks of the Department, is not efficient. Although the final rule asserts that it ''will contribute to 'the efficient administration of' the Department's functions . . . because the Reviews called for by this final rule will take into account both the continued need for particular regulations, as well as whether the burden of those regulations on small entities can be minimized,'' 86 FR at 5719, HHS now believes that the final rule could introduce greater inefficiencies if rules expire without any assessment or review of the need for the regulation or the impact of the regulation on small entities.

In summary, this rule is not mandated by the RFA and may not be consistent with Congressional intent. As a matter of policy, we are therefore reconsidering the benefits of an additional rule that exceeds the requirements of the RFA.

2. Potential Harm to Small Entities Inconsistent With the RFA

Commenters argued that the final rule will impose undue and disproportionate burdens on small entities that undermine the RFA's purpose of alleviating the regulatory burden on such entities. The RFA seeks to address the ''unnecessary and disproportionately burdensome demands . . . [of uniform regulatory requirements] upon small [entities] . . . with limited resources.'' 126 Cong. Rec. 21,449. After reconsidering the burden of the SUNSET final rule, the legislative history for the RFA, and the comments, it is now our view that implementation of the SUNSET final rule could harm small entities, contrary to Congressional intent in enacting the RFA. Below, we summarize the comments that discuss these issues in detail.

Commenters expressed concerns that the sudden expiration of regulations and the threat of sudden expiration of regulations would disproportionately burden small entities by creating regulatory uncertainty and a confusing regulatory landscape that would be difficult for these entities to navigate. Commenters also noted that the sudden expiration of rules could result in reputational harm with customers whose confidence relies on compliance with regulatory standards, and other outcomes that would be particularly damaging to small entities. For example, as discussed above, the expiration of certain regulations could create instances where regulations expire but statutory requirements continue to be applicable, leaving it unclear to small businesses how the Department intends to implement the statutory requirements. As another example, if, as suggested in the preamble to the final rule (86 FR 5712), guidance documents based on expired regulations would cease to have effect, the expiration of regulations could leave stakeholders without needed information in relevant guidance, including Small Entity Compliance Guides (SECG).

Although several commenters representing small business industry associations expressed support for the final rule based on the assumption that the assessments and reviews would lead to deregulatory actions that could benefit small businesses, the vast majority of commenters disagreed with that assumption and opposed the rule. These commenters expressed the concern that small entities who rely on regulations to level the playing field would suddenly lose the clarity provided by such regulations and associated guidance for industry, which would create confusion, costs, and vulnerability for small entities. Commenters noted that most small businesses would generally lack resources to monitor, understand, anticipate, and adapt to changes in the regulatory landscape caused by the automatic expiration framework. Congress's findings in the RFA's legislative history substantiate this concern, as Congress explicitly found that small entities often have limited access to regulatory expertise and capital as compared to larger businesses. *See* 126 Cong. Rec. 21,453.

Moreover, commenters also expressed concerns that the final rule's requirements and timelines would undermine small entities' ability to participate in assessments and reviews, which HHS notes is inconsistent with the RFA's intent to ''give small businesses a greater opportunity to participate in shaping rules which would affect them.'' 126 Cong. Rec. 21,451. Commenters explained that the frenetic pace and scope of simultaneous assessment of rules would impair small entities' ability to effectively engage in the final rule's assessment and review process and for HHS to identify and

[17] The automatic expiration of rules without notice and comment appears to also be inconsistent with Congressional intent that the RFA's requirements ''not alter procedural requirements contained in other statutes applicable to the agency'' (126 Cong. Rec. 21,456).

meaningfully address data and information related to impacts on these entities.

Although the final rule suggests that regulatory uncertainty created by the final rule would be offset by increases in trust in the Department's RFA compliance, and greater transparency about when regulations were adopted, HHS has reason to doubt that assertion. First, this assertion may not have taken into account the high burden on the public, including small businesses, to calculate and track the expiration of regulations, or to participate in the assessment and review processes. Second, HHS no longer finds it appropriate to rely on conclusions regarding ''sunset reviews'' in other jurisdictions, including foreign governments and U.S. State legislatures, given the final rule's acknowledgement that ''[t]hese jurisdictions' sunset provisions do not all work identically to this final rule.'' 86 FR 5747. Commenters pointed out that the experience of foreign governments with sunset provisions would not be applicable to HHS, because these governments are not bound by the requirements of the APA. Other entities also may not have the same resource constraints as HHS, for example, with respect to earmarked funds. Finally, as explained at length throughout this preamble, HHS is no longer confident that, by giving industry five years until any regulations expire, the SUNSET final rule would mitigate the negative effects of expiration. We welcome comments regarding the experience of state and foreign governments with these laws.

Overall, the Department's current assessment that implementation of the SUNSET final rule has the potential to harm small entities, contrary to Congressional intent in enacting the RFA, suggests that there are no clear beneficiaries of this rule. These conclusions call into question the fundamental basis and justification for the SUNSET rule.

3. The Final Rule Is Unnecessary

Consistent with our assessment, discussed above, that the SUNSET final rule's impact exceeds the requirements of the RFA and could impose additional burdens on small entities, HHS now seriously questions the conclusion in the SUNSET final rule that simultaneous Department-wide assessments of thousands of regulations is an efficient way to achieve the RFA's objectives. Instead, HHS now believes more targeted alternatives suggested by commenters merit further consideration.

As commenters noted, there are more efficient and effective ways to identify rules that have or will have a SEISNOSE and require review. For example, the Department may request information or use other processes to seek input from small entities and the public to identify such rules in a more targeted way, and the public may use already-existing petition processes to ask HHS to issue, amend, or repeal a rule. Conducting the assessments required by the rule could amount to searching for a needle in a haystack, and would not provide an effective means for stakeholders to provide input or for HHS to consider and evaluate such input and other relevant information. As commenters who expressed support for retrospective review also noted, the quality of reviews is more important than quantity, and the final rule's framework would strain the Department without improving the quality of reviews.

Alternatives that employ a more targeted approach to identifying rules for review under section 610 of the RFA, which are less burdensome on the Department and stakeholders and incorporate meaningful participation by stakeholders, are consistent with guidance issued by the SBA's Office of Advocacy. That guidance explicitly recognizes that ''[b]ecause of the breadth and volume of federal regulations, a review of all existing rules on a particular industry group can be an onerous task for a federal agency.'' [18] Additionally, the guidance states that ''[i]nsights about an existing regulation received from regulated entities and other interested parties should be a key component of a retrospective rule review,'' and that ''[b]y making the review process transparent and accessible, agencies are more likely to identify improvements that will benefit all parties at the conclusion of the review.'' [19]

A commenter noted that such alternatives are also consistent with the recommendations for best practices for retrospective review published by the Administrative Conference of the United States (ACUS), which is cited in the final rule,[20] whereas the automatic expiration framework is not. HHS now agrees that the targeted alternatives proposed by commenters are generally consistent with ACUS's recommendations, including the recommendation to prioritize retrospective reviews ''[i]n light of resource constraints and competing priorities.'' [21] Although the final rule asserts that certain of its provisions are consistent with ACUS recommendations, *see, e.g.,* 86 FR 5726, the commenter further asserted that the automatic expiration framework is inconsistent with those recommendations, which do not endorse or reference sunset periods [22] and do recommend that retrospective review processes require consideration of and be tailored to the specific rule being reviewed.[23] ACUS issued new recommendations for periodic retrospective review in June 2021.[24] In the preamble to the recommendations, ACUS discusses the tradeoffs of periodic retrospective review, including the costs and time associated with collecting and analyzing data and the uncertainty created by the review process, and advises agencies to ''tailor their periodic retrospective review plans carefully to account for these drawbacks.'' [25] The consultant research report to ACUS on this topic specifically addresses the SUNSET final rule and notes:

> While recognizing the objective to promote retrospective reviews that may be needed, a strict sunset date is an especially strong, perhaps overly strong, incentive for periodic review. It raises questions under US administrative law regarding whether and how an agency can set an expiration date for thousands of its rules through a single new rule, without going through notice and comment rulemaking to rescind each rule or cluster of rules separately. Sunsetting rules may pose high social instability costs, as discussed above, if numerous rules on which stakeholders rely suddenly expire, potentially outweighing the benefits of the agency undertaking periodic reviews of some of these rules. Moreover, there does not seem to be a strong analytic basis presented for the

[18] Office of Advocacy, U.S. Small Business Administration A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act. (Aug. 2017), p. 40.

[19] *Id.* at 83.

[20] *See* Admin. Conf. of the U.S., Recommendation 2014–5, Retrospective Review of Agency Rules (2014) (available at *https://www.acus.gov/sites/default/files/documents/Recommendation%25202014-5%2520%2528Retrospective%2520Review%2529_1.pdf*).

[21] *Id.*

[22] *See generally id.* The commenter noted that the concept of sunset periods is mentioned only in passing in a report prepared in connection with the recommendations. *See* Joseph E. Aldy, Learning from Experience: An Assessment of the Retrospective Reviews of Agency Rules and the Evidence for Improving the Design and Implementation of Regulatory Policy 62, 65 (2014), (available at *https://www.acus.gov/sites/default/files/documents/Aldy%2520Retro%2520Review%2520Draft%252011-17-2014.pdf*).

[23] *See* ACUS Recommendations, *supra n. 18,* at 7.

[24] *See* Admin. Conf of the U.S., Recommendation 2021–2, Periodic Retrospective Review (2021), available at *https://www.acus.gov/sites/default/files/documents/Redline%20-%20Periodic%20Retrospective%20Review%20-%20Final.pdf.*

[25] *Id.* at 3.

periodicity (5 or 10 years) required in the HHS sunset review rule.[26]

HHS agrees that the more targeted alternatives suggested by commenters are likely to achieve the goals of retrospective review more efficiently. We are now reconsidering the SUNSET final rule's apparent position that a burdensome and widespread assessment is necessary to identify regulations that have or will have a SEISNOSE. For example, the final rule primarily emphasizes what it perceives as the general benefits of ''widespread review'' with little explanation of the specific benefits of widespread assessment. *See, e.g.,* 86 FR 5698 (concluding that ''it would not be unreasonable to think that the Department could make major improvements by conducting *widespread review* of its regulations, rather than merely reviewing the small number of regulations that interested parties ask the Department to consider revising'').[27] Additionally, the final rule concludes that ''stakeholder input cannot be the only source of information to spur reviews'' because such input would not reflect the ''dispersed costs'' that ''consumers, small businesses, and the public'' experience, given that those groups ''often find it costly to organize and lobby on behalf of their own interests'' and ''[c]oncentrated interests'' that ''find it relatively easier'' to do so would not take such costs into account. *Id.* at 5740. However, HHS now doubts this conclusion because, as explained above, HHS received numerous comments to the SUNSET proposed rule from a diverse array of consumers, small businesses, and the public asserting the undue burdens and costs that rule would impose.

As stated earlier, while the Department can explore ways to improve its processes, HHS does have a meaningful track record of retrospective regulatory review. As required by section 610 of the RFA, the Department conducts periodic reviews of regulations with impacts on small entities and provides notification of these reviews in the annual Unified Agenda of Regulatory and Deregulatory Actions. Among HHS's other recent retrospective review efforts are the Department's 2011 Plan for Retrospective Review of Existing Rules, an initiative developed in accordance with E.O. 13563 and E.O. 13610, Identifying and Reducing Regulatory Burdens. The Department used this plan from Fiscal Year 2012 through Fiscal Year 2016 as a framework for its retrospective review of existing significant regulations to identify those rules that can be potentially eliminated as obsolete, unnecessary, burdensome, or counterproductive or that can be modified to be more effective, efficient, flexible, and streamlined. A number of commenters also specifically referenced a 2015 CMS initiative to modernize Medicaid Managed Care regulations for Medicaid and CHIP beneficiaries. We also note that the CMS Office of Burden Reduction and Health Informatics works, among other things, to eliminate overly burdensome and unnecessary regulations. More recently, in response to E.O. 13771, Enforcing the Regulatory Reform Agenda, HHS established a Regulatory Reform Task Force that oversaw an effort to evaluate existing regulations and make recommendations to the Secretary regarding their repeal, replacement, or modification, consistent with applicable law. HHS published summary reports of these reviews for Fiscal Years 2018–2020 on the HHS website (available at *https://www.hhs.gov/about/budget/fy2021/performance/regulatory-reform/index.html*). These efforts demonstrate the Department's ongoing commitment to retrospective review, which could be upended rather than strengthened by the SUNSET final rule.

The SUNSET final rule asserts that the threat of regulations expiring is necessary because ''it is nearly impossible to see how a satisfying comprehensive review could occur without a sunset provision,'' 86 FR 5702, and concludes that the Department ''needs to impose a strong incentive on itself to perform retrospective review.'' *Id.* at 5697. HHS now believes that there are numerous regulatory efforts that take place within agencies that routinely involve the review of regulations. Agencies are often requested to provide technical assistance to Congress on proposed legislation which quite often requires, among other considerations, an assessment of the proposal's impact on current regulations. FDA also reviews regulations in the course of responding to certain citizen petitions submitted under 21 CFR 10.30, requesting changes in FDA regulations.

It is also common for new HHS regulations to amend, revise or modify sections of regulations in order to update, replace, or rescind requirements, or to add new definitions or clarifications, which inherently entail review of these sections. For example, the regulations FDA issued to implement FSMA[28] included both the addition of new sections of regulation and revisions and modifications to existing sections. Additionally, regulation provisions are reviewed to determine if guidance documents are needed to provide recommendations for complying with the regulation. This is particularly important when the regulation is necessarily general or broad to accommodate scientific and other innovation changes, and guidance is helpful to consider applicability of the regulatory provisions.

Upon reconsideration, as a matter of policy, HHS now seriously questions whether automatic expiration is an effective or necessary means to incentivize regulatory review. Commenters expressed concern that the automatic expiration of regulations would in fact create a strong incentive, under certain circumstances, to not conduct reviews and thus, allow the Department to effectively rescind such regulations without any justification, explanation, or the notice and comment procedures generally required for rescinding a rule. The Department is concerned that the SUNSET final rule could degrade confidence in our regulatory stewardship.

Among the evidence cited to explain the need for the SUNSET final rule was an artificial intelligence review of all HHS regulations that identified that 85% of regulations before 1990 had not been edited. 86 FR 5699.[29] However, the final rule incorrectly inferred that just because no edit has been made to a regulation, it has never been reviewed. There are numerous regulatory efforts that take place within agencies that involve the review of regulations without resulting in a change to the regulation. As noted above, some commenters explained that many rules setting industry standards have remained untouched for years—not

[26] Lori S. Bennear and Jonathan B. Wiener, Periodic Review of Agency Regulation (June 7, 2021) at 37–38 (report to the Admin. Conf. of the U.S.), available at *https://www.acus.gov/report/periodic-retrospective-review-report-final* (footnotes omitted).

[27] Commenters noted that any benefits derived from assessing thousands of regulations to determine their potential impact on small entities cannot reasonably be deemed to outweigh the benefit of more targeted alternatives that preserve HHS' ability to accomplish activities that protect and promote the public health.

[28] *See* FSMA Rules & Guidance for Industry (available at *https://www.fda.gov/food/food-safety-modernization-act-fsma/fsma-rules-guidance-industry#Rules* (accessed May 11, 2021)).

[29] The final rule stated that the findings of this artificial intelligence review indicated that ''humans performing a comprehensive review of Department regulations would find large numbers of requirements that would benefit from review, and possibly amendment or rescission.'' 86 FR 5701–02. However, commenters expressed concern that the methodology of this search was never made public, and the final rule acknowledged that the ''Department did not previously notify the public about this research project'' as well as certain limitations on the capabilities of this tool. 86 FR 5710.

through neglect, but because they work as intended. There have also been instances where an agency has included certain regulations on past Unified Agendas (UA) and yet never completed these proposals and thus these were eventually withdrawn from the UA. But this ultimate result does not mean that review did not occur. Often review of an existing regulation may result in an agency developing a draft of a new or amended regulation that, upon further deliberation or because of intervening events, the agency decides not to finalize.

The SUNSET final rule also credited this artificial intelligence review with the identification of broken links in regulations and regulations that require multiple paper copies and provided these as examples that show the need to ''more firmly institutionalize retrospective review.'' 86 FR 5699. HHS notes that the broken links and other typographical errors identified through this process were successfully addressed as part of the HHS ''Regulatory Clean-Up Initiative,'' a final rule published on November 16, 2020 (85 FR 72899) that made miscellaneous corrections, including correcting references to other regulations, misspellings and other typographical errors in regulations issued by FDA, CMS, the Office of the Inspector General, and the ACF. In addition, FDA issued a final rule to amend regulations on medical device premarket submissions to remove requirements for paper and multiple copies and replace them with requirements for a single submission in electronic format.[30] However, neither the assessment-and-review process required by the SUNSET rule, nor the threat of expiring regulations, were necessary to incentivize these actions. Rather, HHS now believes the Department's ability to efficiently undertake such regulatory housekeeping in the future could be undermined if staff were overwhelmed by the implementation of the SUNSET final rule.

D. APA Considerations

Commenters questioned the legality of the SUNSET final rule under the APA, which may be an additional ground for reconsideration and repeal. Under the APA, agency action is unlawful and can be set aside by a court when it is ''arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law'' or ''without observance of procedure required by law.'' 5 U.S.C. 706(2)(A), (D). Commenter asserted that the SUNSET final rule may be vulnerable under these standards in light of its stated justification for the rule and the process it followed in promulgating the rule.

1. Consideration of the Relevant Factors

The APA requires an agency, in issuing a final rule, to ''examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.' '' *Motor Vehicle Mfrs. Ass'n* v. *State Farm,* 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines, Inc.* v. *United States,* 371 U.S. 156, 168 (1962)). That explanation must show that ''the decision was based on a consideration of the relevant factors.'' *Id.*

After a regulation is promulgated, the same process applies for amending or rescinding that regulation. 5 U.S.C. 551(5) (''rule making'' encompasses the formulation, amendment, or repeal of a rule); *Perez* v. *Mortg. Bankers Ass'n,* 575 U.S. 92, 101 (2015) (''agencies use the same procedures when they amend or repeal a rule as they used to issue the rule in the first instance''). Thus, an agency must ''present an adequate basis and explanation'' for the amendment or repeal; if the agency has ''entirely failed to consider an important aspect of the problem,'' the rule is ''normally . . . arbitrary and capricious.'' *State Farm,* 463 U.S. at 41, 43. In particular, when an agency changes course, including by amending a regulation, ''a reasoned explanation is needed for disregarding facts and circumstances that underlay or were engendered by the prior policy.'' *FCC* v. *Fox TV Stations, Inc.,* 556 U.S. 502, 515–16 (2009).

As discussed above, the SUNSET final rule establishes a retrospective review scheme and amends most of HHS's regulations ''to apply expiration dates unless certain conditions are satisfied''—*i.e.,* the completion of retrospective review. 86 FR 5716. To support this approach, the Department provided the rationale that ''the benefits of retrospective review, and the need to strongly incentivize it, are so great that the risk of a regulation inadvertently expiring is justified by the benefit of institutionalizing retrospective review in this manner.'' 86 FR 5723.

Several commenters questioned the validity of HHS's approach. Commenters asserted that HHS cannot amend or revoke a legislative rule in a rulemaking that does not address the particulars of that legislative rule because it did not contain any particularized consideration of the regulations subject to expiration, such as the facts, circumstances, and policies originally motivating the promulgation of these regulations. In the preamble to the SUNSET final rule, the Department acknowledged the submission of a large number of comments stating that the rule would violate the APA on this ground. 86 FR 5715. The Department rejected these arguments and asserted that the rulemaking was permissible by comparing the global amendment to an amendment to a specific rule to add an expiration date, or to amending a definition of a term that is more widely applicable to a set of regulations. *See* 86 FR 5703–04. We now question the relevance of that comparison: Because of the differences in scope, scale, and effect, it is far more likely that HHS could consider the relevant factors and produce the record needed to support the rulemaking for these more targeted amendments, in contrast to the global amendment proposed in the SUNSET final rule. The Department also addressed these comments by asserting that it had ''considered the relevant factors'' and ''considered each individual Department regulation'' in connection with deciding whether to exempt the regulation from the scope of the SUNSET final rule. 86 FR 5703, 5718. However, these statements were conclusory; the final rule did not contain particularized consideration of the rules that were amended. Because of this absence, the Department arguably did not adequately consider the factors relevant to the amendments as required under the APA.

These questions are particularly pronounced in the circumstance that the SUNSET final rule leads to the automatic repeal of a regulation. As reflected elsewhere in this preamble, the Department believes that at least some amended regulations are likely to expire. In the event of such expiration, the Department would be changing course on a policy embodied in a regulation. As noted above, such a change needs to be supported by a reasoned explanation.

In addition, the Department is concerned that the exemptions in the SUNSET final rule may not have been adequately justified. The Department exempted certain FDA regulations, for example, on the basis that they create product identities and are being reviewed under other processes. 86 FR 5731. It is not clear that the stated reasoning supports the exemption decisions or their scope. For example, it is not clear why other FDA regulations that are similar, such as those codifying the standards for human blood and blood products, were excluded.

[30] ''Medical Device Submissions: Amending Premarket Regulations That Require Multiple Copies and Specify that Paper Copies To Be Required in Electronic Format.'' Final Rule. 84 FR 68334. Dec. 16, 2019.

2. Length of the Comment Period

When HHS promulgated the SUNSET final rule, as discussed above, it provided a 30-day comment period for most comments. Many commenters asserted that the amount of time was inadequate under the APA, in light of the scale and complexity of the SUNSET proposed rule and in the absence of any public health or welfare emergency basis for the expedited timeline. The SUNSET final rule acknowledged the many comments received objecting to the length of the comment period, but concluded that the comment period was sufficient based primarily on the numerous comments received from a diverse array of stakeholders. 86 FR 5705–06.

The APA does not specify a duration for comment periods in the context of notice-and-comment rulemaking, but agencies must provide ''adequate time for comments.'' *Fla. Power & Light Co.* v. *United States,* 846 F.2d 765, 771 (D.C. Cir. 1988). The timing considerations will vary depending on the nature of the proposal and its impact on the public. Generally, the comment period for issuing new Department regulations is at least sixty days and can be longer depending on the issue and complexity. The SUNSET final rule was determined by OIRA to be an economically significant regulatory action. 86 FR 5737. Furthermore, the SUNSET final rule was vast in scope and impact, affecting thousands of regulations. In light of that, the Department believes commenters raised credible concerns that they could not adequately consider the rule in the time that was allotted for comments for the SUNSET proposed rule, and, as a result, the procedure may be vulnerable under the APA.[31]

E. Vague and Confusing Provisions

The SUNSET final rule states that ''it is crucial to the proper function of this final rule that the Department and public clearly understand the scope and timing of the Assessment and Review process.'' 86 FR 5721. However, upon reconsideration, the Department has found many ambiguities that could impede the ability of the Department and the public to determine the scope and timing of the assessment and review process. This confusion may increase the burden on stakeholders trying to navigate the assessment and review process. Process ambiguities also increase the risk of the automatic expiration of HHS regulations due to inadvertent noncompliance or misapplication of the requirements.

The final rule was revised to use the term ''Section'' rather than ''Regulation'' to refer to a section of the CFR. The preamble explained that this revision would enhance process clarity because ''it is clear when a section of the CFR was first promulgated.'' *Id.* However, in making this revision, the Department failed to consider that the rule also requires that assessments and reviews be performed on *all sections of the CFR* that HHS issued as part of the same rulemaking (and any amendments or additions that may have been issued thereafter). As a result, for any rulemakings that include revisions or cross-references to previously promulgated sections of regulations alongside newly promulgated sections of regulations, the scope and timing of the assessment process prescribed in the SUNSET final rule could be ambiguous.

For example, the FDA rulemaking ''Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Human Food'' (Preventive Controls for Human Food) was published on September 17, 2015 (80 FR 55907), and therefore would be expected by stakeholders to be less than ten years old. However, in addition to new sections first promulgated in 2015, the rule also included revisions to sections of the CFR that were first promulgated in 1975, 1979, 1986, 1995, 1997, 2001, 2004, and 2008. Under the final rule, it is not clear how the Department would determine when to assess CFR parts and sections that are comprised of pieces initially promulgated at various times.

Commenters also expressed concern about ambiguity in the categorical exceptions described in the proposed rule and included in the final rule.[32] Numerous commenters noted the lack of examples provided, and stated the lack of clarity for the categorical exceptions would leave the public unable to know which regulations would be eligible for the exceptions. Accordingly, some commenters stated that stakeholders would face a burden to conduct their own legal analysis.

Upon reexamination, the final rule may have failed to provide additional meaningful examples of these exceptions and only offered unspecific direction that categorical exceptions would be ''rare'' or only applicable to ''a very small category.'' *See* 86 FR 5731. The Department now recognizes the possibility that this lack of clarity could delay the completion of the assessment process and place further strain on the resources and effort needed to avoid the expiration of regulations.

In addition, many commenters stated that it was improper for the final rule to exclude the SUNSET rule itself from the requirements of paragraph (c) of each of the codified provisions, meaning that under the rule, the rule itself is not subject to assessment, review, or expiration. The final rule based this exemption on an assumption that the SUNSET rule would not ''directly impose on the public costs that exceed benefits'' because no rules would expire due to lack of assessment or review. 86 FR 5730. The Department now believes, as described above, that this assumption was likely incorrect.

VI. Preliminary Regulatory Impact Analysis

A. Introduction, Summary, and Background

Introduction

We have examined the impacts of the proposed withdrawal or repeal rule under E.O. 12866, E.O. 13563, the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). EOs 12866 and 13563 direct us to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). We believe that this proposed withdrawal or repeal rule is a significant regulatory action as defined by E.O. 12866.

The RFA requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the proposed withdrawal or repeal rule would result in cost savings to regulated entities, we propose to certify that the proposed withdrawal or repeal rule will not have a significant economic impact on a substantial number of small entities.

[31] Because the instant notice proposes to continue the status quo by withdrawing a rule that has not yet taken effect, and because commenters have already had the opportunity to submit comments on the topic, the Department believes that 60 days for commenting at this stage of the rulemaking is sufficient.

[32] Paragraph (g) in the regulatory text for each rule excluded (1) Regulations that are prescribed by Federal law, such that the Department exercises no discretion as to whether to promulgate the Regulation and as to what is prescribed by the Regulation; (2) Regulations whose expiration pursuant to this section would violate any other Federal law; (3) The SUNSET final rule; (4) Regulations that involve a military or foreign affairs function of the United States; (5) Regulations addressed solely to internal agency management or personnel matters; (6) Regulations related solely to Federal Government procurement; and (7) Regulations that were issued jointly with other Federal agencies, or that were issued in consultation with other agencies because of a legal requirement to consult with that other agency. 86 FR 5729.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $158 million, using the most current (2020) Implicit Price Deflator for the Gross Domestic Product. This proposed withdrawal rule would result in an expenditure in at least one year that meets or exceeds this amount.

Summary of Costs and Benefits

The proposed withdrawal or repeal rule would withdraw or repeal the SUNSET final rule. This proposed regulatory action would reduce the time spent by the Department performing retrospective assessments and reviews of its regulations, and time spent by the general public on comments related to these assessments and reviews. We would monetize the likely reductions in time spent by the Department and the general public as cost savings. Our primary estimate of these cost savings in 2020 dollars, annualized over 10 years, using a 3% discount rate, totals $69.9 million. Using a 7% discount rate, we estimate $75.5 million in annualized cost savings. Table 1 reports these primary estimates alongside a range of estimates that capture uncertainty in the amount of time it will take the Department to perform each assessment and review, and uncertainty in the amount of time the public will spend on comments.

In addition to these monetized effects, the proposed withdrawal or repeal rule would also reduce regulatory uncertainty and regulatory confusion anticipated under the SUNSET final rule. It would also reduce the time spent by the Department on other activities that we have not monetized or quantified, such as the time developing SECGs, and would reduce the time spent by the public monitoring regulations undergoing assessment or review and set to expire. The proposed withdrawal rule or repeal would also result in forgone information as a result of not performing the assessments and reviews.

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

Category	Primary estimate	Low estimate	High estimate	Units			Notes
				Year dollars	Discount rate (percent)	Period covered	
Benefits:							
Annualized Monetized $millions/year					7 3		
Annualized Quantified					7 3		
Qualitative	—Reduction in regulatory uncertainty and confusion. —Disbenefits from the information foregone from not performing assessments and reviews.						
Costs:							
Annualized Monetized $millions/year	−$75.5 −69.9	−$40.1 −37.2	−$110.9 −102.7	2020 2020	7 3	2022–2031 2022–2031	Cost savings from not performing assessments and reviews, and time spent by the public on comments.
Annualized Quantified					7 3		
Qualitative.							
Transfers:							
Federal Annualized Monetized $millions/year.					7 3		
From/To	From:			To:			
Other Annualized Monetized $millions/year.					7 3		
From/To	From:			To:			
Effects:							
State, Local or Tribal Government:							
Small Business:							
Wages:							
Growth:							

We request comment on our estimates of costs and benefits of this proposed withdrawal or repeal rule.

Background

On January 19, 2021, HHS issued the ''Securing Updated and Necessary Statutory Evaluations Timely'' final rule. Under the SUNSET final rule, all HHS regulations less than ten years old, with certain exceptions, will cease to be effective ten years after issuance, unless HHS performs an assessment of the regulation and a more detailed review of those regulations that have a significant economic impact upon a substantial number of small entities. The final rule also provides for regulations older than ten years to cease to be effective unless assessed and reviewed within an initial five-year period. HHS published a regulatory impact analysis (SUNSET

RIA) alongside the final rule, providing estimates of the likely impact of the policy on Departmental resources and time spent by the general public related to these efforts. Following the initiation of litigation, HHS issued an administrative delay of effective date, effective as of March 19, 2021, which extended the effective date of the final rule by one year to March 22, 2022. For the purposes of this analysis, we refer to the January 19, 2021, final rule and March 19, 2021, administrative delay collectively as the SUNSET final rule.

B. Market Failure or Social Purpose Requiring Federal Regulatory Action

The SUNSET final rule establishes automatic expiration dates for the Department's regulations, and a recurring assessment and review process that it can follow to avoid such expirations. The SUNSET final rule's RIA likely underestimates both the time commitment of a credible assessment and review process, and the time spent by the general public commenting on regulations undergoing assessment and review. Given the volume of regulations affected, our revised expectations of the time commitment necessary to conduct credible assessments and reviews, the timeframes for completing these retrospective analyses, and subsequent regulatory actions anticipated as a result of these analyses, it is likely that regulations will automatically expire without substantive review. The potential for regulations to automatically expire introduces regulatory uncertainty, with potential negative repercussions for stakeholders. The actuality of having regulations expire automatically could lead to regulatory confusion among stakeholders and harm the public health in numerous ways, as described in the preamble to the proposed withdrawal rule. This proposed withdrawal or repeal rule is therefore needed to improve the functioning of Government and to reduce the costs to the Department and the general public associated with the SUNSET final rule.

C. Purpose of the Proposed Withdrawal or Repeal Rule

The purpose of the proposed withdrawal or repeal rule is to revoke the SUNSET final rule. If finalized, this regulatory action would directly address the potential harm from the automatic expiration of the Department's regulations. The proposed withdrawal or repeal rule would generate cost savings to the Department from reductions in staff time spent on assessments and reviews, and on related activities. It would also generate cost savings to the general public by reducing time spent on public comments related to these assessments and reviews, and on other activities, such as monitoring potentially expiring regulations. The proposed withdrawal rule would also reduce any regulatory uncertainty from the potential automatic expiration of rules.

D. Baseline Conditions

We adopt a baseline that assumes the requirements of the January 19, 2021, SUNSET final rule [33] remain in place over the period of our analysis, accounting for a one-year administrative delay of effective date.[34] The SUNSET RIA contains monetized estimates of the costs to the Department to perform retrospective analyses of existing regulations and the costs to the public to monitor and respond to anticipated regulatory actions taken by the Department following these retrospective analyses. For the purpose of estimating the time spent on retrospective analyses under the baseline of this analysis, we maintain the assumption in the SUNSET RIA that the Department will satisfy the requirements of the SUNSET final rule and no regulations will automatically expire.[35] We also maintain various assumptions in the SUNSET RIA relating to the timing of the effects and treatment of the one-year waiver provision that allows the Secretary to make one-time, case-by-case exceptions to the automatic expiration of a rule. We also maintain the SUNSET RIA's choice of a 10-year time horizon for the analysis and adopt a base year of 2022 for discounting purposes. In this section, we reconsider several other assumptions underlying the cost estimates in the SUNSET RIA, and discuss additional cost drivers not identified and monetized in the analysis. These revised estimates inform our baseline scenario of no further regulatory action.

Regulations Subject to the SUNSET Final Rule

We adopt the SUNSET RIA's estimate of 17,200 regulations potentially subject to the SUNSET final rule that would need to be assessed in the first ten years. For each of these regulations, the Department will need to perform an assessment to determine whether the regulation imposes a significant economic impact on a substantial number of small entities. The SUNSET RIA estimates that roughly five regulations on average are part of the same rulemaking and could be assessed at one time. We maintain this assumption and terminology, which results in a total of 3,600 assessments in the first ten years. The SUNSET RIA assumes that 11% of these assessments, or 396, impose a significant economic impact on a substantial number of small entities, but reduces this figure to 370 to account for rulemakings that are likely to be reviewed for reasons other than the SUNSET final rule. This adjustment similarly reduces the estimate of the number of rulemakings impacted by the SUNSET final rule to 3,574.

For each of these 370 rulemakings, the Department will need to perform a review, which includes a retrospective regulatory flexibility analysis. The SUNSET RIA distinguishes between the 44 rulemakings that predate the Regulatory Flexibility Act and are unlikely to have an existing prospective regulatory flexibility analysis, and the remaining 326 rulemakings that are assumed to have an existing prospective analysis. The SUNSET RIA also estimates there will be 160 rulemakings assessed to have a significant impact on a substantial number of small entities that have not previously been identified as having a significant economic impact. An Agency will need to perform a review of these rulemakings under the SUNSET final rule.

The SUNSET final rule provides for an initial five-year period for the Department to address regulations older than ten years. We maintain the assumption in the SUNSET RIA that assessments and reviews required in the first five years will be completed evenly across this time period, and that the remaining assessments and reviews will be completed evenly across the next five-year time period. Table D1 presents the yearly count of assessments and reviews anticipated under the baseline scenario. These figures are broadly consistent with the figures contained in the SUNSET RIA; however, unlike that analysis, we do not reduce the number of assessments under the SUNSET final rule by the number of reviews

[33] 86 FR 5694.

[34] 86 FR 15404.

[35] This approach allows for a more direct comparison with the estimates contained in the SUNSET RIA and follows a common practice in regulatory impact analysis to assess costs assuming full compliance with the regulation. We supplement the full-compliance estimates by identifying the likely impacts associated with less than full compliance. The HHS *Guidelines for Regulatory Impact Analysis* (available at *https://aspe.hhs.gov/system/files/pdf/242926/HHS_RIAGuidance.pdf.),* Chapter 4 ''Assess Costs,'' contains a more complete discussion of this approach.

performed, since these assessments occur first and serve to identify regulations requiring review.

TABLE D1—BASELINE ASSESSMENTS AND REVIEWS UNDER THE SUNSET RULE

Year	Total assessments	Reviews			Total
		Pre-RFA	Post-RFA	Not specified	
2022	683.0	8.8	61.8	30.6	101.2
2023	683.0	8.8	61.8	30.6	101.2
2024	683.0	8.8	61.8	30.6	101.2
2025	683.0	8.8	61.8	30.6	101.2
2026	683.0	8.8	61.8	30.6	101.2
2027	31.8	0.0	3.4	1.4	4.8
2028	31.8	0.0	3.4	1.4	4.8
2029	31.8	0.0	3.4	1.4	4.8
2030	31.8	0.0	3.4	1.4	4.8
2031	31.8	0.0	3.4	1.4	4.8
Total	3,574.0	44.0	326.0	160.0	530.0

Time Per Assessment and Per Review

The SUNSET RIA contains estimates of the time per assessment and time per review performed under the SUNSET final rule. For each assessment, the SUNSET RIA assumes that it will require between 3 and 10 hours to assess a rulemaking. For each review, the SUNSET RIA assumes that it will require between 250 and 500 hours to review rulemakings that predate the RFA, and between 40 and 100 hours to review rulemakings that postdate the RFA.

The Department now believes the SUNSET RIA likely underestimates the time necessary to credibly assess whether a regulation imposes a significant economic impact on a substantial number of small entities. The SBA Office of Advocacy published ''A Guide for Government Agencies: How to Comply with The Regulatory Flexibility Act,'' detailing a step-by-step approach for analysts.[36] For each of the 3,574 rulemakings requiring an assessment under the SUNSET final rule, an Agency will need to define the problem and describe the regulated entities, estimate economic impacts by size categories, and determine which size categories incur significant impacts. The SBA guide presents a two-page checklist containing the elements of an adequate certification. In practice, when performing a threshold analysis, analysts will face novel conceptual issues and data challenges, both of which require thoughtful consideration and professional judgement. Furthermore, SBA indicates that it is not sufficient to rely on an assessment made at the time a regulation was published:

> In some cases, even if an agency was originally able to certify properly under section 605 of the RFA that a rule would not have a significant economic impact on a substantial number of small entities, changed conditions may mean that the rule now does have a significant impact and therefore should be reviewed under section 610. For example, many more small businesses may be subject to the rule now than when the rule was promulgated. The cost of compliance with a current rule may have increased sharply because of a required new technology. (SBA, pp. 80–81)

We assume that, under the baseline scenario of the SUNSET final rule, the Department will follow the recommendations in the SBA guidance, and will perform a credible threshold analysis for each rulemaking to assess whether it imposes a significant economic impact on a substantial number of small entities. Each assessment will likely require time by an economist or other analyst to perform and document the threshold analysis, with input from at least one subject matter expert on the area of the regulation. Recognizing the need to fully respond to all the requirements, we modify the assumption in the SUNSET RIA and adopt an estimate of 40 to 100 hours to complete a credible threshold analysis for each rulemaking requiring an assessment.

As described earlier, the SUNSET RIA contains two estimates for the time necessary to perform a retrospective analysis. For rulemakings published before the RFA was enacted, the SUNSET RIA assumes between 250 and 500 hours per review. For rulemakings published after the RFA was enacted, the SUNSET RIA assumes that a prospective regulatory flexibility analysis is available and further assumes that this will reduce the time necessary to complete a review, adopting a range of 40 and 100 hours per review. For the 160 rulemakings newly found to have a significant impact, the SUNSET RIA assumes that it will take between 40 and 100 hours to complete a review. The Sensitivity Analysis Section of the SUNSET RIA acknowledges that ''[o]ne commenter noted that conducting a retrospective analysis can be as time-consuming and expensive as a prospective regulatory analysis, suggesting the Department's estimates of the time and expense of Reviews may be understated.'' Upon further consideration, the Department believes that the commenter is likely correct.

For the analysis of this proposed withdrawal rule, we adopt the SUNSET RIA estimate of 250 to 500 hours for all retrospective analyses, regardless of when the underlying rulemaking was published. If previously published prospective or retrospective regulatory flexibility analyses are generally available, analysts may be able to build off of these previous analytic efforts when developing a retrospective analysis under the SUNSET rule. All else equal, this would suggest the average time per retrospective may be closer to the lower-bound estimate of 250 hours. If these analyses are not generally available, this would suggest an average time per retrospective closer to the upper-bound estimate of 500 hours. We do not address the assumption in the SUNSET RIA that a prospective regulatory flexibility analysis is available for every rulemaking published after the RFA was enacted, because it does not impact the estimate of the overall time spent on reviews under the baseline scenario. Our approach also allows us to ignore the apparent internal inconsistency in the SUNSET RIA underlying the time

[36] Available at *https://cdn.advocacy.sba.gov/wp-content/uploads/2019/06/21110349/How-to-Comply-with-the-RFA.pdf.*

per review of the 160 rulemakings that are newly assessed to have a significant impact.

The SUNSET RIA is not clear on what activities are included in its estimates of the time per review other than the time spent developing a retrospective analysis. We interpret the magnitudes of these estimates to exclude a consideration of time spent on activities other than drafting the retrospective analysis. For example, the agency may need to conduct a study or survey to gather data to inform its analyses. We therefore include an additional 250 hours to 500 hours per review to account for this omission. This estimate reflects time spent by the Department by subject matter experts, lawyers, and other reviewers informing the retrospective analysis and providing feedback on draft analyses. It also reflects time spent by economists and other analysts developing the retrospective analysis to respond to this feedback, and time spent reading and incorporating evidence from other sources, including public comments. Table D2 summarizes the assumptions in the SUNSET RIA and our revised assumptions for the proposed withdrawal rule of the time per assessment and time per review performed under the baseline scenario of the SUNSET final rule. Combining the time spent on retrospective analysis and on other related activities, we estimate that each review will take between 500 and 1,000 hours to complete.

TABLE D2—HOURS PER ASSESSMENT AND REVIEW

Baseline requirement	Sunset RIA		Proposed withdrawal rule	
	Low	High	Low	High
Assessment	3	10	40	100
Review: Retrospective Analysis, pre-RFA regulation	250	500	250	500
Review: Retrospective Analysis, post-RFA regulation	40	100	250	500
Review: Retrospective Analysis, Not Specified	40	100	250	500
Review: Other Activities	0	0	250	500

Time Spent by the Public To Monitor and Comment

Under the SUNSET final rule, the Department would create a docket on *www.Regulations.gov* for each assessment or review that the Department is conducting. The public would then be able to submit comments to the dockets of each rulemaking being assessed or reviewed. The SUNSET RIA includes a discussion of the costs to the stakeholders to monitor and comment on regulations as they are undergoing assessment and review; however, the analysis assigns no costs to the Department associated with setting up these dockets or engaging with the comments. The analysis also does not monetize any other costs associated with operationalization of the SUNSET final rule, which also requires developing a schedule for activities associated with the SUNSET final rule, publishing monthly updates, and establishing a website dashboard to help the public monitor the Department's progress.

When estimating the impact on the public, the SUNSET RIA first estimates that 53 rulemakings will be rescinded and another 159 rulemakings amended as a result of the retrospective analyses initiated as a result of the SUNSET final rule, monetizing the time spent by the public responding to those 212 rulemakings. The SUNSET RIA assumes that, for each of the 53 rulemakings rescinded following a review completed under the SUNSET final rule, the public will submit 243 comments; and for each of the 159 rulemakings amended, the public will submit 486 comments. This will result in an estimated 90,153 comments, for which the SUNSET RIA assumes that each commenter will spend between 5 and 15 hours. Presumably, this estimate is inclusive of finding out that the rulemaking is likely to be rescinded or amended, reading and understanding the rulemaking, completing further research, communicating with other stakeholders, identifying concerns, and drafting and submitting comments. The Preamble to the SUNSET final rule anticipates that the Department will create on its website a dashboard that shows its progress on its Assessments and Reviews. Therefore, we assume that any reduction in the time spent by the public attributable to this dashboard is accounted for in these time estimates. For the purposes of this analysis, we adopt the SUNSET RIA's assumption about the time spent per comment.

The SUNSET RIA's discussion of the timing assumptions suggests the public will wait until the retrospective is complete and an Agency has announced it intends to rescind or amend a rulemaking before commenting. Furthermore, for the remaining 3,388 rulemakings subject to the SUNSET final rule that will be available for public comment prior to an Agency assessment or review, the SUNSET RIA assumes the public will offer no comments. These assumptions appear at odds with the decision to invite public comment during both the assessment and review processes. Furthermore, as discussed by the SBA,[37] ''[i]nsights about an existing regulation received from regulated entities and other interested parties should be a key component of a retrospective rule review. By making the review process transparent and accessible, agencies are more likely to identify improvements that will benefit all parties at the conclusion of the review.''

Upon further consideration, the Department finds it more likely that the public will comment on rulemakings undergoing assessment and review rather than wait until learning the specific rulemakings that will be rescinded or amended as a result of these assessment and reviews. We adopt the SUNSET RIA's estimate of 486 comments per rulemaking, but instead apply this to the 570 rulemakings that, following a threshold analysis in an assessment, an Agency will begin to review. We believe that the public will submit fewer comments for rulemakings undergoing an assessment, and adopt an assumption of 25 comments per assessment. Table D3 summarizes a comparison of the assumptions in the SUNSET RIA and in the baseline analysis of this proposed withdrawal rule of the comments per assessment and review, and for the subsequent

[37] Available at *https://cdn.advocacy.sba.gov/wp-content/uploads/2019/06/21110349/How-to-Comply-with-the-RFA.pdf* pg. 83.

regulatory actions to rescind or amend rulemakings.

TABLE D3—BASELINE COMMENTS PER ACTION

Baseline requirement	SUNSET RIA	Proposed withdrawal rule
Assessment	0	25
Review	0	486
Rescission	486	N/A
Amendment	243	N/A

Considerations Related to Rescissions and Amendments

As described earlier, the SUNSET RIA envisions the Department identifying and rescinding 53 rulemakings and amending 159 rulemakings following completed reviews under the SUNSET final rule. Upon further reflection, the Department no longer believes it was appropriate to unambiguously attribute to the SUNSET rulemaking subsequent regulatory actions of this nature in the context of a regulatory impact analysis. Even if the challenging attribution questions could be resolved, we believe that the SUNSET RIA understates the impact of the SUNSET rule since it implicitly assumes that the Department would not have to spend any time to develop and publish subsequent regulatory actions to rescind or amend existing regulations. This unstated assumption is difficult to justify. Since these anticipated regulatory actions relate to regulations that have a significant economic impact on a substantial number of small entities, we expect that these actions will need to involve subject matter experts, legal review, policy coordination, Departmental clearance, and a communications strategy to bring transparency to the process. For certain regulatory actions, we anticipate the need for review by the Office of Management and Budget. We have not attempted to estimate the time associated with developing these regulatory actions.

Baseline Effect of the SUNSET Rule

To quantify the likely effect of the SUNSET final rule on the Department, we multiply the number of assessments and number of reviews from Table D1 by the assumptions relating to the time per assessment and time per review described in Table D2. To quantify the likely effect of the SUNSET final rule on the public, we multiply the figures in Table D1 by the assumptions relating to the comments per assessment and comments per review described in Table D3. This gives us estimates for the number of comments, which we then multiply by the time estimates per comment, described above, to estimate the total time spent by the public. Table D4 presents yearly estimates of hours spent related to assessments performed under the SUNSET final rule to the Department and the public. Table D5 presents comparable figures related to reviews. Table D6 presents the total time anticipated under the SUNSET rule related to assessments and reviews.

TABLE D4—HOURS RELATED TO ASSESSMENTS UNDER THE SUNSET RULE

Year	Assessments	Department		Public	
		Low	High	Low	High
2022	683	27,320	68,300	85,375	256,125
2023	683	27,320	68,300	85,375	256,125
2024	683	27,320	68,300	85,375	256,125
2025	683	27,320	68,300	85,375	256,125
2026	683	27,320	68,300	85,375	256,125
2027	32	1,272	3,180	3,975	11,925
2028	32	1,272	3,180	3,975	11,925
2029	32	1,272	3,180	3,975	11,925
2030	32	1,272	3,180	3,975	11,925
2031	32	1,272	3,180	3,975	11,925

TABLE D5—HOURS RELATED TO REVIEWS UNDER THE SUNSET RULE

Year	Reviews	Department		Public	
		Low	High	Low	High
2022	101	50,600	101,200	245,916	737,748
2023	101	50,600	101,200	245,916	737,748
2024	101	50,600	101,200	245,916	737,748
2025	101	50,600	101,200	245,916	737,748
2026	101	50,600	101,200	245,916	737,748
2027	5	2,400	4,800	11,664	34,992
2028	5	2,400	4,800	11,664	34,992
2029	5	2,400	4,800	11,664	34,992
2030	5	2,400	4,800	11,664	34,992
2031	5	2,400	4,800	11,664	34,992

TABLE D6—TOTAL HOURS RELATED TO THE SUNSET RULE

Year	Department		Public	
	Low	High	Low	High
2022	77,920	169,500	331,291	993,873
2023	77,920	169,500	331,291	993,873
2024	77,920	169,500	331,291	993,873
2025	77,920	169,500	331,291	993,873
2026	77920	169,500	331,291	993,873
2027	3,672	7,980	15,639	46,917
2028	3,672	7,980	15,639	46,917
2029	3,672	7,980	15,639	46,917
2030	3,672	7,980	15,639	46,917
2031	3,672	7,980	15,639	46,917

While these time estimates are significant, they are not inclusive of all costs expected under the SUNSET final rule. In addition to the quantified estimates above, we expect that the Department will experience other costs related to the requirements of the SUNSET rule under the baseline scenario. For example, the estimates above do not include time spent reviewing guidance documents related to rulemaking undergoing assessment and review. They also do not include the time associated with developing SECGs for the 160 rulemakings newly found to have a significant impact on a substantial number of small entities, or the time associated with updating existing guides for other rulemakings. The figures above also omit the monetary costs to purchase data and data subscriptions that we anticipate will serve as critical inputs for the assessments and reviews, and costs associated with conducting formal evaluations to understand the impact of the rules.

As an additional consideration, we estimate that assessing and reviewing regulations will require the equivalent of 67 and 146 full-time employees in each of the first five years of the analysis, adopting the SUNSET RIA's estimate of 1,160 hours of work per year per employee. Given current staffing and other Departmental needs and priorities, we anticipate the need to hire non-government experts to perform a share of the retrospective work. This approach will likely result in additional overhead costs that we have not quantified. We also anticipate the need to spend Departmental resources to find, hire, train, and transfer personnel with technical expertise to conduct the analyses, which have not been quantified in this analysis.

E. Benefits of the Proposed Withdrawal or Repeal Rule

The monetized benefits of this regulatory action to withdraw or repeal the SUNSET final rule are the cost savings to the Department from not completing the assessments and reviews required under the baseline scenario, and the cost savings to the public from not commenting on these assessments and reviews. To monetize these cost savings, we multiply the hours related to the SUNSET final rule in Table D6 by the cost per hour of these activities. We adopt the SUNSET RIA's estimates of 244.98 per hour developing assessments and reviews and 143.20 per hour spent submitting comments. Table E1 presents the yearly cost savings to the Department and the public expected under the proposed withdrawal or repeal rule compared to the baseline scenario. We combine the low estimates for the Department and the public to generate an overall low estimate, and similarly combine the high estimates for the Department and the public to generate an overall high estimate. We also report an overall primary estimate, which is the midpoint between the low and high estimates. Finally, we report the present discounted value (PDV) and annualized cost savings under the proposed withdrawal or repeal rule for both a 3% and 7% discount rate. All figures are reported in 2020 dollars, in millions.

TABLE E1—COST SAVINGS UNDER THE PROPOSED WITHDRAWAL RULE

[Millions of $]

Year	Department		Public		Overall		
	Low	High	Low	High	Low	Central	High
2022	$19.1	$41.5	$47.4	$142.3	$66.5	$125.2	$183.8
2023	19.1	41.5	47.4	142.3	66.5	125.2	183.8
2024	19.1	41.5	47.4	142.3	66.5	125.2	183.8
2025	19.1	41.5	47.4	142.3	66.5	125.2	183.8
2026	19.1	41.5	47.4	142.3	66.5	125.2	183.8
2027	0.9	2.0	2.2	6.7	3.1	5.9	8.7
2028	0.9	2.0	2.2	6.7	3.1	5.9	8.7
2029	0.9	2.0	2.2	6.7	3.1	5.9	8.7
2030	0.9	2.0	2.2	6.7	3.1	5.9	8.7
2031	0.9	2.0	2.2	6.7	3.1	5.9	8.7
PDV, 3%	91.0	197.9	226.1	678.3	317.1	596.7	876.2
PDV, 7%	80.9	176.0	201.1	603.2	282.0	530.6	779.2
Annualized, 3%	10.7	23.2	26.5	79.5	37.2	69.9	102.7
Annualized, 7%	11.5	25.1	28.6	85.9	40.1	75.5	110.9

For comparison, in present value terms, these estimates of annualized cost savings are more than four times the size of the annualized cost estimates included in the SUNSET RIA. This reflects what the Department has now concluded are more reasonable assumptions about the effect of the SUNSET final rule rather than a claim that the combination of these two regulatory actions would generate net cost savings. These cost savings estimates are consistent with a scenario that the Department returns to its approach to Section 610 reviews that immediately predate the publication of the SUNSET final rule on January 19, 2021. We believe that this represents a credible and appropriate approach for estimating the likely cost savings that would be attributable to the proposed withdrawal or repeal rule, if it is finalized. Other considerations relating to the appropriate frequency or nature of retrospective economic analyses of existing Departmental regulations are beyond the scope of this preliminary regulatory impact analysis.

In the previous section, we discussed concerns about potential costs of the SUNSET final rule that were overlooked in the SUNSET RIA. To the extent that we are unable to quantify or monetize these costs, such as the purchase of data, conducting studies to evaluate the impacts of rules, additional overhead costs associated with contracting with non-government entities to perform a share of the retrospective work, and other personnel costs, the cost savings anticipated under the proposed withdrawal or repeal rule would be equally underestimated.

In addition to cost savings, the proposed withdrawal or repeal rule would generate non-quantified benefits from reduced regulatory uncertainty. Although we calculate the cost savings estimates in this analysis by adopting an assumption that the Department will fulfill the requirements of the SUNSET final rule rather than to let any regulation expire automatically, it is highly likely that some regulations will automatically expire without substantive review. Revoking the SUNSET final rule would remove the expiration provisions, which would also remove the likelihood of any automatic expiration of regulatory requirements. The proposed rule would also eliminate the potential for regulatory confusion among stakeholders, and harm to the public health related to the actuality of having regulations expire automatically.

F. Costs of the Proposed Withdrawal or Repeal Rule

The costs of the proposed withdrawal or repeal rule would be the forgone benefits of the information learned from the assessments and reviews completed under the baseline scenario. We adopt the approach taken in the SUNSET RIA and make no attempt to quantify or monetize the value of this information. The SUNSET RIA also describes potential benefits from subsequent regulatory actions to rescind or amend existing regulations as a result of the SUNSET final rule; however, the Department now believes that any effects associated with future regulatory actions raise challenging questions of attribution (entirely to those regulatory actions themselves, or at least partially to the SUNSET final rule). We therefore do not unambiguously identify these as a source of foregone benefits under the proposed withdrawal rule.

G. Analysis of Regulatory Alternatives to the Proposed Withdrawal or Repeal Rule

We analyze two alternative options to the proposed withdrawal rule. First, we consider an option to maintain the general approach of the SUNSET final rule, but adopt a two-year period following the effective date to assess and review all regulations older than ten years. This option, Alternative 1, follows the timeline envisioned under the November 4, 2020, proposed rule.[38] Second, we consider an option to maintain the general approach of the SUNSET rule, but adopt an initial ten-year period following the effective date to assess and review all regulations, regardless of when they were first published. This option, Alternative 2, evenly distributes the time spent by the Department assessing and reviewing existing regulations.

Table G1 presents the primary estimates of yearly cost savings under the proposed withdrawal rule and under the two policy alternatives described above. All three policy options are compared to the common baseline scenario described in section D. We report the PDV and annualized cost savings under the proposed withdrawal or repeal rule and two policy alternatives for both a 3% and 7% discount rate. All figures are reported in 2020 dollars, in millions. In addition to the monetized estimates below, Alternative 1 would increase the likelihood that the Department would need to hire non-government experts to perform a share of the retrospective work, resulting in additional overhead costs that we have not monetized. Compared to the baseline scenario, Alternative 2 reduces this likelihood and thus reduces these overhead costs.

TABLE G1—PRIMARY ESTIMATE OF COST SAVINGS UNDER THE PROPOSED WITHDRAWAL RULE AND ALTERNATIVES

[Millions of $]

Year	Proposed withdrawal rule	Alternative 1	Alternative 2
2022	$125.2	−$187.8	$59.6
2023	125.2	−187.8	59.6
2024	125.2	121.5	59.6
2025	125.2	121.5	59.6
2026	125.2	121.5	59.6
2027	5.9	2.2	−59.6
2028	5.9	2.2	−59.6
2029	5.9	2.2	−59.6
2030	5.9	2.2	−59.6
2031	5.9	2.2	−59.6
PDV, 3%	596.7	−26.6	37.5
PDV, 7%	530.6	−54.5	70.2
Annualized, 3%	69.9	−3.1	4.4
Annualized, 7%	75.5	−7.8	10.0

[38] 85 FR 70096.

H. Initial Small Entity Analysis

The Department has examined the economic implications of this proposed withdrawal or repeal rule as required by the Regulatory Flexibility Act. This analysis, as well as other sections in this Regulatory Impact Analysis, serves as the Initial Regulatory Flexibility Analysis, as required under the Regulatory Flexibility Act.

1. Description and Number of Affected Small Entities

The U.S. Small Business Administration (SBA) maintains a Table of Small Business Size Standards Matched to North American Industry Classification System Codes (NAICS).[39] We replicate the SBA's description of this table:

> This table lists small business size standards matched to industries described in the North American Industry Classification System (NAICS), as modified by the Office of Management and Budget, effective January 1, 2017. The latest NAICS codes are referred to as NAICS 2017.
>
> The size standards are for the most part expressed in either millions of dollars (those preceded by ''$'') or number of employees (those without the ''$''). A size standard is the largest that a concern can be and still qualify as a small business for Federal Government programs. For the most part, size standards are the average annual receipts or the average employment of a firm.

The SUNSET rule will potentially impact small entities across at least NAICS industry sectors 11 (Agriculture, Forestry, Fishing and Hunting), 31–33 (Manufacturing), 42 (Wholesale Trade), 44–45 (Retail Trade), 48–49 (Transportation and Warehousing), 52 (Finance and Insurance), 54 (Professional, Scientific, and Technical Services), 62 (Health Care and Social Assistance), 81 (Other Services (except Public Administration)), and 92 (Public Administration). Given the wide range of entities affected, and various sources of uncertainty described in this section, it is not practical to directly estimate the number of small entities that would potentially be impacted under the baseline scenario of the SUNSET rule. Similarly, it is impractical to identify the small entities that would be impacted by the proposed withdrawal or repeal rule, if it is finalized. The Congressional Research Service observes that ''about 97% of all employer firms qualify as small under the SBA's size standards. These firms represent about 30% of industry receipts.''[40] For practicality, we assume that the bulk of the potential impacts of the proposed withdrawal or repeal rule to private sector regulated entities are small entities.

2. Description of the Potential Impacts of the Rule on Small Entities

Impacts to Small Entities Related to Rescissions and Amendments

When estimating the impact on the public, the SUNSET RIA first estimates that 53 regulations will be rescinded and another 159 regulations will be amended as a result of the retrospective analyses initiated as a result of the SUNSET rule. Since the particular regulations impacted are unknowable prior to conducting the retrospectives, this results in uncertainty over the types of small entities that will be affected under the baseline scenario of the SUNSET rule. The nature of this uncertainty means it is infeasible to estimate the number of small entities affected by these potential rescinded or amended regulations without first completing the retrospectives.

As described earlier, the Department no longer believes it was appropriate to unambiguously attribute to the SUNSET rulemaking subsequent regulatory actions of this nature in the context of a regulatory impact analysis. We therefore do not attribute any impacts of this nature to the proposed withdrawal or repeal rule, nor do we identify any impacts to small entities.

Impacts to Small Entities Related to the Automatic Expiration of Regulations

When identifying the potential benefits of the proposed withdrawal or repeal rule, we note that, while the Department will seek to fulfill the requirements of the SUNSET rule rather than to let any regulation expire automatically, it is highly likely that some regulations will automatically expire without substantive review. This potential impact under the SUNSET rule does not introduce similar questions of attribution; however, there remains uncertainty over the particular regulations that will be impacted. The nature of this uncertainty means we cannot identify the small entities that are most likely to be affected by regulations that automatically expire without substantive review.

Revoking the SUNSET rule would remove the expiration provisions, which would also remove the likelihood of any automatic expiration of regulatory requirements. The proposed withdrawal or repeal rule would also eliminate the potential for regulatory confusion among stakeholders, including small entities. We anticipate that a large share of these non-quantified benefits would accrue to small entities.

Impacts to Small Entities Related to Commenting on Assessments and Reviews

When identifying the potential benefits of the proposed withdrawal or repeal rule, we estimate the cost savings to the public from not commenting on these assessments and reviews that would be performed under the baseline scenario of the SUNSET rule. Table E1 summarizes these estimates, including a range of cost-savings to the public sector between $26.5 million and $79.5 million in annualized terms under a 3% discount rate. Under a 7% discount rate, the comparable range of cost savings is $28.6 million and $85.9 million. Although these represent substantial cost savings in the aggregate, these include comments not just from small entities but also the general public, larger businesses, Tribes, States, non-governmental organizations, and other regulated entities and stakeholders.

To evaluate the likely magnitude of the impact to a single small entity, we consider an illustrative scenario of a full-time sole proprietor that submits 1 or fewer comment per year. As described earlier, we estimate that each comment takes between 5 and 15 hours to prepare and submit. If the proposed withdrawal or repeal rule is finalized, this would reduce the time spent on comments for this small entity by 5 to 15 hours per year. This represents between 0.2% to 0.7% of annual labor time saved, computed using an assumption that the individual works 2,087 hours per year. As an additional sensitivity analysis, we computed the number of comments that a sole proprietor would need to submit in one year such that the time spent on comments would exceed 3% of total time spent on labor. Assuming 2,087 hours of labor time per year, the total time spent on comments to meet this threshold is about 63 hours. Using a central estimate of 10 hours to prepare and submit each comment, the sole proprietor could prepare up to 6 comments per year without exceeding the 3% threshold. We expect that fewer than 5 percent of small entities will share more than 6 comments per year on regulations undergoing a retrospective analysis under the SUNSET rule. This indicates that the potential cost savings to small entities under the proposed

[39] U.S. Small Business Administration (2019). ''Table of Size Standards.'' August 19, 2019. *https://www.sba.gov/document/support-table-size-standards.*

[40] Robert Jay Dilger (2021). ''Small Business Size Standards: A Historical Analysis of Contemporary Issues.'' Congressional Research Service Report R40860. Updated May 28, 2021. Page 2. *https://crsreports.congress.gov/product/pdf/R/R40860.*

withdrawal or repeal rule, if it is finalized, are unlikely to be significant for a substantial number of small entities. The Department considers a rule to have a significant impact on a substantial number of small entities if it has at least a three percent impact on revenue on at least five percent of small entities. This cost-saving benefit is well below this threshold.

VII. Federalism

We have analyzed this proposed rule in accordance with the principles set forth in E.O. 13132. We have determined that because the SUNSET final rule has not become effective, this proposal to withdraw the final rule, if finalized, will continue the status quo, and therefore does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we conclude that the rule does not contain policies that have federalism implications as defined in the E.O. and, consequently, a federalism summary impact statement is not required.

VIII. Consultation and Coordination With Indian Tribal Governments

We have analyzed this proposed rule in accordance with the principles set forth in E.O. 13175. Multiple comments from representatives of several Tribes and related groups expressed concern that the SUNSET final rule would have significant tribal implications, if implemented, and that consultation with Tribal governments on the SUNSET proposed rule was not adequate. We agree.[41] HHS remains committed to holding meaningful tribal consultation consistent with the HHS Tribal Consultation Policy. However, this proposed rule to withdraw or repeal the final rule, if finalized, will continue the status quo, and therefore does not contain policies that would have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Based on this status, as well as the comments already received on this issue, we do not believe tribal consultation is required. We plan to provide notice to Tribes of this proposed rule, acknowledging tribal concerns with the lack of tribal consultation on the earlier rulemaking and encouraging them to share any additional feedback by providing written comments on this proposed withdrawal or repeal.

[41] As explained in greater detail in the Administrative Delay Order, Tribes should have been ''afforded an opportunity to comment meaningfully on the rule's impact,'' but ''HHS failed to consult with Tribal governments (or even notify them regarding the proposal).'' 86 FR 15407.

IX. Analysis of Environmental Impacts

HHS had determined that the proposed rule will not have a significant impact on the environment.

X. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, 44 U.S.C. 3501–3521; 5 CFR part 1320, appendix A.1, the Department has reviewed this proposed rule and has tentatively determined that it proposes no new collections of information.

XI. References

1. OIRA dashboard screenshot (Dec. 18, 2020).
2. Complaint, *County of Santa Clara* v. *HHS,* Case No. 5:21–cv–01655–BLF (N.D. Cal. Mar. 9, 2021).

Xavier Becerra,

Secretary.

[FR Doc. 2021–23472 Filed 10–28–21; 8:45 am]

BILLING CODE 4150–26–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[EPA–HQ–OPPT–2021–0599; FRL–8949–01–OCSPP]

TSCA Section 21 Petition for Rulemaking Under TSCA Section 6; Reasons for Agency Response; Denial of Requested Rulemaking

AGENCY: Environmental Protection Agency (EPA).

ACTION: Petition; reasons for Agency response.

SUMMARY: This action announces the availability of EPA's response to a petition received on August 2, 2021, from William D. Bush. The petition requests that EPA determine ''that the chemical mixtures contained within cigarettes present an unreasonable risk of injury to health and the environment.'' The petitioner also seeks issuance of a rule or order to ''eliminate the hazardous chemicals used in a mixture with tobacco,'' and to ''develop material techniques of biodegradation to counter or reduce'' environmental risk from current disposal methods of cigarettes under section 6(a) of the Toxic Substances Control Act (TSCA). After careful consideration, EPA has denied the TSCA section 21 petition for the reasons set forth in this document.

DATES: EPA's response to this TSCA section 21 petition was signed October 25, 2021.

ADDRESSES: The docket for this TSCA section 21 petition, identified by docket identification (ID) number EPA–HQ–OPPT–2021–0599, is available at *https://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280.

Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Public Reading Room is by appointment only. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Amy Shuman, Existing Chemicals Risk Management Division (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–2978; email address: *shuman.amy@epa.gov.*

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. This action may, however, be of interest to those persons who manufacture (including import), distribute in commerce, process, use, or dispose of cigarettes. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

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

Under TSCA section 21 (15 U.S.C. 2620), any person can petition EPA to initiate a proceeding for the issuance,

amendment, or repeal of a rule under TSCA sections 4, 6, or 8, or to issue an order under TSCA sections 4, 5(e), or 5(f). A TSCA section 21 petition must set forth the facts which it is claimed establish that it is necessary to initiate the action requested. EPA is required to grant or deny the petition within 90 days of its filing. If EPA grants the petition, the Agency must promptly commence an appropriate proceeding. If EPA denies the petition, the Agency must publish its reasons for the denial in the **Federal Register**. A petitioner may commence a civil action in a U.S. district court seeking to compel initiation of the requested proceeding within 60 days of a denial or, if EPA does not issue a decision, within 60 days of the expiration of the 90-day period.

C. What criteria apply to a decision on this TSCA section 21 petition?

1. Legal Standard Regarding TSCA Section 21 Petitions

TSCA section 21(b)(1) requires that the petition ''set forth the facts which it is claimed establish that it is necessary'' to initiate the proceeding requested. 15 U.S.C. 2620(b)(1). Thus, TSCA section 21 implicitly incorporates the statutory standards that apply to the requested actions. Accordingly, EPA has relied on the standards in TSCA section 21 and in the provisions under which actions have been requested in evaluating this TSCA section 21 petition.

2. Legal Standard Regarding TSCA Section 6(a)

Under TSCA section 6(a), EPA must determine if a chemical substance or mixture in manufacturing, processing, distribution in commerce, use, disposal, or any combination of these activities presents an unreasonable risk of injury to health or the environment. If unreasonable risk to health or the environment is determined, EPA has the authority and obligation to issue a rulemaking placing one or more requirements to the extent necessary so that the chemical substance or mixture no longer presents an unreasonable risk. EPA may eliminate the unreasonable risk of a chemical substance or mixture by regulating manufacture, processing, distribution in commerce, commercial use or disposal of the chemical substance, including by prohibiting, limiting volume, limiting a particular use, restricting concentration, requiring warning and instruction labeling, requiring record-keeping of exposures, notification of end-users, and/or replacement or repurchase by issuance of rulemaking to manufacturers, processors, distributors in commerce, users, and disposers.

3. Legal Standard Regarding TSCA Sections 3(2) and (10)

TSCA section 3(2) excludes from the definition of a ''chemical substance'' ''any mixture,'' ''tobacco or any tobacco product,'' as well as ''any food, food additive, drug, cosmetic, or device (as such terms are defined in Section 201 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 321]) when manufactured, processed, or distributed in commerce for use as a food, food additive, drug, cosmetic, or device.'' 15 U.S.C. 2602(2). In addition, TSCA section 3(10) defines ''mixture'' as ''any combination of two or more chemical substances if the combination does not occur in nature and is not, in whole or in part, the result of a chemical reaction; except that such term does include any combination which occurs, in whole or in part, as a result of a chemical reaction if none of the chemical substances comprising the combination is a new chemical substance and if the combination could have been manufactured for commercial purposes without a chemical reaction at the time the chemical substances comprising the combination were combined.''

4. Legal Standard Regarding TSCA Section 26

TSCA section 26(h) requires EPA, in carrying out TSCA sections 4, 5, and 6, to make science-based decisions using ''scientific information, technical procedures, measures, methods, protocols, methodologies, or models, employed in a manner consistent with the best available science,'' while also taking into account other considerations, including the relevance of information and any uncertainties. 15 U.S.C. 2625(h). TSCA section 26(i) requires that decisions under TSCA sections 4, 5, and 6 be ''based on the weight of scientific evidence.'' 15 U.S.C. 2625(i). TSCA section 26(k) requires that EPA consider information that is reasonably available in carrying out TSCA sections 4, 5, and 6. 15 U.S.C. 2625(k).

II. Summary of the TSCA Section 21 Petition

A. What action was requested?

On August 2, 2021, EPA received a TSCA section 21 petition (Ref. 1) from William D. Bush (the petitioner) that requests EPA take several actions under TSCA section 6. The petition asks EPA to determine ''that the chemical mixtures contained within cigarettes present an unreasonable risk of injury to health and the environment'' and seeks the issuance of a rule or order to ''eliminate the hazardous chemicals used in a mixture with tobacco; including and not limited to the toxic substance inclusions resulting from tobacco growing or handling techniques,'' and to ''develop material techniques of biodegradation to counter or reduce'' environmental risk from current disposal methods of cigarettes. The petition also requests ''any other prudent methods of toxic mixture substance control [EPA] may see due and fit.''

1. Request for Determination That the Chemical Mixtures Contained Within Cigarettes Present an Unreasonable Risk of Injury to Health and the Environment

The petition requests that EPA determine that ''chemical mixtures contained within cigarettes present an unreasonable risk of injury to health and the environment.'' With respect to actions under TSCA section 6, TSCA section 21 provides only for the submission of a petition seeking the initiation of a proceeding for the issuance, amendment, or repeal of a rule under TSCA section 6(a). The purpose of a TSCA section 6 risk evaluation is to determine whether a chemical substance or mixture presents an unreasonable risk to health or the environment under the conditions of use. To initiate a TSCA section 6 risk evaluation, however, the chemical substance or mixture must be designated a high priority for risk evaluation. Prioritization of high priority substances for risk evaluation under TSCA section 6(b) is an activity distinct from rulemaking under TSCA section 6(a). Because TSCA section 21 does not provide an avenue for petitioners to request the initiation of the prioritization process for ''chemical mixtures contained within cigarettes,'' this **Federal Register** document does not address this specific request.

2. Request for Order by Rule That the Manufacturing Producers of Cigarettes Eliminate the Hazardous Chemicals Used in a Mixture With Tobacco

The petition requests that EPA ''[o]rder by [r]ule that the manufacturing producers of cigarettes eliminate the hazardous chemicals used in a mixture with tobacco.'' TSCA section 21 provides for the submission of a petition to initiate a proceeding for the issuance, amendment, or repeal of a rule under TSCA sections 4, 6, or 8, or to issue an order under TSCA sections 4, 5(e), or 5(f). As the petitioner is seeking issuance of a rule under TSCA section

6, this **Federal Register** document addresses this request.

3. Request for Order by Rule That Cigarette Manufacturers Develop New Product Designs That Eliminate or Reduce the Cigarette Butt Disposal Risks to the Environment

The petition asks EPA to ''[o]rder by [r]ule that [c]igarette manufacturers develop new product designs which eliminate or reduce the cigarette 'butt' disposal risks to the environment.'' TSCA section 21 provides for the submission of a petition seeking issuance of a rule under TSCA section 6. However, the requirements listed in TSCA section 6(a) do not allow the Agency to compel a manufacturer to alter existing or develop new product designs. To the extent that the prohibitions and restrictions on manufacturing, processing, or distribution in commerce available in TSCA sections 6(a)(1) and (2) could be interpreted as affecting the design of a product, such issues are described in Unit III.B. To the extent that EPA may apply the TSCA section 6(a)(6) requirement to prohibit or otherwise regulate a manner or method of disposal of a chemical substance, mixture, or article, such a requirement would only apply to a ''manufacturer or processor or . . . any other person who uses, or disposes of, it for commercial purposes'' and not the unspecified ''consumer market disposal methods'' cited in the petition. Therefore, this **Federal Register** document does not address this specific request.

4. Request for Other Methods of Toxic Mixture Substance Control the Agency Determines To Be Required

The petition requests that EPA exercise ''any other prudent methods of toxic mixture substance control'' that the Agency deems ''due and fit.'' As a regulatory body, EPA cannot deviate from the statutory remedies established under TSCA section 21. Therefore, a solicitation for EPA to exercise ''any other prudent methods'' that the Agency deems ''due and fit'' does not adequately identify an objective that is executable within TSCA section 21. Therefore, this **Federal Register** document does not address this specific request.

B. What support did the petitioner offer?

To support the request for an order by rule that the manufacturing producers of cigarettes eliminate the hazardous chemicals used in a mixture with tobacco, the petitioner offers information relating to the structure and content of cigarettes, human and environmental health impacts related to smoking cigarettes, and human and environmental health impacts to discarding cigarette butts (Ref. 1, pp. 2–4). Of 18 points included in that discussion, eight are attributed to an article on the toxicity of cigarette butts and their chemical components for fish (Ref. 2); these points are discussed in detail below. For the remaining ten points, the petitioner does not provide, and EPA could not identify, a reference to support the information presented, which generally applied to the human health and environmental impacts related to smoking cigarettes.

Regarding the eight points attributed to the article on the toxicity of cigarette butts, the petitioner points to estimates of the number of and volume of cigarette butts discarded worldwide (Ref. 1, p. 3, points 9, 10, and 11), as well as the general nature of chemicals in cigarettes and cigarette filters and how such chemicals enter aquatic ecosystems and become ''acutely toxic to fish and microorganisms'' (Ref. 1, p. 3–4, points 14, 15, and 17). The petitioner also points to the use of ''Environmental Protection Agency standard acute fish bioassays'' in the analysis of ''cigarette butt-derived leachate . . . for aquatic toxicity'' and that ''[i]n laboratory experimentation, the chemicals that leached from a single cigarette butt (soaked for 24 hours in a liter of water) released enough toxins to kill 50 percent of the saltwater and freshwater fish exposed to it for 96 hours'' (Ref. 1, p. 3–4, points 16 and 18).

In addition, the petitioner includes a summary of the findings and policy section of the Pollution Prevention Act (42 U.S.C. 13101) (Ref. 1, pp. 4–5), though TSCA section 21 does not provide an avenue for recourse under such Act. The petitioner states ''pollution should be prevented or reduced at the source whenever feasible; pollution that cannot be prevented should be recycled in an environmentally safe manner, whenever feasible; pollution that cannot be prevented or recycled should be treated in an environmentally safe manner whenever feasible; and disposal or other release into the environment should be employed only as a last resort and should be conducted in an environmentally safe manner'' and that ''source reduction is fundamentally different and more desirable than waste management and pollution control.''

The petitioner also provides two claims: (1) ''[t]oxic [c]hemicals added to and included in [c]igarettes are unreasonable;'' and (2) ''[c]igarette [d]isposal presents a clear unreasonable risk to the [e]nvironment.'' (Ref. 1, pp. 5–6). To support the former claim, the petitioner makes general references to, but does not cite or provide for reference *United States* v. *Philip Morris USA Inc.,* 449 F. Supp. 2d 1 (D.D.C. 2006). To support the latter claim, the petitioner states that ''research studies of toxic waste entering the environment are clear in identifying cigarette butts as a major hazardous waste emission,'' but does not cite or provide any reference to such studies.

III. Disposition of TSCA Section 21 Petition

A. What is EPA's response?

After careful consideration, EPA has denied this TSCA section 21 petition. A copy of the Agency's response, which consists of the letter to the petitioner and this document, is posted on the EPA petition website at *https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/tsca-section-21#cigarettes.* The response, the petition (Ref. 1), and other information is available in the docket for this TSCA section 21 petition. *B. What was EPA's reason for this response?*

TSCA section 21 does provide for the submission of a petition seeking the initiation of a proceeding for the issuance of a rule under TSCA section 6(a). The petition must ''set forth the facts which it is claimed establish that it is necessary to issue'' the requested rule. 15 U.S.C. 2620(b)(1). When determining whether the petition meets that burden, EPA will consider whether the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or any combination of such activities, may present an unreasonable risk of injury to health or the environment under TSCA section 6(a). 15 U.S.C. 2605(a).

EPA evaluated the information presented in the petition and considered that information in the context of the applicable authorities and requirements of TSCA sections 6, 21, and 26. Notwithstanding that the burden is on the petitioner to present ''the facts which it is claimed establish that it is necessary'' for EPA to initiate the rule or issue the order sought, EPA nonetheless also considered relevant information that was reasonably available to the Agency during the 90-day petition review period. As detailed further in this Unit, EPA finds that the petitioner has not met its burden as defined in TSCA sections 6(a) and 21(b)(1) because the petitioner because cigarettes are not a product that can be regulated under TSCA section 6(a). These deficiencies, among other findings, are detailed in this document.

As previously discussed, TSCA section 6(a) authorizes EPA to determine if a chemical substance or mixture in manufacturing, processing, distribution in commerce, use, disposal, or any combination of these activities presents an unreasonable risk of injury to health or the environment. If unreasonable risk to health or the environment is determined, then EPA must, by rule, issue regulations apply one or more of the following requirements to the extent necessary to that the chemical substance no longer presents such risk. However, TSCA section 3(2)(B), which defines ''chemical substance,'' excludes ''tobacco or any tobacco product.'' According to section 201(rr) of the Federal Food, Drug, and Cosmetic Act (FFDCA), ''tobacco product'' means ''any product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product.'' 21 U.S.C. 321(rr)(1). Section 900(3) of the FFDCA establishes that a ''cigarette'' is ''a product that . . . is a tobacco product . . . and . . . includes tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette or as roll-your-own tobacco,'' and section 901(b) of the FFDCA makes clear that FDA has authority over ''all cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco.'' 21 U.S.C. 387(3) and 387a(b). Finally, cigarette butts are not considered as a separate item from a cigarette or tobacco product. (See, *e.g.,* FFDCA sections 904(a)(1) (''the tobacco, paper, filter, or other part of each tobacco product'') and 907(a)(1)(A) (''a cigarette or any of its component parts (including the . . . filter, or paper)''). 21 U.S.C. 387d(a)(1) and 387g(a)(1)(A). EPA thus determined that a ''cigarette'' is a ''tobacco product,'' and, therefore, is not a ''chemical substance.'' Similarly, EPA determined that ''tobacco'' is not a ''chemical substance.'' Therefore, EPA cannot issue a rule pursuant to TSCA section 6(a) to apply requirements to tobacco or cigarettes.

TSCA section 3(2)(B) also excludes ''any mixture'' from the definition of ''chemical substance.'' TSCA section 3(10) defines ''mixture'' generally as ''any combination of two or more chemical substances if the combination does not occur in nature and is not, in whole or in part, the result of a chemical reaction'' (emphasis added). Because the petition references ''hazardous chemicals used in a mixture with tobacco'' and the Agency determined that ''tobacco'' is not a ''chemical substance,'' EPA determined that a combination of chemicals with tobacco is not a mixture as defined by TSCA section 3(10). Therefore, EPA cannot issue a rule pursuant to TSCA section 6(a) to apply requirements to ''hazardous chemicals used in a mixture with tobacco.''

Additionally, to the extent that the petition referenced the Pollution Prevention Act (42 U.S.C. 13101), the Agency reiterates that TSCA section 21 does not provide an avenue for recourse under such Act.

B. What were EPA's conclusions?

EPA denied the request to issue of a rule under TSCA section 6(a) because TSCA section 3(2)(B) excludes from the definition of ''chemical substance'' ''any mixture'' and ''tobacco or any tobacco product.'' Because the Agency determined a cigarette (including a cigarette butt) to be a tobacco product, such products are not chemical substances and cannot be subject to a rule issued under TSCA section 6(a). Because EPA also determined that a combination of chemicals with tobacco is not a mixture as defined by TSCA section 3(10), such a combination cannot be subject to a rule issued under TSCA section 6(a).

IV. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

1. Bush, William D. Petition for Issuance of New Rules under Section 15 U.S.C. 2605. Received August 2, 2021.
2. Slaughter, E., Gersberg, R.M., Watanabe, K., Rudolph, J., Stransky, C., & Novotny, T.E. (2011). Toxicity of cigarette butts, and their chemical components, to marine and freshwater fish. Tobacco control, 20 Suppl 1(Suppl_1), i25–i29. *https://doi.org/10.1136/tc.2010.040170.*

Authority: 15 U.S.C. 2601 *et seq.*

Dated: October 25, 2021.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2021–23569 Filed 10–28–21; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 90

[WP Docket No. 07–100; FCC 21–106; FR ID 54623]

4.9 GHz Band

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this Eighth Further Notice of Proposed Rulemaking (Eighth Further Notice), the Federal Communications Commission (Commission or FCC) seeks comment on the structure of the 4940–4990 MHz (4.9 GHz) band in an effort to maximize public safety use while exploring options that could spur innovation, improve coordination, and drive down costs in the band.

DATES: Interested parties may file comments on or before November 29, 2021; and reply comments on or before December 28, 2021.

ADDRESSES: You may submit comments, identified by WP Docket No. 07–100, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *http://apps.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20–304 (March 19, 2020). *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.*

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large

print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Jonathan Markman of the Wireless Telecommunications Bureau, Mobility Division, at (202) 418–7090 or *Jonathan.Markman@fcc.gov,* or Thomas Eng of the Public Safety and Homeland Security Bureau, Policy and Licensing Division, at (202) 418–0019 or *Thomas.Eng@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of Commission's Eighth Further Notice of Proposed Rulemaking, in WP Docket No. 07–100; FCC 21–106, adopted on September 30, 2021 and released on October 1, 2021. The full text of the Eighth Further Notice of Proposed Rulemaking, including all appendices, is available for inspection and copying during normal business hours in the FCC Reference Information Center, 45 L Street NE, Washington, DC 20554, or by downloading the text from the Commission's website at *https://docs.fcc.gov/public/attachments/FCC-21-106A1.pdf.* Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to *FCC504@fcc.gov* or calling the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

I. Eighth Further Notice of Proposed Rulemaking

A. Overview

1. In this Eighth Further Notice, we propose to revisit the structure of the 4.9 GHz band to maximize public safety use while exploring options that could spur innovation, improve coordination, and drive down costs in the band. Specifically, we seek to establish a nationwide framework for coordinating access to the band. We believe that a comprehensive and integrated approach that emphasizes public safety needs represents a superior path to unlocking the potential of the 4.9 GHz band rather than pursuing a state-centered approach that could lead to a patchwork of incompatible uses. Similarly, we believe a nationwide approach will promote a robust equipment market, drive down prices and costs, spur innovation, and increase the likelihood of interoperable communications and consistent interference protection. We also explore potentially allowing non-public safety use of the band to encourage a more robust and innovative equipment market, provided that non-public safety use can occur without causing harmful interference to public safety operations in the band. As part of this vision, we seek comment on how best to meet the needs of public safety in this band and on establishing a database that would contain consistent and reliable information about what spectrum is available and where and how it is being used. Our goal is to provide greater certainty and predictability to stakeholders seeking to plan and invest in 4.9 GHz deployments and enable spectrum users to coordinate shared use of the band to avoid conflicts. In addition, we seek comment on a range of technical issues, eligibility issues, and other measures intended to increase use of the band.

2. We note that this proceeding has an extensive record, which we intend to draw upon as needed to develop a cohesive set of nationwide rules to maximize use of the band, including protection for public safety operations. We encourage commenting parties to assist us by providing input on the new ideas proposed herein and by submitting additional new proposals or by modifying previous proposals. To the extent that commenters wish to reiterate any proposals that have been previously introduced into the record, commenters should demonstrate that the proposals align with our approach and priorities for the band as described in this Eighth Further Notice. We preserve our flexibility to consider and adopt proposals from prior stages of this proceeding that the Commission has not specifically rejected.

B. Ensuring Public Safety Use of the Band

3. As noted above, the band is currently home to 3,541 licensees. We recognize that these licenses represent a significant investment of scarce public safety resources, so as we explore ways to enhance the usage of the band, we are cognizant that we must protect these investments.

1. Protection for Public Safety Licensees

4. We seek comment in this Eighth Further Notice on how to ensure public safety licensees have efficient and interference-free access to the band. Numerous commenters have addressed this issue, and several have expressed support for various approaches to protecting public safety licensees from interference. For instance, the National Public Safety Telecommunications Council (NPSTC) argues that interference protection, whether ''done manually or through some potential future automated frequency coordination approach,'' must be incorporated into the management of the band to protect incumbents ''against interference and signal degradation.'' We agree, and we tentatively conclude that incumbent public safety licensees as well as future public safety users should be protected from harmful interference, both in the near term and on a forward-looking basis, subject to other requirements and conditions that we may adopt in this proceeding.

5. NPSTC recommends ''use of the threshold degradation approach in the ANSI/TIA–10 [American National Standards Institute/Telecommunications Industry Association] standard to minimize interference to incumbent fixed operations,'' which NPSTC notes ''encompass many of the public safety operations'' in the band. We seek comment on the feasibility of NPSTC's proposal to use the TIA–10 standard to minimize interference to incumbents that deploy fixed facilities. Are there alternatives to the TIA–10 standard which could be used to guard against interference between licensees deploying fixed point-to-point (P–P) links and point-to-multipoint (P–MP) hubs? Under Part 90, contour overlap analysis is often the basis for determining if an applicant's proposed facilities would likely cause interference to an incumbent operator. Would contour overlap analysis requirements be useful for certain 4.9 GHz band deployments, and if so, what service and interference contour values would be appropriate? We also seek comment on what standards would be appropriate for incumbents deploying non-fixed, geographic-area operations or ad-hoc temporary operations. Commenters are encouraged to address how their proposals would support our tentative conclusion to protect both existing and future public safety licensees in the band as well as interact with potential new non-public safety operations in the band, with specific attention to the licensing and sharing models addressed below.

2. Licensing Database

6. In the *Sixth Further Notice of Proposed Rulemaking* (*Sixth Further Notice*) (83 FR 20011), the Commission stated that it believed many concerns public safety users have about the 4.9 GHz band could be addressed if more complete technical information were available to all affected parties. We therefore seek comment on collecting more granular data on 4.9 GHz operations in our licensing database and combining that with a formal

coordination structure to improve interference mitigation efforts and bolster public safety confidence in the band. Today, licensees in the 4.9 GHz band only provide our Universal Licensing Service (ULS) database with control points and geographic area of operations. More robust information on public safety operations in the band could help improve predictability for public safety operations and facilitate robust, non-interfering access to the band for non-public safety entities. Therefore, we tentatively conclude that additional information is required, and we seek comment on whether to continue using ULS or to transition to a third-party licensing database to accommodate the additional information. For instance, in the *Sixth Further Notice,* the Commission proposed to maintain ULS as the comprehensive licensing database for the 4.9 GHz band and proposed to modify ULS as necessary to accept the necessary licensing data. Since ULS can readily accommodate additional information, we seek comment on these proposals. We seek comment on requiring incumbents and future applicants to supply complete microwave path data for links, and to license base stations (currently authorized under the geographic license scheme) on a site-by-site basis.

7. In the *Sixth Further Notice,* the Commission proposed ''to require incumbent licensees and new applicants to provide technical information that will enhance frequency coordination and help mitigate the possibility of interference, while permitting more new users.'' We seek comment on this proposal to require incumbents and future applicants in the 4.9 GHz band to submit more information in ULS. Would collecting this data improve the level of interference protection licensees receive in the band? We seek comment on whether collecting this data would create a more predictable and transparent spectrum environment for any current and future users of the band, including potential non-public safety users. To what extent does not having this data currently listed in ULS lead to additional interference or uncertainty in the band? In particular, should licensees specify channels they are using for their operations? In the *Sixth Further Notice,* the Commission also proposed to add the 4.9 GHz band to the ULS microwave schedule for P–P, P–MP, and proposed to ''uncouple base and mobile stations from geographic licenses and instead require that base and mobile technical parameters be entered on the existing location and technical data schedules.'' We seek comment on these ULS schedule proposals and ask commenters to address whether ULS's existing schedules are sufficient for collecting the additional data.

8. What is the burden on incumbents and applicants who would need to submit detailed site-based information, and does the benefit of having additional technical data listed in ULS outweigh that burden? For instance, the Commission estimates the average burden for each applicant completing FCC Form 601 and associated schedules to be 1.25 hours, which includes ''the time to read the instructions, look through existing records, gather and maintain required data, and actually complete and review the form or response.'' Is this estimate accurate for incumbents or new applicants who would need to submit the additional technical information described above with their Form 601 application? What is the interplay of these potential new data collection requirements with potential sharing mechanisms, discussed below, that would facilitate shared public safety and non-public safety use of the band?

9. Are there alternatives to collecting additional technical data in ULS for the 4.9 GHz band? For instance, would a database managed by a third party offer advantages over requiring incumbents and new applicants to submit additional information via ULS? If so, what are those advantages and what would be the cost of having a third party administrator manage a database to collect the information needed to increase interference protection in the 4.9 GHz band? How would the transition from ULS to a third-party database be implemented? Who would pay that cost and how would those costs impact public safety given that public safety entities are subject to no filing fees in ULS? In other words, would a third-party managed database increase costs on public safety licensees in the band and would those costs outweigh any derived benefits? Commenters that support the use of a third party band manager are encouraged to consider how such a system could work with the various methods of introducing non-public safety operations to the band described below. If we were to pursue this option, who would be suitable to manage the database? How should we select the administrator?

10. Regardless of whether ULS or a third-party database is used to collect technical detail on 4.9 GHz deployments, incumbent licensees with geographic licenses would need time to submit the requisite information. In the *Sixth Further Notice,* the Commission proposed giving incumbent geographic licensees one year to identify in ULS P–P links, P–MP hubs, fixed receivers, base stations, and mobiles that are not currently licensed site-by-site. The Commission sought comment on whether the status of a license should become secondary if the incumbent licensee does not meet the one-year deadline. Most parties commenting on this issue concurred with this time period. We seek comment on whether a one-year timetable is still appropriate for incumbent geographic licensees to submit technical data on their deployments into a database, and whether any deterrent, such as the risk of forfeiting primary status, is needed to ensure compliance. On the other hand, given that the purpose of collecting additional technical data is to provide increased interference protection to incumbent licensees, does this benefit provide sufficient incentive for licensees to comply with a timetable requirement?

3. Interoperability

11. The record generated in response to the *Sixth Further Notice* demonstrates that the public safety community employs this band for a wide variety of uses. As we strive to develop a national framework for this band, we seek to encourage uses that enable collaboration and mutual aid between multiple licensees, for instance, in response to larger incidents and emergencies. To that end, we seek comment on whether to adopt any technical standards for the 4.9 GHz band that would promote interoperability in the band. In other private land mobile radio (PLMR) frequency bands used by public safety, the Commission designates certain channels for interoperability communications, and in some instances, it also specifies technical requirements for equipment designed to transmit on those channels. The goal is to ensure that public safety officials from different agencies can communicate on designated interoperability channels regardless of the make or model of their radio equipment.

12. We seek comment on whether any interoperability requirements are needed for the 4.9 GHz band. For example, should we designate a band segment or certain channels in the band for interoperable communications? If so, how much spectrum would sufficiently address public safety needs and how should interoperable spectrum be administered to optimize those resources for their primary purpose? For example, should state interoperability coordinators, regional planning

committees, or individual agencies administer the use of interoperable 4.9 GHz spectrum? In addition, if we were to set aside spectrum for public safety interoperability purposes, should we also specify technical standards for equipment intended to operate on those channels? Would such a requirement invigorate or stifle innovation and equipment options? Parties discussing interoperability for the 4.9 GHz band should explain if and how the benefits of any such requirements outweigh associated costs. How should interoperability requirements apply to non-public safety entities if we expand eligibility for the band beyond public safety (as discussed below)? What technical and licensing conditions should apply to non-public safety licensees to ensure interoperable and interference-free operations? How could the introduction of non-public safety operations into the band help foster a broader interoperable device marketplace? Should we allow the marketplace to adopt voluntary interoperability standards in lieu of requirements specified in the Commission's rules? If so, how could a voluntary industry standard promote interoperability between all eligible users of the band?

4. Public Safety Priority and Preemption

13. An important element of public safety spectrum use, particularly where spectrum is shared with non-public safety users, is ensuring that public safety will have immediate and reliable access to spectrum whenever and wherever it is required for mission-critical operations. We therefore seek comment on affording public safety licensees priority access to the 4.9 GHz band, including the ability to preempt any non-public safety operations that may be authorized in the band.

14. The Association of Public-Safety Communications Officials-International, Inc. (APCO) states in its 2015 report that, while it supports an approach to the band which fosters development in the commercial sector of ''more cost effective equipment,'' any such solution must afford ''priority and preemption for public safety users in a shared environment.'' We note that there are other instances where public safety users are afforded priority network access and the ability to preempt the operations of other users in emergency circumstances. If we open the 4.9 GHz band to non-public safety users, as discussed below, we seek comment on whether public safety priority and preemption should be elements of any sharing model we ultimately adopt. We seek comment on this approach and how best to accomplish that goal in the 4.9 GHz band.

15. For instance, we seek comment below on whether excess capacity leasing or a dynamic spectrum sharing system could effectively enable sharing between public safety and non-public safety. If so, to what extent and by what method could these sharing models ensure priority and preemption for public safety operations? Are priority and preemption sufficient tools to ensure public safety mission-critical operations access to the band under an excess capacity or dynamic spectrum sharing scheme? How would priority and preemption work under other spectrum sharing models?

16. If we adopt rules for public safety priority and preemption, we seek comment on the types of mission-critical public safety operations that should have priority over other public safety as well as non-public safety operations. Given the wide range of possible deployments in the 4.9 GHz band, both geographically and in terms of type of use, how should public safety licensees with overlapping operating areas determine priority and preemption rights and whether certain deployments or types of communications should have priority? For instance, should emergency mobile deployments at an incident scene be able to preempt fixed P–P links that may be operating on a primary basis? Does the primary status of a license or deployment have any bearing on priority and preemption? How do two overlapping licensees that both have primary status determine priority if they seek to use the same channel at the same time? We seek comment on how to ensure that mission-critical communications maintain consistent priority, no matter what deployment form they may take.

17. Finally, we seek comment on the technical feasibility of building priority and preemption algorithms into 4.9 GHz networks and equipment to enable authorized public safety users to obtain priority and preempt use of the spectrum if necessary. In contrast to instances where public safety and non-public safety operate on a single shared network, 4.9 GHz licensees operate on disparate networks. How does this affect the availability of priority and preemption solutions? Is there a demand in the equipment marketplace for priority and preemption tools, and if not, should we require 4.9 GHz band equipment to include such tools? What equipment security requirements could we impose to avoid unauthorized signaling of priority? What would be the cost of incorporating priority and preemption algorithms into equipment?

C. Fostering Greater Public Safety Use of the Band

18. Regardless of what eligibility rules or sharing model we may ultimately adopt, we anticipate that the future of this band includes a robust public safety presence. We tentatively conclude that a nationwide, coordinated approach to the management of the spectrum will not only increase the utility of this band for public safety, but will also promote greater public safety use of the band by providing greater certainty with regards to the availability of the spectrum and interference protection. In this section, we explore ways to make the spectrum environment more attractive to existing and future public safety users.

1. Frequency Coordination

19. We seek comment on requiring formal frequency coordination in the 4.9 GHz band to support interference protection and increase public safety confidence in using the band. As noted above, our rules currently allow licensees in the 4.9 GHz band to deploy base stations, mobile units, and temporary fixed stations anywhere within the licensee's jurisdiction without formal frequency coordination. Rather, our rules direct licensees to informally coordinate with other users in the band by cooperating in ''the selection and use of channels in order to reduce interference and make the most effective use of the authorized facilities.''

20. The Commission previously contemplated frequency coordination as a means to encourage increased public safety use of the band. In 2009, the Commission noted that, ''[w]ithout a specific coordination procedure in place, interference issues may arise between co-primary permanent fixed stations or other co-primary users of the band.'' In the *Sixth Further Notice,* the Commission stated that ''neither self-coordination nor a notice-and-response coordination procedure is likely to be sufficient to ensure interference protection to primary users in a mixed use environment.'' APCO argues in its 2015 report that ''new frequency coordination procedures designed to improve usage, performance, and interference protection'' would increase interest in the band by the public safety community and ''provide incentives for equipment vendors to direct investment into this market.''

21. Therefore, in this Eighth Further Notice, we tentatively conclude that some form of formal frequency coordination, whether through a coordination method discussed in this subsection and/or a dynamic spectrum

sharing model as discussed further below, is necessary to support interference protection and increase public safety confidence in using the band. We seek comment on this tentative conclusion. Would mandatory frequency coordination provide certainty and incentives for public safety to increase its use of the band? Would it encourage equipment manufacturers to invest in developing new and low cost equipment for the band? If we adopt frequency coordination requirements, should they also apply to applications for non-public safety uses, insofar as such uses are permitted? If so, what criteria should coordinators apply to ensure that proposed non-public safety uses will not interfere with public safety operations?

22. If we adopt formal frequency coordination for the 4.9 GHz band, what type of frequency coordination would most effectively promote innovative use of the band while protecting against interference? In certain spectrum bands under Part 90, applicants seeking to license a new frequency or modify existing facilities must demonstrate that their application was coordinated by a Commission-certified frequency coordinator. The certified frequency coordinator recommends the most appropriate frequency for the proposed operation. Another type of frequency coordination that does not rely on certified frequency coordinators is used for applicants in the fixed microwave service. Part 101 requires that an applicant coordinate proposed facilities with existing licensees and other applicants whose facilities could be affected by the new proposal, *i.e.,* ''notice-and-comment'' type frequency coordination. We seek comment on whether Part 90 type frequency coordination, Part 101 type frequency coordination, or a combination of the two would be best suited for the 4.9 GHz band. Should Part 101 type coordination apply only to P–P or P–MP deployments in the 4.9 GHz band since those deployments are similar to deployments licensed under Part 101 of the Commission's rules, or could it apply to additional deployments? What are the costs associated with Part 101 type coordination, including the time and effort to identify all incumbent licensees who must be notified, and how do those costs compare to Part 90-type frequency coordination? Do the benefits of frequency coordination outweigh any associated costs? Furthermore, below we seek comment on a Spectrum Access System (SAS) managed shared access model to facilitate non-public safety use of the band. Therefore, we seek comment on whether a SAS model could be used either in lieu of, or in parallel with, frequency coordination methods discussed above.

23. Next, we seek comment on how formal frequency coordination would apply to temporary or ad hoc deployments in the 4.9 GHz band. In particular, we seek comment on how to balance the need for public safety agencies to deploy temporary or ad hoc operations while protecting licensees with permanent deployments from interference. We also seek comment on what interference standard(s) should be the basis for any frequency coordination method adopted for the 4.9 GHz band. We seek comment on whether to incorporate the technical standard for frequency coordination into our rules, or rely on either an industry-agreed standard or frequency coordinator consensus. What should be the process for permitting Commission review of any disputes arising from the frequency coordinator's actions, and how should Commission staff resolve such disputes?

24. If we adopt a coordination approach for the 4.9 GHz band that requires use of certified frequency coordinators, what criteria should the Commission use to certify coordinators? Should eligibility be limited to coordinators already approved to coordinate Public Safety Pool frequencies, or should it be open to other parties? Should prospective coordinators be required to demonstrate a specific level of technical expertise with respect to 4.9 GHz operations in order to be certified?

2. Nationwide Band Manager

25. We seek comment on the concept of designating a single entity to serve as a nationwide band manager or licensee for the 4.9 GHz band. Assigning spectrum management responsibility to a single nationwide entity might simplify the task of developing a national framework for the band, and has been supported by some commenters. However, this approach would also represent a marked departure from the approach that we have applied to the band up to this point, and it raises a variety of significant policy, legal, and operational questions.

26. We seek comment on the concept of designating a single nationwide band manager that would be responsible for developing a nationwide framework for the band. For example, the Commission has adopted band manager rules for the 700 MHz Guard Bands, and the Wireless Telecommunications Bureau has permitted certain entities to engage in band manager activities via waiver request for the 220 MHz band. What entities would be appropriate for such a role in the 4.9 GHz band? How would the Commission differentiate between competing proposals to become the single nationwide band manager? If we were to pursue a nationwide band manager approach, we seek comment on appropriate rules or guidelines to define how the band manager would be authorized to select and manage users of the band. Would a band manager's duties be limited to merely developing a nationwide framework, or would a band manager take a more active role in evaluating applications? Would a band manager decide who can use the spectrum? Should we impose reporting requirements on a 4.9 GHz band manager, and, if so, what should those reports address and how often should they be filed with the Commission? What would be an appropriate level of compensation for the band manager? If the Commission moves forward with dynamic spectrum sharing, could one or more dynamic spectrum sharing system administrators assume the role of band manager, and would such designation be appropriate?

27. We also seek comment on establishing a national license for the 4.9 GHz band. If we were to adopt this approach, what rights and responsibilities over the band should be associated with the national license, and what rights should be reserved for state, local, tribal, or regional public safety licensees? As proposed above, we envision that incumbent licensees in the band would retain spectrum rights and would be entitled to protection of their facilities. Would all other spectrum rights be invested in the national licensee? If yes, what obligation should the national licensee have to ensure access to the band by sub-national public safety entities? If we were to allow public safety and non-public safety sharing of the band as discussed further below, would the national licensee be responsible for management or oversight of the sharing process? Finally, if we were to establish a national license, what process should we establish for accepting applications and selecting a licensee? What qualifications or attributes should be required to be eligible to apply for the license? If more than one entity applied to be the national licensee, how would the Commission adjudicate between competing applications?

3. Regional Planning Committees

28. Our current 4.9 GHz licensing regime is loosely based on a voluntary

regional planning framework. Section 90.1211(a) of the Commission's rules provides that each Regional Planning Committee (RPC) may submit a plan with guidelines to be used for sharing 4.9 GHz spectrum within the RPC region. The rules list elements to be included in regional plans and provide instructions for plan modifications. Although the Commission originally set a deadline for all RPCs to submit 4.9 GHz regional plans, it subsequently stayed the deadline and made plan submission voluntary. To date, only 10 out of 55 RPC regions have submitted 4.9 GHz regional plans.

29. In the *Sixth Further Notice,* the Commission stated its belief that RPCs should play an integral role in shaping use of the 4.9 GHz band through regional planning. The Commission proposed to allow RPCs to submit 4.9 GHz band regional plans, which could include region-specific technical guidelines. APCO noted that the *Sixth Report and Order* (85 FR 76469) abandoned these proposals, and in the latest round of comments, NPSTC and the American Association of State Highway and Transportation Officials (AASHTO) suggest that active RPCs could serve a valuable role in helping to manage the 4.9 GHz band in their regions.

30. As we endeavor to establish a nationwide spectrum management framework for the 4.9 GHz band, we seek comment on whether RPCs should play a continued or expanded role. Should we continue to make the filing of regional plans optional, or should we require RPCs to file regional plans? In light of the fact that only 10 of 55 RPCs have filed voluntary plans, what resources would RPCs need to ensure that plans were filed for all regions? If we were to adopt frequency coordination requirements for the band as discussed above, would RPCs have the technical expertise and resources to serve as coordinators? To what degree is regional planning consistent with our goal of establishing a national framework for management of the band that would encourage development of standardized equipment and promote interoperability? Should we develop a standardized template to ensure that all regional plans are consistent and support a nationwide approach? Should we allow RPCs to file alternative regional plans that vary from a standardized approach? In the proposal that it filed in 2013, NPSTC stated that ''a single national plan for 4.9 GHz will meet most regions' needs,'' but ''some regions will need some different parameters to better meet needs of users in their regions.'' Is this a viable approach in today's environment?

4. Incentivizing Use of Latest Commercially Available Technologies

31. We seek comment on ways to incentivize public safety use of the latest commercially available technologies, particularly 5G. As a general matter not limited to any particular spectrum band, what is the path for public safety to use 5G? Would public safety agencies be able to deploy custom 5G networks themselves, with the aid of consultants and contractors as necessary? What commercial 5G offerings are available to public safety, and what are the priority and preemption capabilities of such solutions? We also seek comment on the value, utility, and potential of the commercially available technologies, such as 5G, to public safety. For instance, the Public Safety Spectrum Alliance (PSSA) asserts that 5G functionality is expected to be the future of public safety cellular communications because it will support new high-speed applications that leverage rich media, such as augmented and virtual reality, and video streaming, while also offering extremely low latency, allowing true real-time data streaming and transfer necessary for use of autonomous vehicles, bomb and hazardous material detection and remediation, and mobile video surveillance capabilities. Nokia states that ''[n]ew technologies enabled by 5G can also allow for network slicing that can provide greater certainty for enhanced security and other quality of service metrics that may be required for public safety incumbent use cases as well as certain potential . . . [commercial] use cases.'' We seek comment on PSSA's and Nokia's views. What capabilities and applications could 5G and other advanced technologies enable for public safety? We seek comment on any public safety use cases supported by 5G and other advanced technologies.

32. In the *Sixth Report and Order,* the Commission noted that some countries have considered, or are considering, allocating the 4.9 GHz band for 5G, and noted that successful international harmonization efforts could provide further advantages in the availability and price of equipment, thus potentially increasing its utility for flexible use. The *Seventh Further Notice of Proposed Rulemaking* (*Seventh Further Notice*) (85 FR 76505) specifically sought comment on whether 5G wireless operators, among others, could put the 4.9 GHz spectrum to use. Some commenters support further exploration of potential 5G deployments in the 4.9 GHz band. PSSA states that ''as spectrum falling within the mid-band, 4.9 GHz is significantly better suited [than the 700 MHz band public safety broadband spectrum] to offer 5G capabilities.'' We seek comment on the potential for the 4.9 GHz band to support applications enabled by 5G technology, including but not limited to the examples suggested by PSSA and Nokia. Is development of 5G in the band technically feasible, and what are the potential benefits and costs of such development? Could the technical capabilities of 5G technology promote more intense use of the 4.9 GHz band by public safety entities? In the context of our objectives to establish a national framework that ensures public safety priority, how can we create conditions in the 4.9 GHz band that will encourage deployment of 5G and subsequent innovative technologies? As in other spectrum bands, our strong preference is to adhere to a technology-neutral policy for the band and strive for operational flexibility. Do any of the existing 4.9 GHz rules in part 90 (*i.e.,* subpart Y) impede or discourage 5G deployments?

33. We also seek comment on commercial interest in the 4.9 GHz band for 5G, whether for public safety offerings, for non-public safety, or a sharing combination. Could commercial 5G providers and operators put 4.9 GHz spectrum to use? Could 5G technology also enhance opportunities for shared public safety and non-public safety use of the band? If so, how?

5. Other Technical Options

34. Although we seek comment above on certain prominent proposals from the *Sixth Further Notice,* the Commission proposed several other technical rule changes to increase utilization of the 4.9 GHz band. We incorporate these proposals by reference. In particular, the Commission proposed to (1) expand the channel aggregation bandwidth limit from 20 to 40 megahertz; (2) accord primary status for all P–P and P–MP links on Channels 14–18 of the band plan; (3) limit temporary P–P operation to thirty days maximum over a given path over a one-year period; (4) raise the minimum antenna gain for P–P antennas to 26 dBi; (5) require all 4.9 GHz geographic licensees to place at least one base or temporary fixed station in operation within 12 months of license grant; (6) reduce the construction period for fixed P–P stations from 18 months to 12 months; and (7) allow manned aeronautical mobile, not including unmanned aeronautical systems (UAS), and robotic use in the lowest five megahertz of the

band with altitude and other technical limitations. The Commission also sought comment on how to encourage voluntary implementation of technical standards for the band and on power limits and emission masks. We seek comment on these proposals and open issues, and seek comment on whether we should include any of them going forward as part of our proposed national framework.

D. Facilitating Non-Public Safety Access to the Band

35. While we emphasize the importance of public safety operations in the 4.9 GHz band, we also recognize that introducing non-public safety operations in the band may help to foster innovation and drive down equipment costs, thereby making more intensive public safety use of the spectrum a possibility. To that end, we seek comment on expanding use of the band to non-public safety entities, subject to appropriate safeguards to protect public safety operations. We also seek comment on ensuring a cohesive and predictable shared spectrum landscape that would also allow for planning and investing in the band by public safety and non-public safety users alike.

36. In this Eighth Further Notice, we seek comment on whether and how to allow non-public safety entities access to the 4.9 GHz band for non-public safety operations, with particular emphasis on expanding use of the band under a nationwide framework. We seek comment on whether it is in the public interest to open the band to non-public safety uses, and under what terms. We seek comment on whether such a policy has the potential to not only promote efficient use of valuable mid-band spectrum, something which we have recognized repeatedly is in the public interest, but also to reduce equipment costs and spur innovation, which will benefit public safety users as well. We also seek comment on any costs public safety may incur if the band is shared with other users, such as in the need to replace equipment or modify usage. Would use of the band by non-public safety entities make it less reliable for public safety agencies that use the band for critical safety of life communications? If so, how can we address these concerns?

37. If we decide to allow non-public safety use of the 4.9 GHz band, we seek comment on how best to do so. Given that all public safety licenses issued for the 4.9 GHz band to date allow full access to its entire 50 megahertz and the public safety operations that it hosts are of critical importance, we recognize that any sharing regime will be complex. During earlier stages of this proceeding, several stakeholders put forth proposals to permit non-public safety use of the band, some of which have received qualified support from public safety stakeholders.

38. As part of these different potential non-public safety use frameworks, we seek comment on the types of non-public safety operations which should be permitted, and the types of entities that should be eligible for access. Should we allow all types of commercial use, but limit the types of users? For example, the Commission has previously recognized that railroad, power, and petroleum entities use radio communications ''as a critical tool for responding to emergencies that could impact hundreds or even thousands of people.'' Therefore, we seek comment on whether critical infrastructure (CII) eligible entities should be permitted access to the band in a way distinct from other classes of non-public safety users. We also seek comment on whether shared CII access to the band will sufficiently increase use of the band nationwide to encourage innovation and impact equipment costs.

39. We seek comment on these possible alternatives, in particular on the interplay of different elements of the possible approaches to improve access to the band and facilitate non-public safety use. In other words, these components should not be viewed as mutually exclusive and, indeed, any comprehensive framework that we may adopt will likely include elements of multiple access models and licensing approaches discussed below. Commenters that support opening the band for non-public safety applications are encouraged to submit detailed proposals—including cost-benefit analyses—on these issues, incorporating elements of different options discussed below and explaining why they are preferable to alternatives.

1. Shared Access Models

40. We seek comment below on possible sharing mechanisms, non-public safety licensing approaches, and leasing regimes that could be used to provide shared access to the band for non-public safety users while protecting—and, potentially, improving—critical public safety operations. These options are not exclusive of one another (*e.g.,* excess capacity leasing could be combined with a dynamic sharing mechanism) and commenters are encouraged to submit detailed proposals addressing how a comprehensive sharing regime could be implemented.

a. Excess Capacity Leasing

41. One potential means of sharing the band between public safety and non-public safety users involves leasing of excess capacity on public safety networks to non-public safety users. For example, a public safety licensee which has constructed a network of fixed sites for its operations, but only uses that network in emergencies, could lease the use of that network when no such emergency is occurring. Alternatively, a public safety licensee could work with a commercial wireless operator to construct a dual-use system pursuant to its license. Are such excess capacity leasing arrangements feasible for this band and, if so, could they provide potential benefits to public safety licensees? Could such leasing arrangements facilitate more robust deployment of 4.9 GHz public safety networks? What types of non-public safety entities would be interested in leasing excess capacity from public safety licensees? Commenters that support excess capacity leasing should address the specific costs and benefits of such a regime, giving particular consideration to the non-exclusive nature of the public safety licenses in this band, the current and potential future coordination mechanisms discussed herein, and the wide range of different uses this band hosts.

42. If we choose to implement an excess capacity leasing regime, we seek comment on how that regime should be implemented and how the rights of public safety and non-public safety entities should be managed. Given the importance of public safety operations in the band, should we ensure priority and preemption for such operations vis-à-vis non-public safety lessees? If so, how can we best do so? What specific rule-based mechanisms should we implement to ensure a consistent and publicly accountable leasing system? How should we address the overlapping rights of different public safety licensees in the band to ensure a stable and predictable spectrum environment for public safety operations? If we designate a single nationwide band manager, as discussed above, could that entity have a role in facilitating leased access to excess capacity on public safety networks? Alternatively, could these issues be addressed by utilizing a SAS, as discussed below? Specifically, could a SAS be used to manage leases and coordinate access for lessors and lessees? How would such a system work within the Commission's existing leasing rules?

b. Spectrum Access System (SAS) Managed Shared Access

43. In the *Seventh Further Notice,* the Commission sought comment on whether a dynamic spectrum access system could be used to facilitate non-public safety use of the band alongside public safety access. The Commission noted that such opportunistic use of spectrum is permitted in several other spectrum bands using a variety of different automatic sharing systems that rely on databases to ensure protection of other users. We expand on the Commission's earlier inquiry and seek comment on whether a dynamic frequency coordinator—such as the SAS used to coordinate access to the Citizens Broadband Radio Service in the 3.55–3.7 GHz band (3.5 GHz band)—could be used to facilitate sharing between public safety and non-public safety users.

44. In the 3.5 GHz band, SASs currently are used to protect several types of incumbent operations—including critical Department of Defense radar systems, fixed satellite service earth stations, and incumbent terrestrial wireless licensees—as well as two tiers of users in the Citizens Broadband Radio Service. A similar system could be used to protect public safety operations in the 4.9 GHz band. Would a SAS be the most appropriate system to coordinate dynamic spectrum sharing in this band? Or would another model, like the Automatic Frequency Coordination system in the 6 GHz band, be more appropriate? For either system, what, if any, modifications would be necessary to address the unique needs of public safety users in the 4.9 GHz band? What would be the costs associated with such a system, both its setup and its implementation going forward, and how would those costs compare to the cost of traditional Part 90 frequency coordination? Who would be responsible for those costs? Should the Commission maintain the system, or should it contract the responsibility to a third-party?

45. If we implement a SAS-based authorization model in the band, we seek comment on how best to use the unique capabilities of the SASs to protect public safety users, authorize non-public safety operations, and mitigate potential interference between and among various tiers of users in the band. Most importantly, could a SAS protect public safety operations—including possible operations over potential nationwide interoperability spectrum—while providing meaningful access to the band for non-public safety users? We also seek comment on how implementing dynamic spectrum sharing in this band would impact public safety confidence in the band, particularly given the efforts discussed above to increase the visibility of public safety deployments in the band in order to enable protection and clear access rights.

46. We also seek comment on how public safety licensees could best be incorporated into a SAS-driven dynamic spectrum sharing regime while protecting the rights of public safety users and ensuring an interference-free operating environment. Specifically, should public safety licensees be required to inform the SAS of their operations, with the system protecting these operations by only permitting non-public safety use of other frequencies in the band? Or should the SAS also be responsible for assigning frequencies to public safety operations based on their needs? If the latter, to what extent and by what method should the SAS ensure priority and preemption for public safety operations? Should the SAS treat future public safety deployments differently than pre-existing deployments? Is a SAS managed model consistent with our earlier tentative conclusion that frequency coordination is in the public interest for this band? What, if any, requirements should we put in place to protect non-public safety operations from one another?

47. We note that the feasibility of dynamic sharing could depend on factors such as how intensely incumbents are currently using the spectrum, the types of existing services these incumbents are using (*e.g.,* mobile vs. fixed), and the ability of dynamic sharing systems to register, detect, and coordinate existing systems. We seek comment on these and other characteristics in the 4.9 GHz band that would affect dynamic sharing, whether a dynamic spectrum sharing model is appropriate for this band, and, if so, what type of dynamic sharing is most appropriate. Commenters should also discuss the impacts of the different possible changes to the band that the Commission is considering as part of its efforts to standardize public safety operations and ensure greater visibility into deployments in order to provide greater protections for those operations, such as coordination requirements and a licensing database. How could a dynamic spectrum access system take advantage of those efforts?

48. Finally, we seek comment on whether to segment the 4.9 GHz band to enable non-public safety uses while also protecting public safety operations. Would combining such a segmentation of the band with a dynamic spectrum sharing system enable reliable spectrum access both for public safety operators and for non-public safety users, while also ensuring efficient use of spectrum that public safety is not actively using? For example, could we reserve some portion of the band for public safety use on a primary basis, and only permit non-public safety use of this portion via a dynamic spectrum sharing system, while making the remainder of the band available for non-public safety access? Could we grant public safety licensees some form of preemption rights, which would allow public safety access to the entire 4.9 GHz band in the case of an emergency, but limit public safety access to only a portion of the band at other times? If we do segment the band, should we require devices to be operable across the entire 4.9 GHz band, as we did in the 3.5 GHz band? Would segmenting the band—coupled with a band wide operability requirement—help to spur innovations in the equipment marketplace in the band to the benefit of public safety users?

c. Manual and Technical Sharing

49. Given the non-exclusive nature of 4.9 GHz band licenses, we seek comment on whether alternative methods of sharing are preferable to dynamic sharing. Would implementing licensing and technical rules be sufficient to enable non-public safety use without causing harmful interference to those public safety operations that would remain in the band? For example, we could require sensing capabilities for non-public safety equipment, or limit emissions to levels below that which could cause harmful interference to public safety operations. What would be the necessary requirements to allow for purely technical protection measures? Would such limitations prevent the other benefits of opening this band to non-public safety use, such as fostering innovation and lowering equipment costs, from being realized? Such rules could be different for urban or rural areas, in recognition of the different uses of the band in those locations, as discussed above.

50. We seek comment on whether a frequency coordination requirement imposed on public safety operations, as discussed above, would enable similar requirements to be placed on non-public safety operations and thereby enable shared access. What requirements would we need to impose on non-public safety operations to enable full protection for public safety users, and what information would coordinators need from non-public safety operations to ensure such protection? Would we

require non-public safety operators to modify their systems based on new public safety deployments, or only to protect incumbents at the time they deploy? What, if any, requirements should we put in place to protect non-public safety operations from one another?

2. Licensing Non-Public Safety Operations

51. In the event we determine that allowing non-public safety operations in the 4.9 GHz band is in the public interest, we will have to decide on the appropriate framework under which to authorize such operations. Below, we seek comment on a number of different licensing regimes which could be combined with one another and with the sharing regimes discussed above to create a comprehensive, nationwide framework for non-public safety operations in the band.

a. Non-Exclusive Licensed Access

52. We seek comment on allowing non-public safety users to access the band on a licensed, non-exclusive basis. Methods that have been used in other bands include: (1) Traditional site-based Part 90 secondary licensing, such as in the PLMR bands; (2) the ''license light'' licensing model used in the 3650–3700 MHz Service prior to its incorporation into the Citizens Broadband Radio Service; and (3) the licensed-by-rule General Authorized Access (GAA) tier of the Citizens Broadband Radio Service. Such approaches have been successfully used to make spectrum available to a wide variety of operators with relatively low barriers to entry vis-à-vis exclusive licensing models. Would a non-exclusive licensing approach be well-suited to the 4.9 GHz band? Could such an approach facilitate significant non-public safety use in the band while protecting important public safety operations? How should the system treat future public safety deployments, as opposed to incumbents? Could a non-exclusive licensing approach help to promote technological innovation in the band, including the equipment marketplace, to the benefit of public safety and non-public safety users? Commenters that support implementing a non-exclusive licensing model for non-public safety users in the band are encouraged to provide detailed proposals, including details on any sharing or authorization mechanism needed to facilitate such an approach.

b. Granting Exclusive Use Licenses

53. While exclusive use licenses are often the preferred method of allocating spectrum to commercial use, given the non-exclusive nature of existing public safety licenses, the ongoing importance of public safety operations in the band, and the fact that nearly all of the U.S. is covered by at least one public safety license, assigning such licenses in the 4.9 GHz band may prove to be a challenge. But exclusive use licenses offer several important benefits, and, as such we seek comment on a variety of ways that exclusive use licenses could be utilized to facilitate non-public safety use in this band.

54. Would exclusive use licenses potentially increase current and future licensees' willingness to invest heavily in the band? Exclusive use licenses may be subject to mutually exclusive applications, which would be resolved by competitive bidding. Would this increase the likelihood that new licensees will be those entities that are most highly motivated to invest in the band? The Commission's competitive bidding systems generally facilitate the aggregation of licenses when it is economically efficient to do so. Would this make it more likely that licensees aggregating licenses in competitive bidding will invest in developing and deploying networks in this band? Given these potential benefits, we seek comment on whether this band is well-suited to exclusive use licensing and, if so, how to achieve it.

55. *Overlay Licensing.* Overlay licenses would grant new non-public safety entrants the right to use the band in ways that would not cause harmful interference to public safety users at any given time, but would be exclusive as to other non-public safety users. Such a licensing framework could be combined with different access models—including spectrum manager models, competitive bidding, and dynamic database-driven sharing models—and could be coupled with relocation or re-banding of some existing operations to increase the amount of spectrum available to the overlay licensee. This approach could provide the flexibility to allow new non-public safety operations in the band while safeguarding public safety users.

56. We seek comment on whether we should utilize overlay licenses to facilitate non-public safety use of the 4.9 GHz band. We also seek comment on how to assign such licenses and how to structure the rules governing them. How would an overlay license work in concert with potential new technical, interoperability, and coordination rules for public safety licensees that we seek comment on here? What technical or coordination rules would be required for non-public safety operations, as distinct from those required of public safety licensees? How would overlay licenses work with potential future public safety operations, as opposed to incumbents?

57. We also seek comment on the impact of this approach on use of the band. Would other users of the band spur innovation and expand the type, and lower the price, of 4.9 GHz equipment available to public safety entities? What types of entities should be eligible for overlay licenses? Would overlay licenses provide new licensees with sufficient spectrum access to justify investment in equipment and broadband and mobile applications? If more spectrum access than is currently available is needed to motivate investment, can overlay licensees reasonably expect to obtain sufficient spectrum access by negotiation with incumbents? What conditions would be necessary for such negotiations to be successful? Is it possible that such access negotiations would both provide new overlay licensees with sufficient and reliable bandwidth while maintaining current incumbent operations? We seek comment on any other considerations regarding the use of overlay licensing for the 4.9 GHz band.

58. *Exclusive Use Licenses for Specified Frequencies.* We seek comment on whether licenses providing exclusive use of specified frequencies, *e.g.,* designated channels, would be more beneficial for the 4.9 GHz band than overlay licenses. Depending on the use of the band by underlying incumbent licensees, overlay licenses may not enable the use of uniform frequencies across geographic areas by new licensees. However, enabling the exclusive use of uniform frequencies likely would require any incumbent public safety operations using the frequencies to cease. We seek comment on possible mechanisms for relocation or repacking of such operations. We seek comment below on the use of an incentive auction model to enable this effort. But we similarly seek comment on any alternatives to relocate or repack public safety incumbents as needed.

59. What are the benefits and costs to this approach and how could it be implemented? How would licensing specified frequencies for exclusive use work in concert with other proposals to increase use of the band, such as the new technical and coordination rules for public safety operations or dynamic spectrum sharing, and which would it rule out?

c. Unlicensed Access

60. Unlicensed access allows a wide range of different users the ability to access spectrum, especially in rural or

underserved areas and often at lower price points than through licensed services. This framework permits users to support innovative use cases and applications that can be tailored for each area, especially through Wi-Fi, Bluetooth, and other widely used technologies. Because the Commission permits unlicensed operations on a variety of spectrum bands, users are able to both match available capacity to their spectrum needs and choose the band(s) that are best suited to their particular coverage requirements. The Commission previously sought comment on unlicensed operations in this band. We recognize that both the demand for unlicensed spectrum and the unlicensed spectrum landscape have continued to evolve. We seek updated information on the potential use of the 4.9 GHz band for unlicensed access. To what extent is the band desirable for such use, given the presence of public safety incumbents and amount of spectrum available? What use cases could the 4.9 GHz band host? Is this band suitable to provide the types of applications users are demanding in terms of capacity and coverage requirements? Are there particular unlicensed applications and protocols that are well-suited for the 4.9 GHz band? We seek comment below on possible sharing mechanisms, which could operate in concert with unlicensed use, but what technical or licensing rules would be required in order to enable such use, regardless of sharing mechanism?

3. Other Considerations

61. *Technical Flexibility.* In the context of establishing a nationwide approach, we also seek comment on the feasibility of implementing different technical rules (*e.g.,* maximum power levels) for the band to account for different public safety and non-public safety needs in different scenarios. We note that the record in this proceeding indicates that there may be varying use cases and opportunities for use in a nationwide framework. For example, public safety usage of the band is greater in urban areas than rural ones. At the same time, there may be differences in non-public safety use of this band in rural areas, particularly to accommodate wireless broadband. Would it be in the public interest to adopt flexibility in the technical rules for the 4.9 GHz band to accommodate these different needs, consistent with our decision to pursue an integrated, nationwide approach to the band? For example, in other proceedings we have adopted different power levels for urban and rural deployments. Should we take a similar approach here as part of a nationwide framework? Would this approach help foster efficient use, encourage innovation, and improve the equipment marketplace for the band? How would we define the different areas within our nationwide framework, and how would we ensure these definitions remain up-to-date as use of the band evolves?

62. *Incentive Auction.* In addition to its standard authority to conduct competitive bidding to assign licenses, the Commission has statutory authority to conduct incentive auctions, in which it offers incumbent licensees a share of the proceeds from the auction of new licenses made available by the incumbents relinquishing their spectrum usage rights. Should the Commission consider an incentive auction to encourage public safety licensees to relocate their operations (or modify them in some way to reduce the amount of spectrum they require) in order to enable greater non-public safety use of the band? How would we structure an incentive auction within the Commission's existing statutory authority that would result in enough clear spectrum to attract new licensees and serve the public interest? What alternate options are available to public safety licensees which accept incentive auction payments? Would the current 4.9 GHz licensees, many of which are governmental entities, be legally or practically equipped to participate in the reverse phase of an incentive auction? Would their incentives align with the public interest? How would we have to modify our incentive auction structure here, given the non-exclusive rights of the current licensees? Should any incumbent public safety licensees choosing not to participate in the incentive auction be required to be repacked into a portion of the band or otherwise modify their operations to enable coexistence with new non-public safety licensees? What is the likelihood that enough existing licensees would be willing to relinquish their spectrum usage rights so that the Commission then could offer enough new licenses to stimulate investment in the band?

63. *Digital Equity and Inclusion.* Finally, the Commission, as part of its continuing effort to advance digital equity for all, including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, we seek comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority.

II. Procedural Matters

Paperwork Reduction Act

64. This Eighth Further Notice of Proposed Rulemaking may contain new or modified information collection(s) subject to the Paperwork Reduction Act of 1995. If the Commission adopts any new or modified information collection requirements, they will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, we seek specific comment on how we might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

Regulatory Flexibility Act

65. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' Accordingly, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning potential rule and policy changes contained in the Eighth Further Notice of Proposed Rulemaking. The IRFA is contained in Appendix C in the Eighth Further Notice of Proposed Rulemaking.

Ex Parte Rules

66. This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) List all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made; and (2) summarize all data presented and

arguments made during the presentation.

67. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with § 1.1206(b) of the Commission's rules. In proceedings governed by § 1.49(f) of the rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

III. Initial Regulatory Flexibility Analysis

68. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the Eighth Further Notice of Proposed Rulemaking (Eighth Further Notice). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments as specified in the Eighth Further Notice. The Commission will send a copy of the Eighth Further Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the Eighth Further Notice and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

69. In the Eighth Further Notice, we seek comment on a nationwide framework to encourage greater use and improved spectrum efficiency of the 4940–4990 MHz (4.9 GHz) band. We seek comment to implement changes to our policies and regulations that promote optimal use, innovation, and investment. The *Fifth Further Notice of Proposed Rulemaking* (77 FR 45558) and *Sixth Further Notice of Proposed Rulemaking* in this proceeding enabled the Commission to develop a record on several issues, including 4.9 GHz coordination, eligibility, licensing, band plan, power and antenna gain, aeronautical mobile use, and standards. The *Sixth Report and Order and Seventh Further Notice of Proposed Rulemaking,* however, sought to establish a new framework to expand access to the band by providing states the opportunity to lease 4.9 GHz band spectrum to commercial entities, critical infrastructure industry, including electric utilities, and other stakeholders. In addition, the *Seventh Further Notice* sought comment on new state-based licensing regime for public safety operations in the 4.9 GHz band, including a centralized structure of state oversight and coordination of public safety operations in the band.

70. In the Eighth Further Notice, we revisit the structure of the 4.9 GHz band to promote public safety use and encourage a robust market for equipment. Specifically, we focus on establishing a nationwide framework that will avoid breaking up the 4.9 GHz band into a patchwork of state leases. We believe that a nationwide approach will promote robust equipment market, lower costs, and increase the likelihood of interoperable communications and consistent interference protection. To achieve this vision, we seek comment on establishing a database with consistent and reliable information about what spectrum is available where or how it is being used—providing certainty and predictability to plan and invest in 4.9 GHz deployments. Further, we seek comment on certain prominent proposals from the *Sixth Further Notice,* such Universal Licensing System (ULS) information submissions, non-public safety access, dynamic spectrum sharing, and frequency coordination in the 4.9 GHz band, as well as on several other Commission proposals involving technical rule changes to increase utilization of the 4.9 GHz band and we incorporate these proposals by reference into the Eighth Further Notice. We believe that by implementing a nationwide framework that reflects public safety input, we can ensure that public safety continues to be prioritized in the band while opening up the band to additional uses that will facilitate increased usage and encourage a more robust market for equipment and greater innovation, and at the same time protect against harmful interference.

B. Legal Basis

71. The proposed action is authorized pursuant to Sections 1, 4(i), 4(j), 4(o), 301, 303(b), 303(g), 303(r), 316, 332, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 154(o), 301, 303(b), 303(g), 303(r), 316, 332, and 403.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

72. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

73. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small *entities* that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States which translates to 30.7 million businesses.

74. Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements *for* small exempt organizations. Nationwide, for tax year 2018, there were approximately 571,709 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

75. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2017 Census of Governments indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 36,931 general purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts with enrollment populations of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of ''small governmental jurisdictions.''

76. *Private Land Mobile Radio Licensees.* Private land mobile radio (PLMR) systems serve an essential role in a vast range of industrial, business, land transportation, and public safety activities. Companies of all sizes operating in all U.S. business categories use these radios. Because of the vast array of PLMR users, the Commission has not developed a small business size standard specifically applicable to PLMR users. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite) which encompasses business entities engag*ed in radiotelephone communications.* The appropriate size standard for this category under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2012 shows that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1,000 employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of PLMR licensees are small entities.

77. According to the Commission's records, a total of approximately 393,490 licenses comprise PLMR users. Of this number there are a total of 3,541 PLMR licenses in the 4.9 GHz band. The Commission does not require PLMR licensees to disclose information about number of employees, and does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. The Commission however believes that a substantial number of PLMR licensees may be small entities despite the lack of specific information.

78. *Frequency Coordinators.* Neither the Commission nor the SBA has developed a small business size standard specifically applicable to spectrum frequency coordinators. The closest applicable SBA category is Business Associations which comprises establishments primarily engaged in promoting the business interests of their members. The SBA has developed a small business size standard for ''Business Associations,'' which consists of all such firms with gross annual receipts of $7.5 million or less. For this category, U.S. Census Bureau data for 2012 shows that there were 14,996 firms that operated for the entire year. Of these firms, a total of 14,229 had gross annual receipts of less than $5 million and 396 firms had gross annual receipts of $5 million to $9,999,999.

79. There are 13 entities certified to perform frequency coordination functions under Part 90 of the Commission's rules. According to U. S. Census Bureau data approximately 95% of business associations have gross annual receipts of $7.5 million or less and would be classified as small entities. The Business Associations category is very broad however, and does not include specific figures for firms that are engaged in frequency coordination. Thus, the Commission is unable to ascertain exactly how many of the frequency coordinators are classified as small entities under the SBA size standard. Therefore, for purposes of this IRFA under the associated SBA size standard, the Commission estimates that a majority of the 13 FCC-certified frequency coordinators are small.

80. *Regional Planning Committees.* Neither the Commission nor the SBA has developed a small business size standard specifically applicable to Regional Planning Committees (RPCs) and the National Regional Planning Council (NRPC). As described by the NRPC, ''[NRPC] is an advocacy body formed in 2007 that supports public safety communications spectrum management by [the RPCs] in the 700 MHz and 800 MHz NPSPAC public safety spectrum as required by the Federal Communications Commission.'' The NRPC states that RPCs ''consist of public safety volunteer spectrum planners and members that dedicate their time, in addition to the time spent in their regular positions, to coordinate spectrum efficiently and effectively for the purpose of making it available to public safety agency applicants in their respective region.'' According to Commission data, there are 55 RPCs. The Commission has not developed a small business size standard specifically applicable to RPCs and the NRPC. The closest applicable industry with a SBA small business size standard is Wireless Telecommunications Carriers (except Satellite) which encompasses business entities engaged in radiotelephone communications. Under the SBA small business size standard, a business employing no more than 1,500 persons is considered small. For this industry, U.S. Census Bureau data for 2012 shows that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1,000 employees or more. Thus using the SBA size standard, we estimate that all of the RPCs and the NRPC can be considered small.

81. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment. The SBA has established a small business size standard for this industry of 1,250 employees or less. U.S. Census Bureau data for 2012 show that 841 establishments operated in this industry in that year. Of that number, 828 establishments operated with fewer than 1,000 employees, 7 establishments operated with between 1,000 and 2,499 employees and 6 establishments operated with 2,500 or more employees. Based on this data, we conclude that a majority of manufacturers in this industry are small.

82. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms employed fewer than 1,000 employees and 12 firms employed of 1,000

employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of Wireless Telecommunications Carriers (except Satellite) are small entities.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

83. The nationwide framework described in the Eighth Further Notice may impose new or additional reporting or recordkeeping and/or other compliance obligations on small entities, if adopted. The reporting or recordkeeping and/or other compliance obligations generally fall into two categories: Technical requirements and eligibility/governance criteria. Potential information collections and compliance requirements that are technical in nature may include costs associated with compensating engineering or technical staff or consultants or attorneys which the Commission is unable to quantify at this time. The purpose of the information collections is to ensure that future operations protect incumbent operations from interference, and to make it feasible to identify the source of any actual interference that may occur, as well as maximize use of the 4.9 GHz band. We discuss these potential requirements below.

84. *Licensing Database and Frequency Coordination.* The Eighth Further Notice seeks comment on requiring base and mobile stations, permanent fixed P–P transmitters and receivers, and permanent fixed P–MP transmitters and receivers in the 4940–4990 MHz band to be licensed individually on a site-by-site basis for interference protection and frequency coordination purposes which would impose a one-time information collection requirement on existing 4.9 GHz band licensees. The information collected would include technical parameters such as transmitter and receiver antenna coordinates, azimuth (direction), polarization, beamwidth, physical dimensions, gain, and height above ground, as well as transmit details such as power, channel, emission, and would be collected on Form 601 in the Commission's Universal Licensing System database. We expect that there will not be any application fees associated with this information collection for public safety entities because they are exempt from application fees pursuant to 47 CFR 1.1116(b). To the extent non-public safety access is permitted in the band however, non-public safety entities would incur application fee costs.

85. The Eighth Further Notice also seeks comment on requiring formal frequency coordination in the 4.9 GHz band to support interference protection and increase public safety confidence to use the band. If formal frequency coordination is adopted, we have requested comment on the criteria and type of certification the Commission should use to certify coordinators which may impose reporting and recordkeeping obligations. The selected frequency coordinators could be subject reporting recordkeeping obligations associated with coordination for the 4.9 GHz band. Additionally, licensees could be subject to requirements to submit information to frequency coordinators and subject to compliance costs associated frequency coordination.

86. *Facilitating Non-Public Safety Access to the Band.* The Eighth Further Notice seeks comment various methods of enabling non-public safety access to the 4.9 GHz band alongside public safety access, including tiered licensing, a dynamic spectrum access system, and overlay licenses. For any of these methods, either the Commission or a third party would collect information from non-public safety users that wish to access the 4.9 GHz band. Such users may be classified as small businesses, small organizations, small governmental jurisdictions; PLMR licensees; and wireless telecommunications carriers (except satellite). The information collected would likely be equivalent to information collected on Form 601 of the Commission's Universal Licensing System database. For the dynamic spectrum access system method, a third party database would collect certain licensing and operational information from incumbent public safety 4.9 GHz band PLMR licensees. The amount of information collected, the means, and the frequency of such collection depends on whether the dynamic spectrum access system database would draw existing sources of such information, such as information contained in the Commission's Universal Licensing System. The Eighth Further Notice also seeks comment on the potential use of an incentive auction as part of the discussion on granting exclusive access rights which would have recordkeeping and data submission obligations.

87. *Nationwide Licensee or Band Manager.* The Eighth Further Notice seeks comment on designating a nationwide band manager that would be responsible for developing a nationwide framework for the 4.9 GHz band. If adopted, a one-time information collection may take the form of a band manager application and a proposed nationwide framework describing how different types of entities may operate within the 4.9 GHz band.

88. *Regional Planning Committees.* The Eighth Further Notice seeks comment on a requiring regional planning committees (RPCs) to file regional plans, which could impact reporting and recordkeeping obligations for RPCs. Under the Commission's existing rules in the 4.9 GHz licensing regime, the filing of regional plans by RPCs is voluntary. Sections 90.1211(b) and (c) of the Commission's rules detail certain information that must be submitted in regional plans and provide instructions for plan modifications. In the Eighth Further Notice, we inquire whether to develop a standardized template to ensure that the information submitted in all regional plans is consistent and supports a nationwide approach, and whether to allow RPCs to file alternative regional plans that vary from a standardized approach.

E. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

89. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among *others*): ''(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.''

90. The Commission's reliance on technical and eligibility requirements utilized in other public safety and PLMR spectrum bands as the basis of inquiries in Eighth Further Notice potentially provides regulatory policies and frameworks that small entities are operationally familiar with and may therefore minimize any substantial economic impact if similar requirements are adopted in this proceeding. To assist in the Commission's evaluation of the economic impact on small entities as a result of the actions that have been proposed in this proceeding, and the options and alternatives for such entities, the Commission has raised questions and sought comment on these matters in the Eighth Further Notice. As part of the inquiry, the Commission has specifically requested that commenters include costs and benefit analysis data

in their comments. Additionally, we are seeking comment on proposals in the *Sixth Further Notice,* which include inquiries and requests for information on the impacts for small entities and courses of action that might be considered to accommodate the resources small entities. For example, as part of the proposed information collection requirement to make information available to frequency coordinators to ensure that these operations are protected from interference, the *Sixth Further Notice* proposed a one-year deadline for licensees to complete this information collection after final rules in this proceeding become effective. Before the deadline, the Commission would waive frequency coordination requirements. After one year, the information collection would be subject to frequency coordination requirements, including frequency coordination fees. The Commission also sought comment on whether the status of a license should become secondary if the incumbent licensee does not meet the one-year deadline. The *Sixth Further Notice* sought comment on whether small entities should have a lengthier deadline, and what showing the Commission should require from licensees to attest that they qualify as small entities. The *Sixth Further Notice* also asked whether the Commission should require small entities to file attestations by the one-year deadline or accept attestations after the deadline at the time they eventually complete the information collection.

91. The Commission is hopeful that the comments it receives will specifically address matters impacting small entities and include data and analyses relating to these matters. Further, while the Commission believes the rules that are eventually adopted in this proceeding should benefit small entities, whether public safety or non-public safety, by giving them more options for gaining access to valuable spectrum, the Commission expects to more fully consider the economic impact and alternatives for small entities following the review of comments filed in response to the Eighth Further Notice. The Commission's evaluation of this information will shape the final alternatives it considers, the final conclusions it reaches, and any final actions it ultimately takes in this proceeding to minimize any significant economic impact that may occur on small entities.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

IV. Ordering Clauses

92. Accordingly, *it is ordered,* pursuant to the authority found in sections 4(i), 4(j), 302, 303(b), 303(f), 303(g), 303(r), 309(j) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 302a, 303(b), 303(f), 303(g), 303(r), 309(j), and 405, that this Eighth Further Notice of Proposed Rulemaking *is hereby adopted.*

93. *It is further ordered* that, pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415, 1.419, interested parties may file comments on the Eighth Further Notice of Proposed Rulemaking on or before 30 days after publication in the **Federal Register**, and reply comments on or before 60 days after publication in the **Federal Register**.

94. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Eighth Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

[FR Doc. 2021–23335 Filed 10–28–21; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 237, and 252

[Docket DARS–2021–0021]

RIN 0750–AK47

Defense Federal Acquisition Regulation Supplement: Requirement for Firms Used To Support Department of Defense Audits (DFARS Case 2019–D010)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2019, as amended by a section of the National Defense Authorization Act for Fiscal Year 2020, that requires accounting firms that provide financial statement auditing or audit remediation services in support of the Financial Improvement and Audit Remediation Plan to provide to DoD a statement setting forth the details of any disciplinary proceedings with respect to the accounting firm or its associated persons before any entity with the authority to enforce compliance with rules or laws applying to audit services offered by the accounting firm. DoD policy extends this requirement to firms other than accounting firms.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before December 28, 2021, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2019–D010, using any of the following methods:

○ *Federal eRulemaking Portal: https://www.regulations.gov.* Search for ''DFARS Case 2019–D010.'' Select ''Comment'' and follow the instructions provided to submit a comment. Please include ''DFARS Case 2019–D010'' on any attached documents.

○ *Email: osd.dfars@mail.mil.* Include DFARS Case 2019–D010 in the subject line of the message.

Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *https://www.regulations.gov,* approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Mr. David E. Johnson, telephone 571–372–6115.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is proposing to amend the DFARS to implement section 1006 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232), as amended by section 1011 of the NDAA for FY 2020 (Pub. L. 116–92). Section 1006 applies to accounting firms that provide financial statement auditing to DoD in support of the audit under 31 U.S.C. 3521 or audit remediation services in support of the Financial Improvement and Audit Remediation Plan described in 10 U.S.C. 240b. DoD, as a matter of policy, is extending this requirement to firms other than accounting firms that provide such services. Such firms, when responding to a solicitation or awarded

a contract for the acquisition of covered services, must disclose to DoD before any contract action (including award, renewals, and modifications) the details of any disciplinary proceedings with respect to the accounting firm or its associated persons before any entity with the authority to enforce compliance with rules or laws applying to audit services offered by the accounting firm. Section 1011 amended section 1006 to require any disclosures to be treated as confidential to the extent required by the court or agency in which the proceeding occurred and to be treated in a manner consistent with any protections or privileges established by any other provision of Federal law.

DoD received input from one respondent in response to the early engagement opportunity posted on the Defense Acquisition Regulations System web page for the NDAA for FY 2019. The input was considered in the formulation of the proposed rule. The rule is expected to have a minor impact as it is expected to apply to approximately a dozen firms.

II. Discussion and Analysis

DoD proposes to add a new paragraph (d) to DFARS 237.270, Acquisition of audit services; a new solicitation provision 252.237–70XX, Preaward Transparency Requirements for Firms Offering to Support Department of Defense Audits—Representation and Disclosure; and a new contract clause at 252.237–70YY, Postaward Transparency Requirements for Firms that Support Department of Defense Audits. The provision will not be included in the annual representations and certifications, because it affects very few offerors and requires update every time an offer is submitted.

For audit remediation services, both accounting and non-accounting firms are able to bid on and perform this work. Section 1006 of the NDAA for FY 2019 only requires that accounting firms providing financial statement auditing or audit remediation services to DoD provide the details on any disciplinary proceedings with respect to the accounting firm or its associated persons. DFARS 237.270(d)(1) specifies that, as a matter of policy, DoD proposes to require this information from any offeror responding to a DoD solicitation for such services, in order to have a level playing field for the competition.

DFARS 237.270(d)(2) specifies that this requirement applies to solicitations and contracts for financial statement auditing required under 31 U.S.C. 3521(e) (as explicitly stated in the statute) and clarifies that the covered audit remediation services are those in support of the Financial Improvement and Audit Remediation Plan described in 10 U.S.C. 240b (based on a reading of section 1006 in conjunction with section 1002 of the same NDAA for FY 2019).

DFARS 237.270(d)(3) clarifies that the ''associated persons'' referred to in section 1006 include principals and employees. Federal Acquisition Regulation (FAR) 2.101 defines ''principals'' to mean an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity.

The solicitation provision at DFARS 252.237–70XX only requires reporting of disciplinary proceedings within the last 3 years that are not yet fully adjudicated or settled or that were fully adjudicated or settled against the offeror. Postaward, prior to each subsequent contract action, the proposed clause at DFARS 252.237–70YY requires contractors to report any changes in previously reported proceedings and any newly initiated proceeding that has not yet been adjudicated or settled, or has been fully adjudicated or settled against the contractor. The provision and the clause each require that the disclosure shall, at a minimum, include the entity hearing the case, the case or file number, and a brief description of the allegation or conduct at issue, and if fully adjudicated or settled, a brief description of the outcome.

The proposed provision and clause also include assurance that the Government will safeguard and treat as confidential all statements provided pursuant to this provision where the statement has been marked ''confidential'' or ''proprietary'' by the offeror or contractor. Statements so marked will not be released by the Government to the public pursuant to a request under the Freedom of Information Act, 5 U.S.C. 552, without prior notification to the offeror or contractor and opportunity for the offeror or contractor to claim an exemption from release. The Government will treat any statement provided pursuant to this provision and clause as confidential to the extent required by any other applicable law.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Items, Including Commercially Available Off-the-Shelf (COTS) Items

Consistent with the determinations that DoD made with regard to application of the requirements of section 1006 of the NDAA for FY 2019, as amended by section 1011 of the NDAA for FY 2020, DoD does not intend to apply the requirements of section 1006 of the NDAA for FY 2019 to contracts at or below the SAT, but does intend to apply the rule to contracts for the acquisition of commercial items, excluding COTS items.

A. Applicability to Contracts at or Below the Simplified Acquisition Threshold

41 U.S.C. 1905 governs the applicability of laws to contracts or subcontracts in amounts not greater than the simplified acquisition threshold. It is intended to limit the applicability of laws to such contracts or subcontracts. 41 U.S.C. 1905 provides that if a provision of law contains criminal or civil penalties, or if the Federal Acquisition Regulatory Council makes a written determination that it is not in the best interest of the Federal Government to exempt contracts or subcontracts at or below the SAT, the law will apply to them. The Principal Director, Defense Pricing and Contracting (DPC), is the appropriate authority to make comparable determinations for regulations to be published in the DFARS, which is part of the FAR system of regulations. DoD does not intend to make that determination. Therefore, this rule will not apply at or below the simplified acquisition threshold.

B. Applicability to Contracts for the Acquisition of Commercial Items, Including COTS Items

10 U.S.C. 2375 exempts contracts and subcontracts for the acquisition of commercial items (including COTS items) from provisions of law enacted after October 13, 1994, that, as determined by the Under Secretary of Defense for Acquisition and Sustainment (USD(A&S)), set forth policies, procedures, requirements, or restrictions for the acquisition of property or services unless—

- The provision of law—
  - Provides for criminal or civil penalties;
  - Requires that certain articles be bought from American sources pursuant to 10 U.S.C. 2533a or that strategic materials critical to national security be bought from American sources pursuant to 10 U.S.C. 2533b; or
  - Specifically refers to 10 U.S.C. 2375 and states that it shall apply to contracts and subcontracts for the acquisition of commercial items (including COTS items); or
- USD(A&S) determines in writing that it would not be in the best interest

of the Government to exempt contracts or subcontracts for the acquisition of commercial items from the applicability of the provision.

This authority has been delegated to the Principal Director, DPC.

Although sections 1006 and 1011 do not refer to 10 U.S.C. 2375 or state that these sections apply to contracts and subcontracts for the acquisition of commercial items, the types of audit services targeted by the law generally are commercial services. If commercial items are exempted, the statutes will be without effect, undermining the overarching public policy purpose of the law. Therefore, DoD has determined that it is in the best interest of the Federal Government to apply the rule to contracts for the acquisition of commercial items, excluding COTS items, as defined at FAR 2.101.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

V. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD will submit a copy of interim or final the rule with the form, Submission of Federal Rules Under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not anticipated to be a major rule under 5 U.S.C. 804.

VI. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule is expected to apply to approximately a dozen entities. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

DoD is proposing to amend the DFARS to implement section 1006 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232), as amended by section 1011 of the NDAA for FY 2020 (Pub. L. 116–92), and DoD policy to provide a level playing field among firms that provide audit services, whether accounting firms or other than accounting firms.

Section 1006 applies to accounting firms that provide financial statement auditing or audit remediation services to DoD in support of the audit under 31 U.S.C. 3521 or audit remediation services in support of the Financial Improvement and Audit Remediation Plan described in 10 U.S.C. 240b. Such firms, when responding to a solicitation or awarded a contract for the acquisition of covered services, must disclose to DoD before any contract action (including award, renewals, and modifications) the details of any disciplinary proceedings with respect to the accounting firm or its associated persons before any entity with the authority to enforce compliance with rules or laws applying to audit services offered by the accounting firm. DoD policy extends this requirement to firms other than accounting firms, in order to provide a level playing field in competitive acquisitions.

DoD estimates there are 12 respondents that submit offers and 10 respondents that receive award of one or more contracts covered by this rule. Of the estimated 12 respondents, DoD further estimates that only two of these respondents are small entities.

This rule proposes to add a solicitation provision and a contract clause that require details of any disciplinary proceedings with respect to the firm or its associated persons before any contract action on a covered contract in support of DoD audits.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

DoD considered applying the rule to only accounting firms, but that would create a situation in which the rule would not apply to other firms that also provide these services, leading to unfair competitions. Applying the rule to other than accounting firms does not create a significant burden for small entities. DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2019–D010), in correspondence.

VII. Paperwork Reduction Act

The rule contains information collection requirements that require the approval of the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. chapter 35). Accordingly, DoD has submitted a request for approval of a new information collection requirement concerning Requirement for Firms Used to Support Department of Defense Audits (DFARS Case 2019–D010) to OMB. The DFARS rule adds a new documentation submission and reporting requirement.

A. Public reporting burden for this collection of information is estimated to average approximately 0.27 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden estimated as follows:

Respondents: 18.

Responses per respondent: 23.

Total annual responses: 414.

Preparation hours per response: 0.27 hours, approximately.

Total response burden hours: 113.

B. Request for Comments Regarding Paperwork Burden. Written comments and recommendations on the proposed information collection, including suggestions for reducing this burden, should be sent to Ms. Susan Minson at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503, or email *Susan_M._Minson@omb.eop.gov,* with a copy to the Defense Acquisition Regulations System, Attn: Mr. David E. Johnson, OUSD(A&S)DPC/DARS, Room 3B938, 3060 Defense Pentagon, Washington, DC 20301–3060. Comments can be received from 30 to 60 days after the date of this notice, but comments to OMB will be most useful if received by OMB within 30 days after the date of this notice.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the DFARS, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of

the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Acquisition Regulations System, Attn: Mr. David Johnson, OUSD(A&S)DPC/DARS, Room 3B938, 3060 Defense Pentagon, Washington, DC 20301–3060, or email *osd.dfars@mail.mil.* Include DFARS Case 2019–D010 in the subject line of the message.

List of Subjects in 48 CFR Parts 212, 237, and 252

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 212, 237, and 252 are proposed to be amended as follows:

■ 1. The authority citation for parts 212, 237, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 2. Amend section 212.301 by adding paragraphs (f)(xiii)(C) and (D) to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(f) * * *

(xiii) * * *

(C) Use the provision at 252.237–70XX, Preaward Transparency Requirements for Firms Offering to Support Department of Defense Audits—Representation and Disclosure, as prescribed in 237.270(e)(3), to comply with section 1006 of the National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232) and section 1011 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116–92).

(D) Use the clause at 252.237–70YY, Postaward Transparency Requirements for Firms that Support Department of Defense Audits, as prescribed in 237.270(e)(4), to comply with section 1006 of the National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232) and section 1011 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116–92).

* * * * *

PART 237—SERVICE CONTRACTING

■ 3. Amend section 237.270 by—

■ a. Redesignating paragraph (d) as paragraph (e);

■ b. Adding a new paragraph (d); and

■ c. Adding paragraphs (e)(3) and (4).

The additions read as follows:

237.270 Acquisition of audit services.

* * * * *

(d) *Transparency requirement for firms used to support DoD audits.* (1) This paragraph (d) implements the requirements of section 1006 of the National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232) and section 1011 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116–92) for transparency of accounting firms used to support DoD audits; and extends the statutory requirement, as a matter of DoD policy, to firms other than accounting firms in order to ensure consistent availability of data for contracting officer evaluation and appropriate use.

(2) This requirement applies to solicitations and contracts for—

(i) Financial statement auditing required under 31 U.S.C. 3521(e); or

(ii) Audit remediation services in support of the Financial Improvement and Audit Remediation Plan described in 10 U.S.C. 240b.

(3) Any firm responding to a solicitation or awarded a contract for the acquisition of the services described in paragraph (d)(2) of this section is required to represent with regard to whether it has been subject to disciplinary proceedings within the last 3 years and, if the offeror represents that is has, to disclose to DoD before any contract action (including award, renewals, and modifications)—

(i) The details of any disciplinary proceedings, with respect to the firm or its associated persons (including principals and employees), before an entity with the authority to enforce compliance with rules or laws applying to audit services or audit remediation services offered by accounting firms or firms other than accounting firms; and

(ii) For subsequent contract actions after contract award, whether there has been any change with regard to previously reported disciplinary proceedings since the last contract action.

(e) * * *

(3) Use the provision at 252.237–70XX, Preaward Transparency Requirements for Firms Offering to Support Department of Defense Audits—Representation and Disclosure, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, that include the clause at 252.237–70YY, Postaward Transparency Requirements for Firms that Support Department of Defense Audits.

(4) Use the clause at 252.237–70YY, Postaward Transparency Requirements for Firms that Support Department of Defense Audits, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that—

(i) Exceed the simplified acquisition threshold; and

(ii) Are for the acquisition of financial statement auditing or audit remediation services as described in paragraph (d)(2) of this section.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.237–7000 [Amended]

■ 4. Amend section 252.237–7000 introductory text by removing ''237.270(d)(1)'' and adding ''237.270(e)(1)'' in its place.

252.237–7001 [Amended]

■ 5. Amend section 252.237–7001 introductory text by removing ''237.270(d)(2)'' and adding ''237.270(e)(2)'' in its place.

■ 6. Add section 252.237–70XX to read as follows:

252.237–70XX Preaward Transparency Requirements for Firms Offering to Support Department of Defense Audits—Representation and Disclosure.

As prescribed in 237.270(e)(3), use the following provision: PREAWARD TRANSPARENCY REQUIREMENTS FOR FIRMS OFFERING TO SUPPORT DEPARTMENT OF DEFENSE AUDITS—REPRESENTATION AND DISCLOSURE (DATE)

(a) *Representation.* The Offeror represents that within the 3-year period preceding this offer, the Offeror and/or any of its principals or employees have [ ] have not [ ] been the subject of disciplinary proceedings before an entity with the authority to enforce compliance with rules or laws applying to audit services or audit remediation services offered by the Offeror, that—

(1) Are not yet fully adjudicated or settled; or

(2) Were fully adjudicated or settled against the Offeror and/or its principals or employees.

(b) *Disclosure.* If the Offeror checked ''have'' in the representation in paragraph (a) of this provision, the Offeror shall, at a minimum, disclose for each such proceeding—

(1) The entity hearing the case;

(2) The case or file number; and

(3) The allegation or conduct at issue and, if fully adjudicated or settled, a brief description of the outcome.

(c) The Government will safeguard and treat as confidential all statements provided pursuant to this provision where the statement has been marked ''confidential'' or ''proprietary'' by the Offeror. Statements so marked will not be released by the Government to the public pursuant to a request under the Freedom of Information Act, 5 U.S.C. 552, without prior notification to the Offeror and opportunity for the Offeror to claim an exemption from release. The Government will treat any statement provided pursuant to this provision as confidential to the extent required by any other applicable law.

(End of provision)

■ 7. Add section 252.237–70YY to read as follows:

252.237–70YY Postaward Transparency Requirements for Firms that Support Department of Defense Audits.

As prescribed in 237.270(e)(4), use the following clause: POSTAWARD TRANSPARENCY REQUIREMENTS FOR FIRMS THAT SUPPORT DEPARTMENT OF DEFENSE AUDITS (DATE)

(a) Prior to each contract action under this contract (including renewal or modification), the Contractor shall disclose the details of any disciplinary proceedings, with respect to the firm and/or its principals or employees, before an entity with the authority to enforce compliance with rules or laws applying to audit services or audit remediation services offered by the Contractor, and whether there has been any change with regard to previously reported proceedings since the last contract action.

(b) The disclosure shall, at a minimum, include—

(1) The entity hearing the case;

(2) The case or file number; and

(3) A brief description of the allegation or conduct at issue and, if fully adjudicated or settled, a brief description of the outcome.

(c) The Government will safeguard and treat as confidential all statements provided pursuant to this clause where the statement has been marked ''confidential'' or ''proprietary'' by the Contractor. Statements so marked will not be released by the Government to the public pursuant to a request under the Freedom of Information Act, 5 U.S.C. 552, without prior notification to the Contractor and opportunity for the Contractor to claim an exemption from release. The Government will treat any statement provided pursuant to this clause as confidential to the extent required by any other applicable law.

(End of clause)

[FR Doc. 2021–23457 Filed 10–28–21; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 217, 234, and 235

[Docket DARS–2021–0020]

RIN 0750–AL49

Defense Federal Acquisition Regulation Supplement: Contract Authority for Development and Demonstration of Prototypes (DFARS Case 2021–D025)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2021 that amends the types of line items and contract options that may be included, subject to limitations, in certain contracts initially awarded pursuant to competitive solicitations.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before December 28, 2021, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2021–D025, using any of the following methods:

○ *Federal eRulemaking Portal: https://www.regulations.gov.* Search for ''DFARS Case 2021–D025'' in the search box and select ''Search.'' Select ''Comment'' and follow the instructions to submit a comment. Please include your name, company name (if any), and ''DFARS Case 2021–D025'' on any attached document.

○ *Email: osd.dfars@mail.mil.* Include DFARS Case 2021–D025 in the subject line of the message.

Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *https://www.regulations.gov,* approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Carrie Moore, telephone 571–372–6093.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is proposing to revise the DFARS to implement paragraph (a)(2) of section 831 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021 (Pub. L. 116–283). Section 831(a)(2) amends 10 U.S.C. 2302e(a) to revise the type of contract line items or options that may be included, without additional competition, in contracts initially awarded from the competitive selection of a proposal resulting from a broad agency announcement (BAA).

When awarding a contract that results from the competitive selection of a proposal received in response to a BAA, 10 U.S.C. 2302e(a) permits the inclusion of certain contract line items or contract options that would not otherwise be covered under the general solicitation authority of a BAA. These contract line items or contract options: (1) Must be for certain services related to the technology developed under the contract, or the delivery of initial or additional items created as a result of the work performed under the contract; and (2) are subject to the quantity, term, and dollar value limitations expressed at 10 U.S.C. 2302e(b).

10 U.S.C. 2302e is intended to help streamline the process for moving technologies from science and technology into production and to enable the transition of technology for faster fielding by allowing the performance of certain work to continue while a follow-on or production contract is awarded.

II. Discussion and Analysis

Section 831(a)(2) amends 10 U.S.C. 2302e to replace ''provision of advanced component development, prototype'' with ''development and demonstration.'' As a result, when awarding a contract that results from the competitive selection of a proposal received in response to a BAA, contracting officers may now include a contract line item or contract option for the ''development and demonstration'' of technology developed under the contract. This revision provides a broader scope of effort and funding for which these contract line items and contract options can be awarded.

This proposed rule reflects the authority provided by section 831(a)(2) and clarifies for contracting officers that a contract line item or contract option included in an award pursuant to 10 U.S.C. 2302e is not limited to the funding types used for the general solicitation authority of a BAA, which are listed at DFARS 235.016.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Items, Including Commercially Available Off-the-Shelf (COTS) Items

This rule does not create any new solicitation provisions or contract clauses. It does not impact any existing solicitation provisions or contract clauses.

IV. Expected Impact of the Rule

The proposed rule impacts DoD acquisition planning decisions for contract awards that will result from the competitive selection of a proposal in response to a BAA for which DoD intends to include a contract line item or option for the development and demonstration of technology developed under the contract. The proposed rule broadens the scope of effort for which these contract line items and contract options can be awarded and the type of funding that may be used to fund these line items or options. This proposed rule also helps streamline the process for moving technologies developed under such contracts from science and technology into production.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

VI. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not anticipated to be a major rule under 5 U.S.C. 804.

VII. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule primarily affects the acquisition planning decisions made internally by DoD. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

The reason for this proposed rule is to implement paragraph (a)(2) of section 831 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021 (Pub. L. 116–283).

The objective of this rule is to revise the type of contract line items or options that may be included, without additional competition, in contracts initially awarded from the competitive selection of a proposal resulting from a broad agency announcement (BAA). When awarding such a contract, contracting officers may now include a contract line item or contract option for the ''development and demonstration'' of technology developed under the contract. This revision provides a broader scope of effort and funding for which these contract line items and contract options can be awarded, which in turn helps streamline the process for moving technologies developed under such contracts from science and technology into production. The legal basis for the rule is paragraph (a)(2) of section 831 of the NDAA for FY 2021.

Based on data from the Federal Procurement Data System for FY 2018 through FY 2020, on average, DoD annually awards 300 contracts to 200 unique small entities using the competitive selection of proposals resulting from a BAA.

This rule does not impose any new reporting, recordkeeping, or other compliance requirements. This rule does not duplicate, overlap, or conflict with any other Federal rules. There are no significant alternatives to this rule that would accomplish the objective of the statute.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2021–D025), in correspondence.

VIII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 217, 234, and 235

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 217, 234, and 235 are proposed to be amended as follows:

■ 1. The authority citation for 48 CFR parts 217, 234, and 235 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 217—SPECIAL CONTRACTING METHODS

■ 2. Amend section 217.202 by revising paragraph (2) to read as follows:

217.202 Use of options.

* * * * *

(2) For a contract that is initially awarded from the competitive selection of a proposal resulting from a broad agency announcement, see 234.005–1 for the use of contract options for the development and demonstration or initial production of technology developed under the contract or the delivery of initial or additional items.

PART 234—MAJOR SYSTEM ACQUISITION

■ 3. Amend section 234.005–1 by revising the introductory text and paragraph (1) to read as follows:

234.005–1 Competition.

A contract that is initially awarded from the competitive selection of a proposal resulting from a broad agency announcement (see 235.016) may contain a contract line item or contract option using funds not limited to those identified in 235.016 for the development and demonstration or initial production of technology developed under the contract, or the delivery of initial or additional items if the item or a prototype thereof is created as the result of work performed under the contract, only when it adheres to the following limitations:

(1) The contract line item or contract option shall be limited to the delivery of the minimal amount of initial or additional items or prototypes that will allow for timely competitive solicitation

and award of a follow-on development or production contract for those items.

* * * * *

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

■ 4. Amend section 235.006–71 by revising paragraph (b) to read as follows:

235.006–71 Competition.

* * * * *

(b) For a contract that is initially awarded from the competitive selection of a proposal resulting from a broad agency announcement, see 234.005–1 for the use of contract line items or contract options for the development and demonstration or initial production of technology developed under the contract or the delivery of initial or additional items.

[FR Doc. 2021–23459 Filed 10–28–21; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2021–0103; FXES111302WOLF0–212–FF02ENEH00]

RIN 1018–BE52

Endangered and Threatened Wildlife and Plants; Revision to the Nonessential Experimental Population of the Mexican Wolf

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; availability of draft supplemental environmental impact statement; announcement of public information sessions and public hearings.

SUMMARY: We, the U.S. Fish and Wildlife Service (USFWS), propose new revisions to the existing experimental population designation of the Mexican wolf (*Canis lupus baileyi*) in the Mexican Wolf Experimental Population Area (MWEPA) in Arizona and New Mexico under section 10(j) of the Endangered Species Act of 1973, as amended (ESA). We are taking this action in response to a court-ordered remand of our January 16, 2015, final rule revising the regulations for the nonessential experimental population of the Mexican wolf. This document proposes to modify the population objective, establish a genetic objective, and temporarily restrict three of the forms of take of Mexican wolves in the MWEPA that we adopted in the January 16, 2015, final rule. We are proposing these revisions to ensure the long-term conservation and recovery of the Mexican wolf. In addition, this document proposes to maintain the nonessential designation for the experimental population. We are not proposing to revise the geographic boundaries of the MWEPA. We are seeking comment from the public on the proposed regulatory revisions and on a draft supplemental environmental impact statement for the proposed revisions. We also announce public information sessions and public hearings on this proposed rule and the associated draft supplemental environmental impact statement.

DATES:

Written comments: We will accept public comments received or postmarked on or before January 27, 2022. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**) must be received by 11:59 p.m. Eastern Time on the closing date. Due to a court-ordered deadline, we will not extend the date for public review and comment on these documents.

Public information sessions and public hearings: We are holding three public information session and two public hearings, as follows:

- On November 18, 2021, we will hold a public information session from 5:30 p.m. to 7:30 p.m., Mountain Time.
- On December 8, 2021, we will hold a public information session from 5:30 p.m. to 7 p.m., Mountain Time, followed by a public hearing from 7 p.m. to 9 p.m., Mountain Time.
- On January 11, 2022, we will hold a public information session from 5:30 p.m. to 7 p.m., Mountain Time, followed by a public hearing from 7 p.m. to 9 p.m., Mountain Time.

ADDRESSES:

Written comments: You may submit written comments on this proposed rule and the associated draft supplemental environmental impact statement by one of the following methods:

(1) *Electronically:* Go to the Federal Rulemaking Portal: *http://www.regulations.gov.* In the Search box, enter the docket number or RIN for this rulemaking (presented above in the document headings). For best results, do not copy and paste either number; instead, type the docket number or RIN into the Search box using hyphens. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment.''

(2) *By hard copy:* Submit comments by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R2–ES–2021–0103, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send written comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

Public information sessions and public hearings: The public information sessions and public hearings will be held virtually via the Zoom online video platform and via teleconference so that participants can attend remotely. See *Public Information Sessions and Public Hearings,* below, for more information.

FOR FURTHER INFORMATION CONTACT:

Brady McGee, Mexican Wolf Recovery Coordinator, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna Road NE, Albuquerque, NM 87113; by telephone at 505–761–4704; or by facsimile 505–761–2542. If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service at 800–877–8339. You may visit the Mexican Wolf Recovery Program's website at *https://www.fws.gov/southwest/es/mexicanwolf/* for additional information about the Mexican wolf recovery effort, and *https://www.fws.gov/southwest/es/mexicanwolf/10j-revision* for information about our proposed revision.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why We Need To Publish a Rule

Under section 10(j) of the ESA, the USFWS may designate a population of an endangered or threatened species as an experimental population prior to its reintroduction. Experimental populations can only be designated by issuing a rule.

On January 12, 1998, we published a final rule (63 FR 1752) adopting regulations that designate a nonessential experimental population of the Mexican wolf. On January 16, 2015, we published a final rule (80 FR 2512; the ''2015 10(j) rule'') revising those experimental population regulations based on two decades of implementing Mexican wolf reintroduction in the Mexican Wolf Experimental Population Area (MWEPA) in portions of Arizona and New Mexico. The 2015 10(j) rule expanded the geographic boundaries of

the MWEPA, established new management zones with provisions for initial release and translocation of Mexican wolves, revised and added allowable forms of take, and clarified definitions. On March 31, 2018, the District Court of Arizona remanded the 2015 10(j) rule to the USFWS to redress specific components of the rule in a new revised experimental population rule (*Center for Biological Diversity* v. *Jewell,* No. 4:15–cv–00019–JGZ (D. Ariz.) (March 31, 2018) (''March 31, 2018, Order'')). The 2015 10(j) rule has remained, and will remain, in effect while we address the remand.

What This Document Does

This document proposes revisions to the experimental population designation of Mexican wolves in the MWEPA in response to the March 31, 2018, Order. We propose to modify the population objective, establish a genetic objective, and temporarily restrict three of the forms of take of Mexican wolves in the MWEPA that we adopted in the 2015 10(j) rule. Proposed revisions also include a new essentiality determination. We are not proposing or analyzing any changes to the 2015 10(j) rule beyond the scope of the March 31, 2018, Order. Finally, we have also updated the 2015 10(j) rule determinations with current data and information. If adopted as proposed, this rule will designate Mexican wolves in the MWEPA as a nonessential experimental population on the List of Endangered and Threatened Wildlife in title 50 of the Code of Federal Regulations (CFR) at 50 CFR 17.11(h) with a revised rule issued under section 10(j) of the ESA at 50 CFR 17.84(k).

The Basis for Our Action

Based on the best scientific and commercial data available (in accordance with 50 CFR 17.81), we find that releasing Mexican wolves into the MWEPA, with the proposed revised regulatory provisions described in this document, will further the long-term conservation and recovery of the species. The proposed nonessential experimental population status is appropriate for the reintroduced population because we have determined that it is not essential to the continued existence of the species in the wild.

In making our finding that this rule would further the conservation and recovery of the species, we evaluate any possible adverse effects on extant Mexican wolf populations, the likelihood that the experimental population would become established and survive in the foreseeable future, the relative effects that establishment of the experimental population would have on the recovery of the species, and the extent to which the reintroduced population could be affected by existing or anticipated Federal, State, or Tribal actions or private activities within or adjacent to the experimental population area. We specifically evaluate how our proposed revisions to the population objective, establishment of a genetic objective, and revisions to the take provisions further the conservation of the species by aligning the designation and management of the experimental population with USFWS's long-term conservation and recovery goals for the Mexican wolf. In addition, we identify the geographic boundaries of the MWEPA as defined in the 2015 10(j) rule and note that we are not proposing geographic revisions to the boundaries of the MWEPA, the management zones, or the phasing of the Arizona portion of the MWEPA. We also explain our rationale for why the population is not essential to the continued existence of the species in the wild, and we describe management restrictions, protective measures, or other special management concerns for Mexican wolves. Last, we explain a proposed process for periodic review and evaluation of the success or failure of the experimental population and its effect on the conservation and recovery of the species.

Supplemental Environmental Impact Statement

To ensure that we consider the environmental impacts associated with this proposed rule, we have prepared a draft supplemental environmental impact statement (DSEIS) pursuant to the National Environmental Policy Act of 1969, as amended (NEPA; 42 U.S.C. 4321 *et seq.*). On April 15, 2020, we published our notice of intent to prepare the DSEIS (85 FR 20967); that document opened the public scoping process under NEPA from April 15, 2020, to June 15, 2020, to seek public input on the issues under remand by the March 31, 2018, Order. We used the information gathered during scoping to inform our DSEIS and used the analyses in the DSEIS to inform this proposed rule. The comments we received are available online at *http://www.regulations.gov* in Docket No. FWS–R2–ES–2020–0007.

Information Requested

We are seeking comments from the public on the proposed revisions to the 2015 10(j) rule described in this document and our associated DSEIS. We want to ensure that any final rule is as effective as possible. Therefore, we request comments or information from other concerned governmental agencies, Native American Tribes, the scientific community, industry, and any other interested parties concerning this proposed rule. Your comments should be as specific as possible.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov.* If you provide personal identifying information in your comment, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. The comments we receive and any supporting documentation we used in preparing this proposal will be available for public inspection at *http://www.regulations.gov.* All comments, including commenters' names and addresses, if provided to us, will become part of the supporting record.

We will consider comments and information we receive during the public comment period on the proposed rule as we prepare our final rule and final SEIS. Accordingly, the final rule and final SEIS may differ from this proposal and the DSEIS. Please note that submissions merely stating support for, or opposition to, the actions under consideration, without providing supporting information, although noted, do not provide substantial information necessary to support a determination. Section 10(j)(2)(B) of the ESA (16 U.S.C. 1531 *et seq.*) and our regulations at 50 CFR 17.81 direct that our determinations and findings regarding designation of experimental populations be made utilizing the best scientific and commercial data available.

We are specifically seeking comments on the proposed revisions to the 2015 10(j) rule described in this document and the associated DSEIS, including:

- The effect of the proposed revised population objective on the recovery of the Mexican wolf, including the extent to which the proposed revision supports the MWEPA population in contributing to recovery;
- The effect of the proposed genetic objective on the recovery of the Mexican wolf, including the extent to which the proposed revision supports the MWEPA population in contributing to recovery;
- The effects of the proposed temporary restriction of three of the take provisions on the recovery of the Mexican wolf;
- The effects of the proposed revisions (population objective, genetic objective, and take provisions) on public, Tribal, and private lands with management activities such as ranching

and livestock production, hunting, guiding, and other land uses; and

- Scientific information pertinent to our proposed determination to (re)designate the experimental population for the Mexican wolf in the MWEPA as nonessential.

Public Information Sessions and Public Hearings

We have scheduled three public information sessions and two public hearings on this proposed rule. We will hold the public information meetings and public hearings on the dates and at the times listed above under *Public information sessions and public hearings* in **DATES**. We are holding the public information sessions and the public hearings via the Zoom online video platform and via teleconference so that participants can attend remotely. Options for participation include: (1) Listen to and view one of the information sessions and one of the hearings via Zoom, or (2) listen to the information sessions and hearings by telephone. For security purposes and to ensure as many members of the public can participate as possible within the capacity of our Zoom and telephone lines, registration for the information sessions and hearings is required. To listen and view the information sessions or hearings via Zoom, listen to the information sessions or hearings by telephone, or provide oral public comments at the public hearing by Zoom or telephone, you must register. We ask that individuals register for only one public information session and one public hearing. For information on how to register, visit *https://www.fws.gov/southwest/es/mexicanwolf/10j-revision.* If applicable, interested members of the public not familiar with the Zoom platform should view the Zoom video tutorials (*https://support.zoom.us/hc/en-us/articles/206618765-Zoom-video-tutorials*) prior to the public information sessions and public hearings.

The public hearings will provide interested parties an opportunity to present verbal testimony (formal, oral comments) regarding this proposed rule and the DSEIS. While the public information sessions will be an opportunity for dialogue with the USFWS, the public hearings are not: They are a forum for accepting formal verbal testimony. In the event there is a large attendance, the time allotted for oral statements may be limited. Therefore, anyone wishing to make an oral statement during the public hearings for the record is encouraged to provide a prepared written copy of their statement to us through the Federal eRulemaking Portal, or U.S. mail (see **ADDRESSES**, above); providing an oral comment is not required for submission of a written comment. There is no limit on the length of written comments submitted to us. Anyone wishing to make an oral statement at a public hearing must register before the hearing (*https://www.fws.gov/southwest/es/mexicanwolf/10j-revision*). The use of virtual public hearings is consistent with our regulations at 50 CFR 424.16(c)(3).

The USFWS is committed to providing access to the public information sessions and public hearing for all participants. Live audio via telephone or computer speakers and closed captioning via Zoom will be available during public information sessions and public hearings. We will post a full audio and video recording and transcript of the public hearings online at *https://www.fws.gov/southwest/es/mexicanwolf/10j-revision* after the hearings. Persons with disabilities requiring reasonable accommodations to participate in a public information session and/or hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** at least 5 business days prior to the date of the information session and/or hearing to help ensure availability. We will post an accessible version of the USFWS public information session presentation online at *https://www.fws.gov/southwest/es/mexicanwolf/10j-revision* prior to the date of the first public information session (see **DATES**, above).

Background

Statutory and Regulatory Framework

The 1982 amendments to the ESA (16 U.S.C. 1531 *et seq.*) included the addition of section 10(j), which allows for the designation of populations of listed species planned to be reintroduced as ''experimental populations.'' Under section 10(j) of the ESA and our regulations at 50 CFR 17.81, the USFWS may designate a population of endangered or threatened species that will be released into suitable habitat outside the species' current range (but within its probable historical range, absent a finding by the Director of the USFWS in the extreme case that the primary habitat of the species has been unsuitably and irreversibly altered or destroyed) as an experimental population.

In accordance with 50 CFR 17.81(b), before authorizing the release as an experimental population (including eggs, propagules, or individuals) of an endangered or threatened species, and before authorizing any necessary transportation to conduct the release, the USFWS must find by regulation that such release will further the conservation of the species. In making such a finding, the USFWS uses the best scientific and commercial data available to consider:

(1) Any possible adverse effects on extant populations of a species as a result of removal of individuals, eggs, or propagules for introduction elsewhere (see *Possible Adverse Effects on Wild and Captive Breeding Populations,* below);

(2) The likelihood that any such experimental population will become established and survive in the foreseeable future (see *Likelihood of Population Establishment and Survival,* below);

(3) The relative effects that establishment of an experimental population will have on the recovery of the species (see How Does the Experimental Population Contribute to the Conservation of the Species?, below); and

(4) The extent to which the introduced population may be affected by existing or anticipated Federal, State, or Tribal actions or private activities within or adjacent to the experimental population area (see *Actions and Activities that May Affect the Introduced Population,* below).

Furthermore, under 50 CFR 17.81(c), all regulations designating experimental populations under section 10(j) shall provide:

(1) Appropriate means to identify the experimental population, including, but not limited to, its actual or proposed location, actual or anticipated migration, number of specimens released or to be released, and other criteria appropriate to identify the experimental population(s) (see *Location and Boundaries of the Proposed Experimental Population,* below);

(2) A finding, based solely on the best scientific and commercial data available, and the supporting factual basis, on whether the experimental population is, or is not, essential to the continued existence of the species in the wild (see *Is the Experimental Population Essential to the Continued Existence of the Species in the Wild?,* below);

(3) Management restrictions, protective measures, or other special management concerns of that population, which may include but are not limited to, measures to isolate and/or contain the experimental population designated in the regulation from natural populations (see *Management*

Restrictions, Protective Measures, and Other Special Management, below); and

(4) A process for periodic review and evaluation of the success or failure of the release and the effect of the release on the conservation and recovery of the species (see *Review and Evaluation of the MWEPA Population,* below).

Under 50 CFR 17.81(d), the USFWS shall consult with appropriate State game and fish agencies, local governmental entities, Tribal governments, affected Federal agencies, and affected private landowners in developing and implementing experimental population rules. To the maximum extent practicable, section 10(j) rules represent an agreement between the USFWS, the affected State and Federal agencies, and persons holding any interest in land that may be affected by the establishment of an experimental population.

Under 50 CFR 17.81(f), the Secretary of the Interior (Secretary) may designate critical habitat as defined in section 3(5)(A) of the ESA for an essential experimental population. No designation of critical habitat will be made for nonessential experimental populations. In those situations where a portion or all of an essential experimental population overlaps with a natural population of the species during certain periods of the year, we will not designate critical habitat for the area of overlap unless implemented as a revision to critical habitat of the natural population for reasons unrelated to the overlap itself.

Under 50 CFR 17.82, any population determined by the Secretary to be an experimental population will be treated as if it were listed as a threatened species for purposes of establishing protective regulations with respect to that population. The protective regulations adopted for an experimental population will contain applicable prohibitions, as appropriate, and exceptions for that population.

Under 50 CFR 17.83(a), any experimental population designated for a listed species (1) determined not to be essential to the survival of that species and (2) not occurring within the National Park System or the National Wildlife Refuge System will be treated for purposes of section 7 (other than paragraph (a)(1)) of the ESA as a species proposed to be listed under the ESA as a threatened species.

Under 50 CFR 17.83(b), any experimental population designated for a listed species that either (1) has been determined to be essential to the survival of that species or (2) occurs within the National Park System or the National Wildlife Refuge System as now or hereafter constituted will be treated for purposes of section 7 of the ESA as a threatened species. Any biological opinion prepared pursuant to section 7(b) of the ESA and any agency determination made pursuant to section 7(a) of the ESA will consider any experimental and nonexperimental populations to constitute a single listed species for the purposes of conducting the analyses under such sections.

Legal Status

On January 16, 2015, we published a final rule (80 FR 2488) listing the Mexican wolf as endangered. Previously, on January 12, 1998, we published a final rule (63 FR 1752) adopting regulations that designate a nonessential experimental population of the Mexican wolf in Arizona and New Mexico as the Mexican Wolf Experimental Population Area (MWEPA). The Mexican wolf is treated as endangered wherever it is found except where included in the MWEPA.

The Mexican wolf is also protected by State laws in the United States and by federal law in Mexico. In Arizona, the gray wolf, including the Mexican wolf subspecies, is identified as a Species of Greatest Conservation Need (Arizona Game and Fish Department 2012). The gray wolf, including the Mexican wolf subspecies, is listed as endangered in New Mexico (Wildlife Conservation Act, 17–2–37 through 17–2–46 New Mexico Statutes (NMSA) 1978; List of Threatened and Endangered Species, 19.33.6 New Mexico Administrative Code (NMAC) 1978) and Texas (Texas Parks and Wildlife Code, chapter 68). In Mexico, the status of the Mexican wolf was updated from ''probably extinct in the wild'' to ''endangered'' in November 2019, via federal regulations (Norma Oficial Mexicana NOM–059–SEMARNAT–2010) (Secretaría de Medio Ambiente y Recursos Naturales [SEMARNAT; Federal Ministry of the Environment and Natural Resources] 2010).

Previous Federal Actions

On April 28, 1976, we published a final rule (41 FR 17736) listing the Mexican wolf as endangered under the ESA. On March 9, 1978, we published a final rule (43 FR 9607) reclassifying the entire gray wolf species in North America south of Canada as endangered, except in Minnesota where we listed it as threatened. The March 9, 1978, gray wolf listing rule subsumed the Mexican wolf subspecies listing but stated that we would continue to recognize the Mexican wolf as a valid biological subspecies for purposes of research and conservation.

On April 1, 2003, we published a final rule (68 FR 15804) revising the classification of gray wolves by establishing three gray wolf distinct population segments (DPSs), including the Mexican wolf in the Southwestern DPS. Subsequently, in 2008, two federal district courts overturned this rule, and the USFWS considered the gray wolf to have reverted to its listing status prior to the April 1, 2003, rule (see 73 FR 75356; December 11, 2008).

On January 16, 2015, we published a final rule (80 FR 2488) listing the Mexican wolf as endangered. This final rule created a separate entry for the Mexican wolf on the List of Endangered and Threatened Wildlife so that the subspecies was no longer subsumed in the gray wolf listing. In effect, the Mexican wolf has been protected as endangered since 1976.

On January 12, 1998, we published a final rule (63 FR 1752) designating a nonessential experimental population of the Mexican wolf in portions of Arizona and New Mexico. We began releasing captive wolves into the wild in the MWEPA later that year. On January 16, 2015, we published a final rule (80 FR 2512; the ''2015 10(j) rule'') revising the January 12, 1998, experimental population designation to improve the conservation and management of the Mexican wolf in the MWEPA.

Our designation of the MWEPA in 1998, and our 2015 revisions to that MWEPA designation, necessitated analysis of our proposed actions under NEPA. On December 20, 1996, we released the final environmental impact statement titled, ''Reintroduction of the Mexican Wolf within its Historic Range in the Southwestern United States,'' and on November 25, 2014, we released our subsequent ''Environmental Impact Statement for the Proposed Revision to the Regulations for the Nonessential Experimental Population of the Mexican Wolf.''

On March 31, 2018, the District Court of Arizona remanded the 2015 10(j) rule to the USFWS (*Center for Biological Diversity* v. *Jewell,* No. 4:15–cv–00019–JGZ (D. Ariz.) (March 31, 2018) (''March 31, 2018, Order'')). In response to the remand, we began the process to revise the 2015 10(j) rule and develop the DSEIS. On April 15, 2020, we published our notice of intent to prepare the DSEIS (85 FR 20967); that document opened the public scoping process under NEPA to seek public input on the issues under remand.

In addition to our rulemaking actions, the USFWS has developed two recovery plans for the Mexican wolf: The 1982 Mexican Wolf Recovery Plan (USFWS 1982), and the 2017 Mexican Wolf

Recovery Plan, First Revision (USFWS 2017a) (revised recovery plan). The revised recovery plan supersedes the original plan and provides a comprehensive strategy and long-term conservation and recovery goals for the USFWS Mexican wolf recovery program. Following completion of the revised recovery plan, we conducted a 5-year status review for the Mexican wolf under section 4(c)(2)(A) of the ESA in 2018 (see 83 FR 25034; May 31, 2018).

For more detailed information on previous Federal actions concerning the Mexican wolf through 2015, including petition findings and other 5-year reviews, refer to the final rule to list the Mexican wolf as endangered (80 FR 2488; January 16, 2015) and the 2015 10(j) rule (80 FR 2512; January 16, 2015). We note that on November 3, 2020, the USFWS published a final rule (85 FR 69778) removing the gray wolf from the List of Endangered and Threatened Wildlife (*i.e.,* ''delisting'' the gray wolf). That rule provides additional information on previous Federal actions for the gray wolf. The subspecies listing for the Mexican wolf and the Mexican wolf experimental population designation are not affected by the USFWS November 3, 2020, final rule to delist the gray wolf. All previous actions for the Mexican wolf and gray wolf are also available on the Environmental Conservation Online System at *https://ecos.fws.gov/ecp;* type ''gray wolf'' and ''Mexican wolf'' into the Search Tool.

In addition to the information sources identified above, questions about previous Federal actions can be directed to the Mexican Wolf Recovery Program, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Recovery Efforts

The United States and Mexico have collaborated on Mexican wolf recovery since the mid-1970s. The early focus of the binational recovery effort was to save the Mexican wolf from extinction through the establishment of a captive breeding population (USFWS 1982, p. 28). The captive population held 369 Mexican wolves in approximately 55 facilities in the United States and Mexico as of June 30, 2020 (Scott et al. 2020, p. 7). Although housed in numerous facilities, captive Mexican wolves are managed as a single population through the routine transfer of wolves among institutions for breeding events or other management needs. The captive population is maintained in accordance with stringent genetic and population objectives established by the Species Survival Program (SSP). Reintroduction of the Mexican wolf to the wild began in 1998 and 2011 for the United States and Mexico, respectively (see USFWS 2017a, pp. 5–8 for additional information on both reintroductions).

The USFWS revised recovery plan (see Previous Federal Actions, above) provides the binational long-term recovery strategy for the Mexican wolf, including recovery criteria and recovery actions (USFWS 2017a). The revised recovery plan strategy recommends establishing and maintaining a minimum of two resilient, genetically diverse Mexican wolf populations distributed across ecologically and geographically diverse areas in the subspecies' range in the United States and Mexico (USFWS 2017a, p. 10). Recovery criteria for downlisting and delisting the Mexican wolf address threats related to the extinction risk associated with small population size, loss of gene diversity and related genetic issues, and human-caused mortality (USFWS 2017a, pp. 18–25). Criteria will need to be met in both countries for threats across the range of the Mexican wolf to be lessened and alleviated sufficiently to consider delisting the Mexican wolf. The revised recovery plan provides for evaluations at 5 and 10 years after plan implementation to ensure progress toward recovery (USFWS 2017a, pp. 26–27). Site-specific actions to alleviate threats, as well as other actions necessary to manage Mexican wolves across their range, are provided (USFWS 2017a, pp. 28–34). A separate recovery implementation strategy provides detailed activities for the USFWS and our partners to contribute to the recovery actions (online at *https://www.fws.gov/southwest/es/mexicanwolf/*). We intend for the MWEPA population to serve as the population to meet recovery criteria in the United States, and Mexico is pursuing recovery in the Sierra Madre Occidental in northern Mexico. (See *Current Range in the United States and Mexico,* below, for additional information.)

The revised recovery plan provides an important foundation for our proposed revisions to the 2015 10(j) rule. While we intended for the 2015 10(j) rule to improve the efficacy of reintroduction and contribute to the conservation of the Mexican wolf, we were simultaneously aware that at that time (2015) we did not have a full vision of recovery with which to align the revised experimental population designation. The USFWS recognized this shortcoming in the 2015 10(j) rule (80 FR 2512, January 16, 2015, pp. 2514–2515). We are proposing revisions to the 2015 10(j) rule that address the March 31, 2018, Order by aligning the MWEPA designation with the long-term conservation and recovery strategy and criteria in the revised recovery plan.

In addition to publishing the 2015 10(j) rule and finalizing the revised recovery plan in 2017, we have taken a number of steps to advance the recovery of the Mexican wolf:

First, we have strengthened our collaborative management framework with Federal, State, county, and Tribal partners. We initiated a new Memorandum of Understanding for Mexican Wolf Recovery and Management (June 24, 2019) (USFWS 2019; 2019 MOU). Signatories to the 2019 MOU as of August 12, 2021, include: White Mountain Apache Tribe; Arizona Game and Fish Department; New Mexico Department of Game and Fish; U.S. Department of Agriculture Wildlife Services and U.S. Department of Agriculture Forest Service; Bureau of Land Management—Arizona and Bureau of Land Management—New Mexico; National Park Service; Catron County, New Mexico; and Graham, Greenlee, Gila, and Navajo Counties in Arizona, as well as the Eastern Arizona Counties Organization. The 2019 MOU establishes a framework for a long-term, scientific approach to reintroducing and managing Mexican wolves in Arizona and New Mexico to contribute to the recovery of the Mexican wolf pursuant to the revised recovery plan. The 2019 MOU includes signature by agencies and counties that were not signatories of the previous version at the time of the 2015 10(j) rule, representing a broadened base of expertise and logistical support to manage Mexican wolves in the MWEPA and engage with local communities and the public.

The USFWS and our domestic partners have also strengthened our binational recovery collaboration with Mexico. Since the completion of the revised recovery plan in 2017, the USFWS and our partners have increased the extent of our technical support and communication at staff, management, and leadership levels. We have collectively engaged in coordination with the captive breeding facilities to ensure wolves are available for release in both countries in support of achieving recovery criteria. The USFWS and our partners have also provided wild wolves from the MWEPA to Mexico for release (see *Possible Adverse Effects on Wild and Captive Breeding Populations,* below, for additional information on releases in Mexico). In April 2019, the USFWS, Arizona Game and Fish Department, New Mexico Department of Game and Fish, the

federal government of Mexico (Dirección General de Vida Silvestre and the Dirección de Especies Prioritarias para la Conservación), and other partners requested endorsement by the Executive Table of the Canada/Mexico/U.S. Trilateral Committee for Wildlife and Ecosystem Conservation and Management for strengthened collaboration to implement recovery actions on both sides of the border. In 2019, the Arizona Game and Fish Department was awarded $75,000 through the USFWS Recovery Challenge grant program to assist Mexico's Mexican wolf reintroduction. The Arizona Game and Fish Department is also awarded funds of approximately $250,000 annually for Mexican wolf recovery implementation through the USFWS Cooperative Endangered Species Conservation Fund Traditional Section 6 grant program.

The USFWS and our partners continue to intensively manage and monitor the status of Mexican wolves in the MWEPA and now specifically track progress toward achieving the recovery criteria in the revised recovery plan for the United States. Numerous field staff from multiple agencies, including law enforcement, conduct daily management activities throughout the MWEPA. These activities include: Monitoring and data collection of wolf locations and activity; conducting or assisting with proactive or responsive management measures to address wolf-livestock or wolf-human conflicts; releasing wolves; providing vaccinations or other medical care; coordinating Mexican wolf transfers between SSP facilities or with Mexico; investigating wolf mortalities; and education and outreach in local communities and with the media. We summarize these activities in quarterly and annual reports and in our annual initial release and translocation plans available on our website at *https://www.fws.gov/southwest/es/mexicanwolf/*. We use the data and information we collect to adapt our management to ensure continued progress toward recovery.

The USFWS and our partners have also tested the technique of cross-fostering (placing captive-born pups into wild dens to be raised with the wild litter) as a release method to increase gene diversity in the MWEPA since 2014. Between 2014 and 2021, we have cross-fostered 78 pups, including placing 72 pups from captive dens into wild dens, and 6 pups from one wild den to another wild den. We have increased the number of pups we cross-foster, from 2 pups in 2014 to 22 pups in 2021 based on our success with the management technique, the number of captive litters that align with the birth of wild litters, and the staffing capacity of our program and partner agencies (USFWS files).

The USFWS and our partners have also increased efforts to address wolf-livestock conflict, which is one of the primary sources of concern in local communities. The USFWS, our partners, and livestock owners and operators implement a number of proactive management techniques to reduce wolf-livestock conflict, including increasing the number and geographic coverage of range riders, using fladry (strips of fabric mounted along fencelines to deter wolves) in calving areas, harassing or hazing Mexican wolves using scare devices and noise, manipulating Mexican wolf pack movements using food caches, moving cattle away from dens, and other activities (USFWS 2018, pp. 25–27). The USFWS provides depredation compensation and funding for proactive management to eligible States and Tribes through its Wolf Livestock Demonstration Project grants. The Arizona Livestock Loss Board provides depredation compensation for Arizona operators. Several nongovernmental organizations also contribute substantial financial and logistical resources to address and reduce livestock conflict. (See our annual reports for information on funding related to livestock depredations and proactive management, as well as additional information about the Mexican Wolf/Livestock Council, online at: *https://www.fws.gov/southwest/es/mexicanwolf/*.)

Our efforts across the recovery program are showing success in the MWEPA. The minimum population count in 2020 of 186 wolves, including 20 breeding pairs (defined as a pair that produced pups, at least one of which survived to the end of the year), continues a trend of steady population growth, nearly doubling in size over the last 5 years (see our online population estimate at *https://www.fws.gov/southwest/es/mexicanwolf/*). This growth lessens the severity of demographic threats to the population, as described in Summary and Rationale for Proposed Changes to the Experimental Population Designation in Relation to Recovery, below. Mexican wolves have expanded their range significantly under the 2015 10(j) rule, from a range of 7,255 square miles (mi^2) (18,790 square kilometers (km^2)) in 2014, the year prior to our expansion of the MWEPA, to 19,495 mi^2 (50,492 km^2) in 2020 (USFWS files). This demonstrates progress in our recovery strategy to expand the geographic distribution of the Mexican wolf (USFWS 2017a, pp. 11, 24). We also recorded a minor increase in gene diversity and decrease in population mean kinship (a measure of the relatedness of an individual to the population) from 2020 to 2021 (USFWS files). These measures of the genetic status of the MWEPA population document the positive impact that recent cross-fostering events are having, and we expect to document continued progress as we continue our efforts to decrease genetic threats to the Mexican wolf, as described in Summary and Rationale for Proposed Changes to the Experimental Population Designation in Relation to Recovery, below.

Biological Information

Species Description

The Mexican wolf (*Canis lupus baileyi*) is a subspecies of gray wolf that historically occurred in portions of the southwestern United States and central and northern Mexico. Mexican wolves are the smallest extant gray wolf in North America, weighing between 50 to 90 pounds. They are typically a patchy black, brown to cinnamon, and cream color, with primarily light underparts (80 FR 2488, January 16, 2015, p. 2490).

Mexican wolves are social predators that live in packs ranging in size from two wolves to more than a dozen wolves. Mexican wolf packs establish a territory, or area, within which pack members hunt and find shelter. Mexican wolves predominantly prey on elk, but other sources of prey include deer, small mammals, and birds. Mexican wolves are also known to prey and scavenge on livestock (USFWS 2017b, pp. 12–19).

Historical Range

The historical range of the Mexican wolf has been the subject of scientific inquiry and debate for several decades, primarily related to the northern and possibly western extent of the range. The USFWS recognizes concordance in the scientific literature depicting the Sierra Madre of Mexico and southern Arizona and New Mexico as Mexican wolf core historical range, and continues to recognize the expanded historical range per Parsons (1996, p. 106) that extends into central New Mexico and Arizona (see our summary in USFWS 2017b, pp. 10–12, and in our final rule to list the Mexican wolf as an endangered subspecies (80 FR 2488, January 16, 2015)). We continue to monitor the scientific literature for ongoing exploration of this topic.

Current Range in the United States and Mexico

The current range of the Mexican wolf in the wild includes only those areas where they have been reintroduced from captivity and the surrounding areas to which they have naturally expanded: The MWEPA in the United States and a portion of the Sierra Madre Occidental mountain range in northern Mexico. Mexican wolves inhabit approximately 19,495 mi² (50,492 km²) of the MWEPA as of the end of 2020 (USFWS files). The MWEPA is 153,871 mi² (398,524 km²), with approximately 32,244 mi² (83,512 km²) of suitable habitat that occurs on various land ownership types, but primarily U.S. Forest Service (USFS) land (USFWS 2014, chapter 3, p. 11). The MWEPA is within the probable historical range of the Mexican wolf (see *Historical Range,* above).

Mexican wolves in the northern Sierra Madre Occidental in the states of Sonora and Chihuahua in Mexico are approximately 130 miles (mi) (209 kilometers (km)) south of the U.S.-Mexico border. The Sierra Madre Occidental is the longest mountain range in Mexico, extending from northern Mexico south to the State of Jalisco. In the northern portion of the mountain range, there are approximately 7,305 mi² (18,922 km²) of suitable Mexican wolf habitat, with limited habitat connectivity to a second area to the south containing approximately 9,728 mi² (25,196 km²) of suitable habitat. Suitable Mexican wolf habitat in the Sierra Madre Oriental, a mountain range to the east, has also been identified (Martínez-Meyer et al. 2020, entire), but releases have not taken place in this area as of February 2021. The MWEPA designation stops at the U.S.-Mexico border; the wolves in Mexico are not part of the experimental population.

Habitat Use and Movement Ecology in the MWEPA

Wolves are considered habitat generalists that can occupy areas where prey populations and human tolerance support their existence (Fritts et al. 2003, pp. 300–301). Accordingly, we consider suitable habitat for Mexican wolves to be forested areas with adequate wild ungulate prey and low levels of human development and livestock density. In the MWEPA, Mexican wolves inhabit evergreen pine-oak woodlands (*i.e.,* Madrean woodlands), pinyon-juniper woodlands (*i.e.,* Great Basin conifer forests), and mixed-conifer montane forests (*i.e.,* Rocky Mountain, or petran forests) that are inhabited by elk, mule deer, and white-tailed deer (USFWS 2017b, p. 14). Mexican wolves in the MWEPA move within their territories daily to hunt and find shelter. Pack home range size can vary significantly. For example, in 2018, we documented a home range of approximately 57 mi² (148 km²) for the Dark Canyon pack and 552 mi² (1,352 km²) for the Tsay O Ah pack, with an average home range size of approximately 210 mi² (544 km²) across 24 packs or pairs (USFWS 2018, p. 22; also see USFWS 2017b, p. 13). Individual juvenile Mexican wolves sometimes disperse beyond their pack's territory to find a mate and establish a new territory. We track Mexican wolves' movements via radio telemetry and global positioning system radio collars to document pack home ranges, occupied range, and dispersal events.

Lifecycle

Mexican wolf life history is similar to that of other gray wolves (see USFWS 2010, pp. 32–41). In the wild, Mexican wolves live on average 4 to 5 years, although we have documented wolves living to 14 years (USFWS files). Mexican wolves reach sexual maturity around 2 years of age and have one reproductive cycle per year. Typically only one female and one male (the main breeding pair) breed in a pack and produce pups; however, there have been instances in the wild of a secondary female being bred and having pups within the same pack. Mexican wolves in the wild are generally born between early April and early May, with an average litter size of 4.65 pups (USFWS files).

For a detailed description of the Mexican wolf, see our discussion under *Subspecies Information* in our final rule to list the Mexican wolf as endangered (80 FR 2488, January 16, 2015, pp. 2489–2492) or the biological report for the Mexican Wolf (USFWS 2017b).

Threats/Causes of Decline

The Mexican wolf is listed as endangered due to the individual and cumulative effects of excessive human-caused mortality, including illegal killing; genetic issues including inbreeding, loss of heterozygosity, and loss of adaptive potential; and demographic stochasticity (decreases in survival or reproduction) associated with small population size (80 FR 2488, January 16, 2015; see also USFWS 2017a, p. 9, and USFWS 2017b, pp. 23–34, for additional discussion of these threats). We have established a comprehensive strategy and suite of actions in our revised recovery plan to diminish these threats sufficiently such that the Mexican wolf can be considered for delisting when rangewide recovery criteria are met. Under the guidance of the recovery plan, the 2015 10(j) rule, and other program documents, the USFWS and our partners manage the MWEPA to lessen and alleviate threats to the experimental population. Our proposed revisions to the 2015 10(j) rule will also lessen and alleviate threats to the Mexican wolf, as explained in the following discussion.

Summary and Rationale for Proposed Changes to the Experimental Population Designation in Relation to Recovery

We are proposing revisions to the MWEPA designation to ensure that it contributes to the long-term conservation and recovery of the Mexican wolf. We are using the revised recovery plan as the foundation of our proposed revisions because it provides our strategy and criteria for Mexican wolf recovery. We are proposing to modify the population objective, establish a genetic objective, and temporarily restrict three take provisions from the 2015 10(j) rule as follows, and for the following reasons:

Modification of the Population Objective

We propose to revise the population objective for the MWEPA at 50 CFR 17.84(k)(9)(iii) by deleting the following three sentences: Based on end-of-year counts, we will manage for a population objective of 300 to 325 Mexican wolves in the MWEPA in Arizona and New Mexico. So as not to exceed this population objective, we will exercise all management options with preference for translocation to other Mexican wolf populations to further the conservation of the subspecies. The USFWS may change this provision as necessary to accommodate a new recovery plan.

We propose to replace the deleted language with the following two sentences: Based on end-of-year counts, we will manage to achieve and sustain a population average greater than or equal to 320 wolves in Arizona and New Mexico. In order to achieve the current demographic recovery criteria for the United States, this average must be achieved over an 8-year period, the population must exceed 320 Mexican wolves each of the last 3 years of the 8-year period, and the annual population growth rate averaged over the 8-year period must be stable or increasing.

Under this proposed population objective, we would continue to manage Mexican wolves in the MWEPA to maintain a population average greater than or equal to 320 wolves until delisting occurs. After delisting, the States of Arizona and New Mexico and

the Tribes in Arizona and New Mexico would obtain management authority and responsibility to maintain the Mexican wolf at or above recovered levels.

When we established the population objective in the 2015 10(j) rule, we explained that the USFWS may change this provision as necessary to accommodate a new recovery plan (80 FR 2512, January 16, 2015, p. 2563; 50 CFR 17.84(k)(9)(iii)). Now, our proposed revised population objective for the MWEPA is based on the recovery criteria in the revised recovery plan, which was developed subsequent to the 2015 10(j) rule. During the development of the revised recovery plan, we gathered data on the Mexican wolf population in the MWEPA for the purpose of conducting population viability analysis modeling. Several previous population and habitat viability analysis models served as springboards for our effort (Carroll et al. 2006; Carroll et al. 2014). We updated or replaced data sets used in previous studies to ensure model parameterization reflected our current knowledge of Mexican wolves in the MWEPA (as opposed to gray wolf populations in other geographic areas, as used in previous studies). For example, we updated datasets on mortality rates, the frequency and effects of disease, female pairing, and the effect of inbreeding on the likelihood of producing pups, all of which are important factors in projecting future population abundance and persistence. We incorporated more than 15 years of wild Mexican wolf data in the modeling effort and made conservative choices in parameterization to ensure model results would not overestimate the growth or probability of persistence of simulated populations (Miller 2017, entire).

During the recovery planning process, we used the population viability analysis model to explore management scenarios that would achieve at least a 90 percent likelihood of persistence of the MWEPA population over a 100-year period to alleviate the threat of demographic stochasticity (USFWS 2017a, pp. 20–22). The threat of demographic stochasticity due to small population size means that at smaller population sizes, a population is more susceptible to uncertain demographic events such as changes in birth or death rates that could lead toward extirpation of the population. As a population grows, this threat diminishes and the likelihood of population persistence increases (see our discussion at USFWS 2017a, pp. 13, 20–22; USFWS 2017b, pp. 35–36; Miller 2017, entire; USFWS 2019, pp. 63–68). The combined elements of the demographic recovery criteria for the United States that our proposed population objective is based upon—that the population must maintain an average greater than or equal to 320 wolves over an 8-year period, that the population must exceed 320 wolves in each of the last 3 years of the 8-year period, and that the annual growth rate averaged over the 8-year period must be stable or increasing—provides for a 90 percent likelihood of persistence of the MWEPA population over a 100-year period (USFWS 2017a, p. 19).

The data and analyses we used as the basis of the demographic recovery criteria in the revised recovery plan were not available when we established the population objective in the 2015 10(j) rule (see discussion of available scientific studies at 80 FR 2512, January 16, 2015, p. 2517). We established the upper limit of the population objective in the 2015 10(j) rule because we did not have an up-to-date recovery plan to provide context for the contribution of the MWEPA to recovery; in other words, we did not know how many wolves may be needed for recovery or how those wolves should be distributed geographically between different populations. The revised recovery plan now provides clear direction for the MWEPA population's contribution to recovery, and we recognize that an upper limit of 325 in the MWEPA is not consistent with being able to adequately alleviate the threat of demographic stochasticity to the Mexican wolf. Although ''300 to 325'' and ''an average of 320'' sound very similar, a range of 300 to 325 with an upper limit of 325 does not ensure at least a 90 percent likelihood of persistence over 100 years, because the upper limit combined with the absence of additional specifications of the population's behavior (exceeding 320 wolves in each of the last 3 years of the 8-year period, and that the annual growth rate averaged over the 8-year period must be stable or increasing) result in a population with an extinction risk of more than 10 percent over 100 years.

As we continue to manage for an average population size greater than or equal to 320 Mexican wolves in the MWEPA after the proposed population objective is reached, we would expect the population to fluctuate between the mid-300s to low 400s. Although a larger (more than low 400s) population size may be possible due to natural population growth, we would expect that population growth would slow down or stabilize in the mid-300s to low 400s in response to our future management actions such as reduced food caching, translocation of wolves to Mexico in support of their recovery goals, or removals for various management purposes.

We continue to collect and analyze data on the experimental population and to survey the scientific literature for additional information pertinent to managing the MWEPA population in a manner consistent with recovering the Mexican wolf. Since the completion of the revised recovery plan, we have not observed life-history events or population trends in Mexican wolves in the MWEPA (such as changes in reproductive or mortality rates, for example) that cause us to reconsider the validity of the data used or the results of the population viability analysis that provided the foundation for our development of recovery criteria in the revised recovery plan. One published study critiqued the recovery criteria in the revised recovery plan, including the population viability analysis modeling used to develop the criteria (Carroll et al. 2019). The study explored how the modeling for the revised recovery plan differed from previous modeling and criteria-setting efforts for the Mexican wolf. The study identified six parameterization differences that varied across modeling efforts, grouping those parameters as biological (for example, the effects of disease), management-related (for example, the number of releases from captivity), or both biological and management-related (for example, the proportion of packs receiving supplemental feeding). The study examined how normative (values-based) and scientific decisions related to setting the values for and function of these parameters in a population viability analysis model affect model results, including the degree to which uncertainty surrounding specific parameters can influence scenario projections. The study recommended establishing a recovery strategy and recovery criteria that buffer against uncertainty and claimed that our approach did not do so. For example, the paper recommended inclusion of an independent human-caused mortality criterion to buffer against uncertainty in the parameterization of wolf mortality rates, in addition to a demographic recovery criterion based on extinction risk, as opposed to our approach of tying our human-caused mortality criterion to our demographic criterion (USFWS 2017a, p. 20). The study also critiqued the level of risk tolerance considered acceptable by the USFWS for the recovery of the Mexican wolf as

too high, and ultimately claimed that political influence led to increased risk tolerance in establishing recovery criteria.

We acknowledge the authors' characterization that some decisions in population viability analysis modeling and the establishment of recovery criteria contain a normative element, such as what level of extinction risk is acceptable for recovery or the degree to which supplemental feeding is an appropriate management intervention during species recovery. We also acknowledge that recovery criteria could be formulated differently than those contained in the revised recovery plan to articulate when threats have been alleviated sufficiently to delist the Mexican wolf. However, these acknowledgements do not alter our position that the population viability analysis modeling conducted for the revised recovery plan constitutes the best available information upon which to base a revised population objective for the Mexican wolf in the MWEPA, because it is based on up-to-date Mexican wolf data and reflects realistic management scenarios (such as incorporating supplemental feeding). Our proposed population objective would remove the upper limit of 325 wolves; lead to a more robust population of wolves in the MWEPA; allow for annual population fluctuations while ensuring stable population performance; and alleviate the threat of demographic stochasticity consistent with the recovery needs of the Mexican wolf.

Establishment of a Genetic Objective

We propose to establish a genetic objective for the MWEPA to address genetic threats to the experimental population. We did not include a genetic objective in the 2015 10(j) rule; rather, we provided a recommendation in the preamble of the rule for the release of Mexican wolves from captivity at a level that would achieve a minimum of 1 to 2 effective migrants per generation entering the population, depending on its size, over the long term. The rule went on to say that in the more immediate future, we may conduct additional releases in excess of 1 to 2 effective migrants per generation to address the high degree of relatedness of wolves in the current Blue Range Wolf Recovery Area (80 FR 2512, January 16, 2015, p. 2517). We are now proposing to modify our approach in the 2015 10(j) rule in two ways:

First, we propose to revise the language to state that the USFWS and designated agencies will conduct a sufficient number of releases into the MWEPA from captivity to result in at least 22 released Mexican wolves surviving to breeding age. Second, we propose to codify this release statement at 50 CFR 17.84(k)(9)(v). We expect to achieve this proposed objective by 2030, as described below in *Modification of Three Allowable Forms of Take of Mexican Wolves*.

Similar to the discussion above of the population objective, our proposed establishment of a genetic objective is based on information and analyses conducted subsequent to the 2015 10(j) rule that are included in the revised recovery plan. When we developed our genetic criterion in the revised recovery plan, we determined that wild populations contributing to recovery should represent approximately 90 percent of the genetic diversity available in the captive population to consider genetic threats sufficiently abated (USFWS 2017a, p. 13). The reason for this is that the gene diversity in the captive population is higher than either wild population in the United States or Mexico; therefore, releasing captive wolves will add beneficial gene diversity to the experimental population as some of the released wolves breed and produce offspring in the MWEPA. Increasing gene diversity in the MWEPA to approximately 90 percent of the gene diversity available in the captive population will reduce the incidence of inbreeding depression, and over a longer timeframe, it will aid Mexican wolves' ability to respond and adapt to various and changing environmental conditions (USFWS 2017a, p. 22). In addition, releasing captive wolves makes room in captive facilities for additional captive breeding events, which enables the captive population to maintain, or slow the loss of, genetic diversity in captivity and continue supporting the wild populations in the United States and Mexico during the recovery process (Scott et al. 2020, p. 9).

As we explored model scenarios during the recovery planning process to alleviate genetic threats to the Mexican wolf by releasing captive wolves to the wild, we recognized that not all wolves released from captivity would survive to breeding age, and due to wolves' social structure, not all wolves that survive to breeding age would breed (Miller 2017, pp. 9–10). Based on survival and mortality data of different age classes of Mexican wolves (pups, subadults, adults), we determined that at least 22 released Mexican wolves surviving to breeding age by 2035 would result in a sufficient portion of those wolves breeding to result in approximately 90 percent of the genetic diversity of the captive population being represented in the wild (USFWS 2017 a, pp. 22–24). Our proposal to revise the release recommendation in the 2015 10(j) rule by establishing a genetic objective would contribute to the recovery of the Mexican wolf because our proposal aligns with the genetic recovery criterion in the revised recovery plan and would therefore alleviate genetic threats consistent with the recovery needs of the Mexican wolf (see Recovery Efforts, above, and USFWS 2017a, pp. 5, 7, 9, 13–14, 22–23; USFWS 2017b, pp. 26–29).

Our proposed revision would result in a larger number of released wolves entering the MWEPA in a shorter time period than the release recommendation in the 2015 10(j) rule, which reflects our improved understanding of the number and timing of releases needed to adequately reduce genetic threats. Under our 2015 10(j) rule, we intended to release 35 to 50 captive wolves by 2035 (see USFWS 2014, Appendix D, pp. 3, 12); however, in our revised recovery plan, we estimated we would need to release at least 70 wolves to achieve our genetic criterion in the revised recovery plan. Because we are conducting releases via cross-fostering, a method for which we are uncertain of the number of releases needed to achieve at least 22 released wolves surviving to breeding age, we have aggressively pursued releases in the last few years. We expect that the survival of cross-fostered pups in their first years is similar to wild-born pups (approximately 50 percent). As of the spring of 2021, we have released 72 Mexican wolves from captivity to the wild via cross-fostering, and we have documented a minimum of 7 out of 30 released pups surviving to breeding age. Pups released in 2020 (20 pups) and 2021 (22 pups) had not yet reached breeding age in the spring of 2021, and are therefore not eligible to be included in the total number of released pups that could have survived to breeding age in 2021 (30 pups). We will continue to document our progress annually toward at least 22 released wolves surviving to breeding age and will adjust our ongoing release plans accordingly.

We note that our proposed genetic objective shifts our previous language in the 2015 10(j) rule from tracking ''effective migrants,'' which means an animal that comes from outside the population and successfully reproduces within the population, to instead tracking captive animals released to the MWEPA that ''survive to breeding age'' and have the opportunity to contribute genetically to the population. This proposed revision in language tracks our population viability analysis modeling

approach in the revised recovery plan directly, and it appropriately addresses the need to increase gene diversity in the MWEPA population because it results in the representation of approximately 90 percent of the gene diversity available in the captive population entering the MWEPA (USFWS 2017a, pp. 22–24).

As stated earlier, we propose to codify this release statement at 50 CFR 17.84(k)(9)(v) and refer to it as a genetic objective. Establishment of a genetic objective strengthens this feature of our management because the genetic objective becomes part of the MWEPA regulations. In addition, we propose annual benchmarks for achieving the number of released wolves that survive to breeding age by 2030 in *Modification of Three Allowable Forms of Take of Mexican Wolves,* below, which will drive expedient progress toward recovery and ensure that progress toward releasing captive wolves keeps pace with expected population growth.

Modification of Three Allowable Forms of Take of Mexican Wolves

We propose to modify three allowable forms of take of Mexican wolves at 50 CFR 17.84(k)(7) by temporarily restricting their use while we make progress toward increasing Mexican wolf gene diversity in the MWEPA. The three forms of allowable take from the 2015 10(j) rule we propose to modify are: Take on non-Federal land in conjunction with a removal action (§ 17.84(k)(7)(iv)(C)), take on Federal land (§ 17.84(k)(7)(v)(A)), and take in response to an unacceptable impact to a wild ungulate herd (§ 17.84(k)(7)(vi)). We are proposing to temporarily restrict these forms of take because they can result in the loss of released Mexican wolves whose gene diversity could have contributed to alleviating genetic threats had they survived and reproduced during the timeframe of the genetic recovery criterion in the United States (see *Establishment of a Genetic Objective,* above). Temporarily restricting these potential sources of take will support the success of these wolves during a critical period in the recovery effort (that is, as we focus our management on alleviating threats and achieving recovery criteria). Therefore, we propose to add the following language to § 17.84(k)(7)(iv)(C) and § 17.84(k)(7)(v)(A):

(*1*) Until the USFWS has achieved the genetic objective for the MWEPA set forth at paragraph (k)(9)(v) of this section by documenting that at least 22 released wolves have survived to breeding age in the MWEPA, the USFWS or a designated agency may issue permits only on a conditional, annual basis according to the following provisions: Either

(*i*) Annual release benchmarks (here, the term ''benchmark'' means the minimum cumulative number of released wolves surviving to breeding age since January 1, 2016, as documented annually in March) have been achieved based on the following schedule:

Year	Benchmark
2021	7
2022	9
2023	11
2024	13
2025	14
2026	15
2027	16
2028	18
2029	20
2030	22

; or

(*ii*) Permitted take on non-Federal land [under § 17.84(k)(7)(iv)], or on Federal land [under § 17.84(k)(7)(v)], during the previous year (April 1 to March 31) did not include the lethal take of any released wolf or wolves that were or would have counted toward the genetic objective set forth at paragraph (k)(9)(v) of this section.

(*2*) After the USFWS has achieved the genetic objective set forth at paragraph (k)(9)(v) of this section, the conditional annual basis for issuing permits will no longer be in effect.

In addition, we propose to add the following language to § 17.84(k)(7)(vi):

(E) No requests for take in response to unacceptable impacts to a wild ungulate herd may be made by the State game and fish agency or accepted by the USFWS until the genetic objective at paragraph (k)(9)(v) of this section has been met.

Once we reach the proposed genetic objective at § 17.84(k)(9)(v), gene diversity of released wolves will have integrated into the population through breeding events between released and wild wolves such that released wolves will no longer represent a pool of unique gene diversity; in other words, as more released wolves survive and breed in the wild, the contribution of released wolves to the overall gene diversity of the MWEPA diminishes. Therefore, our approach to the temporary restriction of these take provisions is to ensure we are protective of released wolves during the time we are achieving the proposed genetic objective. Once we have reached the proposed genetic objective, we would remove these temporary restrictions in recognition that take (including removal) of released wolves would not have the potential to hinder the recovery of the Mexican wolf. In the near term, restricting these take provisions contingent upon achieving the proposed genetic objective would provide synergistic support toward the recovery of the Mexican wolf. The benchmarks we are proposing reflect the targets established in the revised recovery plan for 9 released wolves to be surviving to breeding age in 2022 and 16 released wolves to be surviving to breeding age in 2027 (USFWS 2017a, pp. 26–27), and would result in 22 released wolves surviving to breeding age 5 years prior to the scenarios we explored in the population viability analysis modeling for the revised recovery plan. This schedule will ensure that strong progress to alleviate genetic threats is occurring.

Simultaneous with our intention to increase and protect the gene diversity of the MWEPA population and alleviate genetic threats to the Mexican wolf, we continue to recognize that these three allowable forms of take can provide the USFWS, State fish and game agencies, domestic animal owners and their agents, and livestock owners and their agents with a management tool for resolving wolf conflict situations. We expect that over time, and especially as the experimental population grows numerically, multiple conflict situations may occur simultaneously in different locations within the MWEPA. The USFWS considers the issuance of take permits on Federal and non-Federal land to serve as a management tool because the permits may provide for conflicts to be resolved without the participation of the USFWS or a designated agency's personnel, allowing for limited agency resources to be used in the most efficient manner. We have, therefore, integrated flexibility into the temporary restrictions we are proposing for permitted take on Federal and non-Federal land by recognizing that if an annual release benchmark toward the genetic objective is not achieved, and permitted take in the previous year did not result in the take of any released wolf or wolves, the permits are not the reason for missing the benchmark, nor are they negatively impacting gene diversity. (For example, the USFWS could miss the benchmark because we had not conducted adequate releases during a prior year due to logistical constraints.) In this context, we do not want to unnecessarily restrict a management tool that can be used to address conflicts if its use is not exacerbating a threat or hindering our progress toward recovery.

Our proposed revision to the provision for take in response to an unacceptable impact to a wild ungulate herd (§ 17.84(k)(7)(vi)) does not include a conditional approach such as we have incorporated into our proposed revisions for take on Federal and non-Federal land due to our uncertainty surrounding the extent of take that could occur under this provision. We are uncertain as to the number or frequency of future authorizations the USFWS may issue to a State or designated agency to remove wolves due to an unacceptable impact to a wild ungulate herd because we do not know when (*e.g.,* at what number of wolves or wolf density) wolf predation on a localized herd could result in an ungulate decline that is deemed unacceptable based on State management goals. Further, the level of removal (*i.e.,* number of wolves, timing, and duration) that could be requested by the State agency would depend on the level of ungulate decline occurring within the context of the State's management goals for that herd, as well as other pertinent factors, but would more likely result in authorized removal of one or more packs of wolves rather than an individual wolf. Removal of an entire pack or packs could result in removing multiple released Mexican wolves at once that could count toward our genetic objective. Therefore, we recognize that the likelihood of take of a released wolf or wolves may be higher under this take provision than the other two take provisions we are proposing to revise. On the other hand, take under this provision could result in the translocation of Mexican wolves rather than permanent removal or lethal take, and, in those cases, no loss of gene diversity in the MWEPA would occur. Due to these uncertainties, our proposed revision to this take provision does not include any contingencies to use this provision during the temporary restriction period (that is, from now until the proposed genetic objective at § 17.84 (k)(9)(v) is met).

Our final consideration as we evaluate our proposed restriction of these three take provisions is our recognition that this rule needs to serve the conservation and recovery of the Mexican wolf prior to, but also potentially after, the recovery criteria for the United States in the revised recovery plan have been met. Recovery of the Mexican wolf as envisioned by the revised recovery plan is contingent upon achieving recovery criteria for the population in the United States and the population in Mexico in order to adequately alleviate threats rangewide. Therefore, ongoing management of Mexican wolves in the United States under the ESA may occur after the MWEPA achieves the criteria for the United States if Mexico has not yet achieved its set of recovery criteria. These three take provisions will contribute to efficient, flexible management of a recovered population in the MWEPA until delisting occurs. We expect to remove the proposed temporary restrictions on these three take provisions after the genetic objective has been met. At that time, gene diversity will have been sufficiently improved to alleviate genetic threats, and the USFWS and our partners will be managing to achieve or maintain the demographic criteria. (We do not expect the MWEPA population to reach the demographic and genetic criteria simultaneously.) After the genetic objective has been met, we would expect to use these allowable forms of take in a manner consistent with achieving all recovery criteria in the United States and maintaining the experimental population at recovered levels until rangewide delisting is appropriate.

Proposed Experimental Population

Location and Boundaries of the Proposed Experimental Population

The Mexican wolf experimental population is located in the MWEPA, as designated in the 2015 10(j) rule (80 FR 2512, January 16, 2015, p. 2558). The boundaries of the MWEPA are the portions of Arizona and New Mexico that are south of Interstate Highway 40 (I–40) to the international border with Mexico (see map at 50 CFR 17.84(k)(4)). The boundaries of the MWEPA are consistent with the recovery strategy established in the revised recovery plan, which states that we will continue to focus on one large Mexican wolf population south of I–40 in Arizona and New Mexico in the United States (USFWS 2017a, p. 11).

We consider the experimental population in the MWEPA to be wholly separate geographically from any nonexperimental populations of the same (sub)species. Based on the USFWS definition of a gray wolf population (see 59 FR 60252, November 22, 1994), which we have used for the Mexican wolf, there is a population of Mexican wolves in the northern Sierra Madre Occidental, Mexico, approximately 130 miles (209 km) south of the U.S.-Mexico international border. At the end of 2020, Mexico reported 30 to 35 Mexican wolves in the wild, including two breeding pairs that each successfully raised at least two young annually for 2 consecutive years (Carlos Lopez 2020, pers. comm.). While we acknowledge that the populations are geographically located within dispersal range of one another, interconnectivity between the MWEPA and the Mexico population is currently low, and future connectivity is expected to be similarly low as explained below. For the MWEPA to not be considered wholly geographically separate, regular dispersal from one population to the other population would need to occur (*e.g.,* semifrequent dispersal events throughout the year), potentially including interbreeding between populations. Since 2015, four wolves dispersed from Mexico into the United States. Of those wolves, one was removed from the MWEPA due to depredation behavior, two dispersed back across the border into Mexico naturally, and one died of unknown causes (USFWS files). Based on radio-collar data, none of these dispersing wolves encountered other wild wolves during the dispersal event, nor have breeding events between Mexican wolves from the two populations occurred since the reintroduction in Mexico began. We are not aware of any Mexican wolves from the MWEPA that have dispersed into Mexico. One wolf in the MWEPA dispersed very close to the U.S.-Mexico border before turning around and moving back towards its territory in the MWEPA (USFWS files).

In the revised recovery plan and accompanying population viability analysis model, we hypothesized that successful dispersal (a dispersal event that does not end in mortality during dispersal) between the MWEPA and the current reintroduction area in northern Mexico would be infrequent (about one wolf every 12 to 16 years) (USFWS 2017a, p. 14; Miller 2017, pp. 47–49). The low level of estimated connectivity is based on potentially high levels of mortality associated with wolf dispersal events (Miller 2017, p. 9), low habitat quality across the borderlands (USFWS 2017a, pp. 12, 14; also see Martínez-Meyer 2017, p. 59), and the construction of the border wall, which includes a variety of deterrents and structures, some of which are impermeable to Mexican wolves (USCBP 2020). The demographic and genetic recovery criteria we developed were robust in the face of low expected connectivity across the border (Miller 2017, pp. 47–49), meaning that independent populations would be able to achieve the standards for threat alleviation we consider necessary for recovery either through dispersal between populations or through releases from captivity or translocations across the border, as described in Summary and Rationale for

Proposed Changes to the Experimental Population Designation in Relation to Recovery, above. Since the publication of the revised recovery plan, we have not observed a frequency of dispersal events suggesting that interconnectivity will be higher than what we previously estimated in our revised recovery plan and accompanying population viability analysis models.

In the 2015 10(j) rule, we stated that the experimental population in the MWEPA was wholly separate geographically from any nonexperimental population of Mexican wolves because the Mexican wolves in Mexico did not yet meet the definition of a population (80 FR 2512, January 16, 2015, p. 2549). We stated that if a population was successfully established in Mexico, an occasional dispersal event between the populations could occur. We also stated that interconnectivity between the two population could benefit recovery by providing genetic interchange between populations (80 FR 2512, January 16, 2015, p. 2550), which we subsequently restated in the revised recovery plan (USFWS 2017a, pp. 14–15). Although a second population of Mexican wolves does now exist in the wild in Mexico, we maintain our finding that the MWEPA population is wholly separate geographically from any nonexperimental population of Mexican wolves due to the lack of functional (regular or semi-frequent, or resulting in interbreeding) interconnectivity between the populations now or likely in the future.

Overview of the Proposed Experimental Population

The MWEPA is a large area in Arizona and New Mexico that includes Federal, State, Tribal, and private land. The MWEPA consists of three management zones that define areas for initial releases (the release of wolves from captivity to the wild) and translocations, and that allow wolf dispersal and occupancy (see definitions of Zone 1, Zone 2, and Zone 3 at 50 CFR 17.84(k)(3) and the map of the MWEPA designated area at 50 CFR 17.84(k)(4)). The MWEPA also includes a phased approach to translocations, initial releases, and occupancy of Mexican wolves west of Highway 87 in Arizona (see 50 CFR 17.84(k)(9)(iv)). We are not proposing to modify the management zones or phased approach, including the phasing evaluation periods, in this proposed rule. Regarding the phasing, we note that the minimum annual population count in 2019 (the year of the first phasing evaluation) was 163 Mexican wolves, which exceeded the 5-year phasing benchmark of reaching a population size greater than 150 Mexican wolves five years after February 17, 2015. We have not moved into Phase 2 at this time but may do so prior to the 8-year evaluation if agreed upon between the USFWS and participating State game and fish agencies.

Release Procedures

The USFWS and our partners release Mexican wolves into the MWEPA using several different management strategies, including the cross-fostering of captive pups into wild dens as a form of initial release; the initial release of adult or sub-adults individually, as pairs with and without pups, or as multigenerational packs; and translocations of wild wolves from one location to another. All methods of release can serve as useful strategies to manage the experimental population, and each has benefits and challenges within the context of our management needs at any point in time. In recent years, we have used cross-fostering as our primary release strategy because our initial attempts at cross-fostering have proven to be a successful method. Importantly, it is a more accepted technique among the local public, our stakeholders, and our State partners than releases of adult wolves or a family group into an unoccupied area, although some members of the public continue to strongly support the release of adult pairs or packs. We may still release adult wolves or family groups under certain conditions, but we expect to use cross-fostering as the primary release strategy to address the genetic needs of the experimental population.

Each year, we develop an initial release and translocation plan (available online at *https://www.fws.gov/southwest/es/mexicanwolf/*) with our partners that provides our objectives related to initial releases, translocations, and any targeted or potential removals (*e.g.,* to prevent the breeding of highly related wolves) for the upcoming year. We base our near-term plans on the existing conditions in the MWEPA, the status of the captive population and availability of suitable adult wolves and/or pups for release, logistical considerations such as staffing for the USFWS and our partners, and our current and anticipated progress toward recovery.

We intend to continue releasing Mexican wolves from captivity into the MWEPA primarily to increase the gene diversity of the experimental population (see Summary and Rationale for Proposed Changes to the Experimental Population Designation in Relation to Recovery, above). In addition, we may release or translocate wolves for other management purposes such as replacing a mate for a breeding pair due to a wolf mortality. As explained above in *Overview of the Proposed Experimental Population,* we release Mexican wolves in the MWEPA in accordance with our management zones and phasing provisions. We intend to release a sufficient number of captive Mexican wolves to the MWEPA to ensure that at least 22 released wolves survive to breeding age, although we do not know the exact number of releases this will require, because it is dependent on the survival of released wolves. Based on the data we used in the revised recovery plan on first year mortality of wolves released from captivity into the MWEPA, we explained in the revised recovery plan that we will need to release at least 70 wolves, beginning with wolves released after December 31, 2015, in order for at least 22 to survive to breeding age and meet the genetic recovery criterion for the United States (USFWS 2017a, p. 23). We stated that, ''The number of releases required may increase or decrease if the survival of released wolves changes'' (USFWS 2017a, p. 23). At the time of the revised recovery plan, we had little experience with the cross-foster release technique (2014–2016); therefore, our estimate of first-year release survival and the number of releases needed to achieve the criterion was not derived from cross-foster data.

If we continue to primarily use cross-fostering as a release technique to improve gene diversity in the MWEPA, the number of pups surviving to breeding age in a given year will reflect the cross-fostered pups placed in dens 2 years prior, or earlier, that have reached breeding age. This is because it takes 2 years from placement of the pup into a den for it to reach breeding age. Comparatively, adult or sub-adult releases have a lag of 1 year, as they would count as surviving to breeding age the year after their release. Therefore, our annual tally of released wolves surviving to breeding age will have a lag that reflects the age of the animals we have released. Currently, we estimate that cross-fostered Mexican wolf pups have similar survival to wild-born Mexican wolf pups (approximately 50 percent); however, more data are needed to enable us to predict the number of cross-fostered pups we will need to release in order to reach our genetic criterion in the revised recovery plan, which is also our proposed genetic objective in this proposed rule (see discussion under *Establishment of a Genetic Objective,* above). We note that

any pups that have been cross-fostered from one wild den to another wild den (four pups as of spring of 2021) that reach breeding age will not count toward our genetic objective because they do not increase gene diversity in the MWEPA.

Prior to release from captivity into the wild, Mexican wolves receive permanent identification marks and radio collars (if appropriate for the age and size of the wolf), and their DNA profile is recorded to assist with ongoing pedigree analyses of the population. While not all Mexican wolves are radio-collared, we currently attempt to maintain at least two radio collars per pack in the wild. Radio collars allow the USFWS to monitor reproduction, dispersal, survival, pack formation, depredations, predation, and other important biological metrics. We will continue monitoring Mexican wolves while they are listed under the ESA and for at least five years after delisting. A majority of wild Mexican wolves may not have radio collars as the population grows.

Any Mexican wolf found outside of the MWEPA would have either dispersed out of the MWEPA or across the border from Mexico. A combination of identification mechanisms, such as identification marks, radio collars, DNA analysis, and ongoing monitoring will make identification of the population of origin probable. It is possible that gray wolves could disperse from other regions such as the northern Rocky Mountains into Arizona and New Mexico. These gray wolves are typically larger in size and may have distinctive coats, such as all black or white, that make them distinguishable from Mexican wolves, in addition to any identification mechanisms from the management areas from which they dispersed.

How does the experimental population contribute to the conservation of the species?

The MWEPA has been the cornerstone of Mexican wolf recovery in the United States since its designation in 1998. Then, as now, the MWEPA is the only place in the United States where a population of Mexican wolves exists in the wild. The experimental population remains the focus of our recovery efforts in the United States and plays a significant role in the long-term conservation and recovery of the Mexican wolf. Specifically, the USFWS intends for the MWEPA population to achieve the recovery criteria for the United States population provided in the revised recovery plan (USFWS 2017a, pp. 18–25) (see Recovery Efforts, above). As such, we are proposing population and genetic objectives for the MWEPA that would reduce threats consistent with the recovery needs of the Mexican wolf. Also, we are proposing to temporarily restrict the use of three take provisions in support of achieving the genetic objective and furthering Mexican wolf conservation and recovery.

Possible Adverse Effects on Wild and Captive Breeding Populations

Adverse effects on extant populations of the Mexican wolf, including the captive population and the wild population in Mexico, as a result of removal of individuals for introduction into the MWEPA will not occur for the following reasons:

The Mexican wolf reintroduction in the MWEPA was established beginning in 1998 using Mexican wolves bred and housed in captivity because no wild Mexican wolves existed for translocation into the MWEPA. We continue to use captive animals for release into the MWEPA today. As of June 30, 2020, 369 captive Mexican wolves were managed as a single captive population across 55 participating facilities (Scott et al. 2020, p. 7). The primary purpose of the captive-breeding program is to supply wolves for reestablishing Mexican wolves into the wild. Mexican wolves selected for release from the captive-breeding program are genetically well-represented in the captive population, thus minimizing any adverse effects on the genetic integrity of the remaining captive population. The Mexican Wolf SSP maintains detailed lineage information on each captive Mexican wolf and establishes annual breeding objectives to maintain the genetic diversity of the captive population (Scott et al. 2020, entire). The Mexican Wolf SSP meets with the agencies responsible for Mexican wolf reintroduction in the United States and Mexico annually to discuss release objectives for the year ahead.

The captive population remains capable of supporting both the U.S. and Mexico populations of wild Mexican wolves. Over the course of the reintroduction from 1998 to December 31, 2020, we have released 146 captive wolves to the MWEPA, including the release of 51 wolves (1 adult, 50 pups) between January 1, 2015, and December 31, 2020, to improve gene diversity (USFWS files). For clarity, only releases subsequent to December 2015 count toward the genetic criterion in the revised recovery plan (USFWS 2017a, p. 23). Mexico has released 49 captive wolves between 2011 and February 24, 2021 (USFWS files). This proposed rule recommends a higher number of releases to the wild than the 2015 10(j) rule (see *Release Procedures,* above) but that is well within the current capacity of the captive program (Miller 2017, p. 42). Releases from the SSP facilities can benefit the captive-breeding program by freeing up space for additional breeding of Mexican wolves in captivity, which can slow the loss of genetic diversity (Scott et al. 2020, p. 9; also see Mechak et al. 2016, pp. 1–15). Based on our proposed revisions described in this document, we will release a sufficient number of captive Mexican wolves to the MWEPA such that at least 22 survive to breeding age and the gene diversity in the MWEPA represents approximately 90 percent of the gene diversity available in captivity.

No wolves have been removed from the wild in Mexico for translocation (*i.e.,* release) into the MWEPA since Mexico began releasing wolves to the wild in 2011. We do not need to translocate wolves from the wild Mexico population into the United States to assist the growth or stability of the MWEPA population due to the growth already occurring in the MWEPA population. We recognize that Mexico is still in the early phases of establishing a population, and at its current small size, it could not support occasional or frequent removal of wolves for translocation to the United States. In the biological report that accompanies the revised recovery plan, we investigated release scenarios with various levels of translocation of Mexican wolves from the United States to Mexico, but not the reverse, for this reason (Miller 2017, pp. 16–38). We recognize the importance of supporting Mexico in achieving the recovery criteria in Mexico, and we would not request removal of wolves from Mexico for translocation to the United States unless it were beneficial for both populations. If we requested translocation of Mexican wolves from Mexico, it would be on a very limited basis for a specific reason, such as to improve gene diversity in the recipient population and reduce mean kinship in the donor population. Therefore, any translocations from Mexico to the United States would be sufficiently rare and assessed for mutual benefit so as to have no adverse impacts on the wild population in Mexico. We will continue to rely on the captive population for our release needs in the MWEPA.

Likelihood of Population Establishment and Survival

As we stated in the 2015 10(j) rule, the experimental population has

consistently demonstrated signs of establishment, such as wolves establishing home ranges and reproducing (80 FR 2512, January 16, 2015, p. 2551). Since the publication of the 2015 10(j) rule, the population has continued to exhibit these signs. 2020 marked the 19th year in which wild-born Mexican wolves bred and raised pups in the wild (USFWS files), demonstrating sustained natural reproduction. The population has exhibited steady growth under the 2015 10(j) rule, from a minimum of 112 to 186 wolves from the end of 2014 through 2020. During the same time period, the number of breeding pairs increased from 9 to 20, and the population expanded geographically from 7,255 mi^2 (18,790 km^2) to 19,495 mi^2 (50,492 km^2) (USFWS 2014; USFWS files). Substantial areas of high-quality habitat remain unoccupied in the MWEPA, allowing for continued geographic expansion of the population as it increases numerically.

As discussed in *Threats/Causes of Decline,* above, we actively manage to lessen or alleviate threats to the Mexican wolf throughout the MWEPA. Also, as discussed in Recovery Efforts, above, we continue to demonstrate our commitment to the recovery of the Mexican wolf through our use of regulatory tools, evolving field techniques, law enforcement, and partnerships and outreach. Based on the biological characteristics of the population, including its demonstrated growth and expansion, coupled with the ongoing intensive management and monitoring efforts of the USFWS and our partners, and our demonstrated adaptive and collaborative management approach, the population in the MWEPA is established and the likelihood of survival is extremely high.

Effects of the MWEPA Population on Recovery Efforts

Continuing the effort to reestablish the experimental population will have significant, direct, immediate, and long-term measurable benefit to the recovery of the Mexican wolf. As discussed above in Recovery Efforts, the revised recovery plan states that recovery of the Mexican wolf will be achieved when two self-sustaining populations—one in the United States and one in Mexico—have been established and safeguarded from threats as provided for by the recovery criteria and actions in the plan. The USFWS intends for the experimental population in the MWEPA to serve as the population that will achieve the recovery criteria for the United States. Our proposed population objective, genetic objective, and temporary restriction of three take provisions are intended to ensure that the experimental population in the MWEPA supports our efforts to achieve the long-term conservation and recovery of the Mexican wolf.

Actions and Activities That May Affect the Introduced Population

Consistent with our findings in the past (63 FR 1752, January 12, 1998, p. 1755; 80 FR 2512, January 16, 2015, p. 2551), we do not foresee that the introduced population will be adversely affected by existing or anticipated Federal or State actions or private activities. We expect that anticipated Federal, State, or Tribal actions or private activities will not negatively affect the experimental population's ability to increase numerically or continue to expand into suitable habitat in the MWEPA, but some activities could affect individual wolves.

We expect Mexican wolves in the MWEPA to primarily occupy forested areas on Federal lands due to the availability of prey in these areas and supportive management regimes. We expect the majority of the Mexican wolf population to occur on Federal lands within Zones 1 and 2 of the MWEPA, but we also recognize that Mexican wolves may seek to inhabit suitable habitat on Tribal or private lands or may disperse through or occasionally occupy less-suitable habitat of various land ownership types in Zones 2 and 3.

Zone 1, the area where Mexican wolves may be initially released from captivity or translocated, is comprised of the Apache, Gila, and Sitgreaves National Forests; the Payson, Pleasant Valley, and Tonto Basin Ranger Districts of the Tonto National Forest; and the Magdalena Ranger District of the Cibola National Forest. The USFS manages these areas to sustain the health, diversity, and productivity of the Nation's forests and grasslands to meet the needs of present and future generations. The National Forests are responsible for developing and operating under a land and resource management plan, which outlines how each of the multiple uses on the forest will be managed. The USFS is a signatory to the 2019 MOU and actively participates in daily management of the experimental population (see *Is the Experimental Population Essential to the Continued Existence of the Species in the Wild?* below, for additional discussion of the USFS's role and contributions to the management and recovery of the Mexican wolf in the MWEPA). We anticipate that individual Mexican wolves or wolf packs may be affected by actions and activities associated with ranching activities on public land, because wolves that depredate livestock or display nuisance behavior may be hazed or removed.

Zone 2 of the MWEPA contains a matrix of land ownerships, including Federal (*e.g.,* USFS, Bureau of Land Management, Department of Defense), State, private, and Tribal lands. A variety of actions and activities may occur throughout this zone, such as recreation, agriculture and ranching, urban and suburban development, and military operations. Similar to Zone 1, we anticipate that individual Mexican wolves or wolf packs may be affected by actions and activities occurring on private or Tribal land in Zone 2, such as ranching operations, because wolves that depredate livestock or display nuisance behavior may be hazed or removed. We will continue to establish management actions in cooperation with private landowners and Tribal governments to support the recovery of the Mexican wolf on private and Tribal lands, and we will continue our efforts to support programs that fund depredation compensation and preventative/proactive management activities aimed at reducing wolf-livestock conflicts.

Road and human densities have been identified as potential limiting factors for colonizing wolves in the Midwest and Northern Rocky Mountains due to the mortality associated with these landscape characteristics (Mladenoff et al. 1995, entire; Oakleaf et al. 2006, pp. 558–561). Vehicular collision in particular is not identified as having a significant impact on the Mexican wolf population, although it may contribute to the overall vulnerability of the population due to its small population size and cumulative effects of multiple factors, including inbreeding and illegal shooting of wolves (80 FR 2488, January 16, 2015, p. 2503). We recognize that human and road densities in the MWEPA are within the recommended levels for Mexican wolf colonization, and are expected to remain so in the future; therefore, we see the impact to the population from actions related to human development as minimal within the areas we expect Mexican wolves to primarily inhabit in Zones 1 and 2. More information about vehicular collisions can be found in the final rule determining endangered status for the Mexican wolf (80 FR 2488, January 16, 2015).

The border wall along the southern boundary of the MWEPA in Zones 2 and 3 may affect Mexican wolves that try to disperse southward from the MWEPA or northward from Mexico. We expect these dispersal occurrences to be fairly

rare, as discussed in *Location and Boundaries of the Proposed Experimental Population,* above. Such occurrences will only be affected if dispersal activity is blocked or altered by the border wall.

Experimental Population Regulation Requirements

Appropriate Means To Identify the Experimental Population

The location of the experimental population is the MWEPA, as defined at 50 CFR 17.84(k). Mexican wolves will move throughout the MWEPA in their daily feeding and sheltering activities. We can identify Mexican wolves based on the permanent identification marks we give them prior to release, or by radio collar, DNA analysis, or visual observation.

Is the experimental population essential to the continued existence of the species in the wild?

The ESA instructs us to determine whether a population is essential to the continued existence of an endangered or threatened species. Our regulations define ''essential experimental population'' as an experimental population whose loss would be likely to appreciably reduce the likelihood of survival of the species in the wild (50 CFR 17.80(b)). The USFWS defines ''survival'' as the condition in which a species continues to exist in the future while retaining the potential for recovery (USFWS and National Marine Fisheries Service 1998). Inherent in our regulatory definition of ''essential experimental population'' is the impact the potential loss of the experimental population would have on the species as a whole (49 FR 33885; August 27, 1984). All experimental populations not meeting this bar are considered ''nonessential'' (50 CFR 17.80(b)).

We designated the Mexican wolf experimental population in the MWEPA as nonessential in 1998 (63 FR 1752; January 12, 1998). The March 31, 2018, Order instructs us to make a new essentiality designation because our geographic expansion of the MWEPA in the 2015 10(j) rule would result in Mexican wolf occupancy outside of areas previously considered when we made our 1998 essentiality determination. We now propose to maintain the designation of the experimental population in the MWEPA as nonessential based on the following information and considerations:

Reestablishing a species, is by its very nature, an experiment for which the outcomes are uncertain. However, it is always our goal to successfully reestablish a species in the wild so that the species can be recovered and removed from the Federal List of Endangered and Threatened Wildlife. This is consistent with the ESA's requirements for section 10(j) experimental populations. Specifically, the ESA requires experimental populations to further the conservation of the species. At 16 U.S.C. 1532(3), the ESA defines conservation as the use of all methods and procedures which are necessary to bring any endangered or threatened species to the point at which the measures provided pursuant to the ESA are no longer necessary. In short, experimental populations serve the species' recovery.

The importance of an experimental population to a species' recovery does not mean the population is ''essential'' under section 10(j) of the ESA. All efforts to reestablish a species are undertaken to move that species toward recovery. If importance to recovery was equated with essentiality, no reestablished populations of a species would qualify for nonessential status. This interpretation would conflict with Congress' expectation that ''in most cases, experimental populations will not be essential'' (H.R. Conference Report No. 835, supra at 34; 49 FR 33885, August 27, 1984). Therefore, although we have indicated that we will manage the MWEPA population to achieve the recovery criteria for the U.S. population of Mexican wolves, the MWEPA population's importance to recovery does not equate with the MWEPA being designated as essential.

In the final rule published on January 12, 1998 (63 FR 1752), we determined that the experimental population was not essential to the survival of the species in the wild based on the current and expected future availability of Mexican wolves in captivity that would be available for release to the wild. Just prior to the 1998 designation, the captive program included 148 animals in 44 facilities in the United States and Mexico. We stated in the 1998 designation that the captive population had doubled in size over the previous 3 years, demonstrating its reproductive potential to replace reintroduced wolves that died (63 FR 1752, January 12, 1998, p. 1753). While we expected that some wolves would die after removal from the captive population, we also expected that the captive population had the capacity to support another reintroduction attempt in the extreme event that the entire population died. We established an expectation from the earliest days of the reintroduction that wolves released to the wild would be genetically redundant to wolves in captivity, such that no unique genes would be lost if released wolves did not survive. This approach ensured the genetic integrity of the captive population and the survival of the subspecies. We stated that the genetic management of the captive population would be conducted by the American Zoo and Aquarium Association's SSP program, using state-of-the-art technology and being guided by an expert advisor specializing in small population management.

Now, taking into consideration our expansion of the MWEPA in the 2015 10(j) rule and the growth of the MWEPA population since the reintroduction began, we maintain our position that the captive population serves as a safeguard for the survival of the Mexican wolf in the wild. Although the revised geography of the MWEPA results in Mexican wolves occupying new areas south of I–40 in Arizona and New Mexico south to the international border with Mexico, wolves that may occupy any area within the revised MWEPA are part of the same experimental population we initiated in 1998. Our previous rationale stands for this now enlarged area: Even if the entire population in the MWEPA died, which is extremely unlikely (see *Likelihood of Population Establishment and Survival,* above), animals from captivity would be available to reintroduce to the wild to reestablish the population. In fact, the captive population is more capable of producing genetically redundant wolves for release than it was in 1998, due to its increased size. As of June 30, 2020, the captive population housed 369 wolves in 55 facilities (Scott et al. 2020, p. 7). Many of the facilities that house and breed wolves in captivity have been doing so for two to three decades, demonstrating a firm commitment as a partner in this effort and gaining considerable experience in husbandry and rearing techniques. The SSP continues to annually meet or exceed its goal to maintain a captive population of 300 wolves. The captive population could be expanded beyond its current size with the addition of more participating facilities that would enable more wolves to be placed into breeding situations (Scott et al. 2020, p. 7).

In addition to the capacity of the captive population to produce the number of wolves that would be necessary to reinitiate a reintroduction, the SSP continues to demonstrate rigorous management of the genetic integrity of the captive population. The SSP prioritizes the breeding of select individuals, and multiple facilities and institutions within the SSP invest in gamete collection and preservation for

use in promising assisted reproductive technologies that allow individual wolves to contribute genetically to the population after their death (Scott et al. 2020, pp. 82–83). The rigorous management of the captive facilities combined with the increasing exploration of and potential to use reproductive technologies further strengthen our position that the captive population has the current capacity and demonstrated record of accomplishment to produce Mexican wolves for release to ensure the survival and recovery of the Mexican wolf in the wild.

We propose our designation in recognition that the gene diversity of the captive population will slowly decline over time. The 2020 SSP masterplan for the Mexican wolf states, ''Currently this population could maintain only 75% gene diversity for 59 years and would be expected to maintain 72.3% after 100 years (Scott et al. 2020, p. 9).'' We acknowledge that the captive population is based on a small number of founders with no possibility of new Mexican wolf founders that could add gene diversity, which limits the gene diversity of the captive Mexican wolf population and any wild population initiated with captive wolves. We also acknowledge that limited breeding capacity due to the number of captive facilities available for breeding coupled with the social structure of the species (not all wolves are breeders) will affect the rate of loss of gene diversity in the captive population over time (Scott et al. 2020, p. 9). However, these factors do not make the captive population unfit to serve as a source for additional reintroductions because the breeding of underrepresented founders, the addition of facilities for breeding events, and the use of reproductive technologies can be increased in order to slow the loss of gene diversity in the captive population. That is, the rate of gene loss can be controlled to a large degree by the management of the captive population. Loss of gene diversity in the captive population would limit future reintroduction potential if it occurred to such an extent that inbreeding effects were observed and resulted in wolves unfit for release. At the current time there is no indication of this, nor is there a specific degree of gene loss at which we have certainty this would occur. Therefore, while we recognize that gene diversity limitations have and will continue to persist, they are not occurring to a degree that curtails our ability to consider a future reintroduction of Mexican wolves to the wild or for those wolves to retain the potential for recovery.

We also note the reintroduction of Mexican wolves in Mexico beginning in 2011, which has resulted in the establishment of a second population of wild Mexican wolves. This effort is a central part of the recovery effort for the Mexican wolf and is not dependent demographically on dispersal of wolves from the MWEPA for its establishment, although translocations from the United States may be undertaken for various management purposes. A loss of wolves in the MWEPA would not disable Mexico's ability to achieve recovery; meanwhile, the MWEPA population could be re-established.

We note that when the MWEPA was designated in 1998 (see 63 FR 1752; January 12, 1998), the Mexican wolf was protected as endangered through the gray wolf listing (see 43 FR 9607; March 9, 1978). We indicated our intent in that rule to conserve subspecies such as the Mexican wolf (43 FR 9607, March 9, 1978, pp. 9609–9610). As such, our designation of an experimental population of the Mexican wolf was in relation to the Mexican wolf subspecies, not the gray wolf species. Therefore, our rationale for designating the MWEPA as nonessential was also in relation to the Mexican wolf subspecies only and did not take into consideration other gray wolf populations (63 FR 1752; January 12, 1998). In 2015, we published a final rule (80 FR 2488; January 16, 2015) listing the Mexican wolf as an endangered subspecies to make its listing independent of the gray wolf species listing. This change in listing, from being part of a species-level listing to a subspecies listing, does not alter our above rationale related to the role of the captive population in our essentiality determination because, consistent with our original designation, we continue to consider the designation of the MWEPA in relation to the Mexican wolf subspecies.

As described in this proposed rule, the USFWS and our partners have over two decades of management experience that support our position that we could successfully reinitiate a reintroduction. In 1998, we stated that in the event of the loss of the entire population, future reintroductions would be possible if the reasons for initial failure were understood (63 FR 1752, January 12, 1998, p. 1754). Not only have we not experienced any such initial failure, we have demonstrated success in growing the population to a minimum of 186 wild wolves. Along the way, we have engaged in adaptive management to hone effective release techniques and identify successful release locations and timing; we have developed and implemented depredation avoidance techniques; we have expanded our partnership network to bring additional expertise and capacity to bear; we have solidified our recovery goals and revised our management regulations; and we continue to integrate new technologies as they become available to track and monitor wolves and collect data. We are better informed and equipped now, and will be in the future, to initiate and manage a reintroduction than we were in 1998.

In addition to considering our logistical potential to conduct a new reintroduction and the degree to which the recovery potential of the Mexican wolf would be retained in such circumstances based on the status of the captive population, our finding of whether a population is essential is also made with our understanding that Congress enacted the provisions of the ESA's section 10(j) to mitigate fears that reestablishing populations of endangered or threatened species into the wild would negatively impact landowners and other private parties. Congress recognized that flexible rules could encourage recovery partners to actively assist in the reestablishment and hosting of such population on their lands (H.R. Conference Report. No. 97–567, at 8(1982)). Although Congress allowed experimental populations to be identified as either essential or nonessential, they noted that most experimental populations would be nonessential (H.R. Conference Report No. 835, supra at 34; see 49 FR 33885, August 27, 1984). Mexican wolves, due to their status as a top predator, have created significant dissension and concern in local communities. In this regard, we note that we are in a unique position in making this finding as an extension of an existing experimental population, as opposed to a new population designation in another geographic area. Because of this, we consider it even more important to maintain the existing partnerships and management arrangements that we have built over the last two decades of the reintroduction because they enhance our ability to address local concerns and contribute to the recovery progress of the Mexican wolf. Our intent to establish a collaborative management scheme for the reintroduction has been evident since 1998, when we discussed the role of cooperating agencies in the management, identification, and monitoring of the reintroduced population (63 FR 1752, January 12, 1998, p. 1754). Currently, we manage the reintroduction pursuant to the 2019 MOU with a host of Federal and State agencies, a Tribe, and several counties

and local governments, each of which plays a unique and important role. We recognize that changing course to an essential designation could result in challenges in maintaining these partnerships.

Section 7 of the ESA, titled Interagency Cooperation, outlines the procedures for Federal interagency cooperation to conserve Federally listed species and designated critical habitats. Section 7(a)(1) directs the Secretaries of the Interior and Commerce to review other programs administered by them and utilize such programs to further the purposes of the ESA. It also directs all other Federal agencies to utilize their authorities in furtherance of the purposes of the ESA by carrying out programs for the conservation of species listed pursuant to the ESA. This section of the ESA makes it clear that all Federal agencies should participate in the conservation and recovery of listed endangered and threatened species. Under this provision, Federal agencies often enter into partnerships and memoranda of understanding with the USFWS to implement and fund conservation agreements, management plans, and recovery plans for listed species.

The primary land management agency within the MWEPA is the USFS, which manages land under a multiple use mandate. The USFS is a signatory to the 2019 MOU for Mexican Wolf Recovery and Management. According to the 2019 MOU, the USFS will provide a liaison to the Interagency Field Team (IFT) to: (1) Serve as the primary liaison between the IFT and USFS on all Mexican wolf issues that pertain to USFS-managed lands, USFS permittees, and other users; (2) provide coordination between the various USFS district rangers/wildlife staff/regional office and the IFT on wolf-related activities and issues; (3) provide assistance and input on IFT issues and priorities; and (4) facilitate obtaining necessary USFS authorizations, permits, environmental analyses, and closure orders.

The USFS has implemented proactive conservation efforts for the Mexican wolf on a multiple use landscape. The USFS districts work closely with the IFT and meet at least four times per year to coordinate the following:

- Review locations of current wolf territories and den/rendezvous sites to coordinate with planned land management actions (including range, fire, timber, recreation) and mitigate potential impacts;
- Coordinate with each district in developing a district-specific livestock carcass removal strategy so that carcasses can be removed from grazing allotments when appropriate to reduce potential wolf/livestock conflict;
- Attend annual operating instructions meetings with range conservationists and individual livestock permittees to review allotment-specific wolf information and develop conflict reduction strategies;
- Update the district range conservationist when depredations occur and explore strategies to reduce conflicts;
- Update livestock permittees approximately every 2 weeks on new wolf locations on their allotments with the intent of reducing wolf/livestock conflicts, encouraging proactive measures, and improving information exchange with the wolf biologist(s) assigned to that area;
- Coordinate with nongovernmental organizations for funding of proactive measures in areas with high depredation rates; and
- Coordinate to help ensure successful implementation of cross-fostering efforts on USFS lands to reach genetic recovery goals.

For the ESA's section 7 consultation purposes, section 10(j) requires the following:

- Any nonessential experimental population located outside a National Park or National Wildlife Refuge System unit is treated as a proposed species for the purposes of section 7 (conference may be conducted);
- Any essential population is treated as a threatened species for purposes of section 7 consultation (standard consultations are conducted);
- Critical habitat may be designated for essential experimental populations (standard consultations are conducted), but not for nonessential experimental populations; and
- All populations of the species (including populations designated as experimental) are considered to be a single listed entity when making jeopardy determinations or other analyses in a section 7 consultation.

By definition, a ''nonessential experimental population'' is not essential to the continued existence of the species. Therefore, no proposed action impacting a population so designated could lead to a jeopardy determination for the entire species. Because the USFS is implementing their section 7(a)(1) responsibilities, is a signatory to the 2019 MOU along with 13 other agencies and entities, and is implementing conservation measures, it is appropriate for the Mexican wolf to be treated as a proposed species for the purposes of section 7 under the nonessential designation.

Management Restrictions, Protective Measures, and Other Special Management

For Mexican wolves that occur outside the MWEPA due to dispersal activity, the ESA prohibits activities that ''take'' endangered and threatened species unless a Federal permit allows such ''take.'' Along with our implementing regulations at 50 CFR part 17, the ESA provides for ''take'' permits and requires that we invite public comment before issuing these permits. A permit issued by us under section 10(a)(1)(A) of the ESA authorizes activities otherwise prohibited by section 9 for scientific purposes or to enhance the propagation or survival of the affected species, including acts necessary for the establishment and maintenance of experimental populations. Our regulations regarding implementation of section 10(a)(1)(A) permits are found at 50 CFR 17.22 for endangered species.

We have developed a section 10(a)(1)(A) permit to allow for certain activities with Mexican wolves that occur both inside and outside the MWEPA. If Mexican wolves travel outside the MWEPA, we intend to capture and return them to the MWEPA or place them in captivity.

Review and Evaluation of the MWEPA Population

The USFWS will measure the success, failure, and effects of releases, translocations, proactive management, removals, and other management actions by monitoring, researching, and evaluating the status of Mexican wolves and their offspring in the MWEPA. Using adaptive management principles, the USFWS will continue to modify subsequent management actions and strategies depending on what we learn and the status of the population. We will prepare periodic progress reports, annual reports, and publications, as appropriate, to evaluate our progress. The reviews and progress reports we foresee completing in the future include: Quarterly updates and annual reports; five-year status evaluations pursuant to section 4(c)(2) of the ESA, with the next evaluations occurring in 2023 and 2028; 5- and 10-year recovery progress evaluations pursuant to the revised recovery plan, during which we will assess progress toward recovery based on data through 2022 and 2027 for the 5- and 10-year evaluations, respectively, and which will result in the publication of our evaluations in 2023 and 2028; the phasing evaluations for western Arizona as established in the 2015 10(j) rule, which occurred in

2020 and will occur in 2023; and an evaluation of this revised rule approximately 5 years after implementation begins, which would be based on data through the annual population count in 2027 and which we will synchronize with our 2027 recovery plan evaluation to ensure we conduct a wholistic review of the experimental population within the context of recovery, for publication in 2028.

Consultation With State Game and Fish Agencies, Local Governments, Tribes, Federal Agencies, and Private Landowners in Developing and Implementing This Proposed Rule

In accordance with 50 CFR 17.81(d), to the maximum extent practicable, this proposed rule represents an agreement between the USFWS, the affected State and Federal agencies, and persons holding any interest in land that may be affected by the establishment of this experimental population. We invited 60 Federal and State agencies, local governments, and Tribes to participate as cooperating agencies in the development of the DSEIS, 24 of which signed a memorandum of understanding (MOU). The purpose of this MOU was for the signatory entities to contribute to the preparation of the DSEIS that analyzes the proposed revisions to the regulations for the MWEPA. The revisions proposed in this rule directly reflect the input of State game and fish agencies, local governmental entities, and affected Federal agencies.

In April 2020, we notified the Tribal governments of all the Native American Tribes in Arizona and New Mexico of our intent to prepare a proposed revised 10(j) rule and DSEIS. We held several Tribal working group meetings to provide opportunity for input, discuss the current status of the DSEIS development, and address issues raised by the Tribes. We also provided updates and opportunities for Tribal input to our process during Tribal coordination meetings convened by the Arizona Ecological Services Field Office in Phoenix, Arizona, and the New Mexico Ecological Services Field Office in Albuquerque, New Mexico.

Due to the difficulty of conducting in-person meetings during the COVID–19 pandemic, we conducted most meetings related to this process via virtual video or telephone meetings. We met with affected Federal and State agencies, representatives from local and Tribal governments, and stakeholder groups representing interested parties to discuss the proposed rule and DSEIS. We met with the Arizona Game and Fish Department and New Mexico Department of Game and Fish to collect data for the biological resources and economics analyses and to discuss proposed revisions. We coordinated regularly to discuss their issues and recommendations.

In addition to the coordination provided specific to the development of the proposed rule and DSEIS, we note that we also conduct the management and recovery of the Mexican wolf within an interagency framework that is defined by our 2019 MOU (see Recovery Efforts, above).

Numerous other entities and individuals provided comments during scoping or at other times during our process that did not reflect the best available scientific and commercial information or contribute to the conservation and recovery of the species. It is not practicable for this proposed rule to represent an agreement between the USFWS and all persons holding any interest in land that may be affected by the revision to the designation of this experimental population. We reviewed approximately 87,000 public scoping comments to develop this proposed rule and the DSEIS. We will hold virtual public meetings and hearings during the public comment period for this proposed rule and the DSEIS (see **DATES** and **ADDRESSES**, above), and we will consider all comments we receive during the open public comment period in the development of our final rule and final SEIS.

Peer Review

In accordance with joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. We have provided copies of this proposed rule to three or more appropriate and independent specialists in order to solicit comments on the scientific data and assumptions we used. The purpose of such review is to ensure that the final determination is based on scientifically sound data, assumptions, and analyses. As directed by the USFWS Peer Review Policy dated July 1, 1994 (59 FR 34270), and a recent memo updating the peer review policy for listing and recovery actions (August 22, 2016), we will invite peer reviewers to comment on our methods and conclusions, and provide additional information, clarifications, and suggestions to improve the final determination. We will consider their comments and information on proposed modifications during preparation of a final rule. Accordingly, the final decision may differ from this proposal.

Required Determinations

Regulatory Planning and Review—Executive Order 12866

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs 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. Executive Order 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 proposed rule in a manner consistent with these requirements.

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

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 801 *et seq.*), whenever a Federal 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 effect 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 an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act 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. We certify that this proposed rule would not have a significant economic effect on a substantial number of small entities. The following discussion explains our rationale.

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, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and forestry and logging operations with fewer than 500 employees and annual business less than $7 million. To determine whether small entities may be affected, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

Importantly, the impacts of a rule must be both significant and substantial to prevent certification of the rule under the Regulatory Flexibility Act and to require the preparation of an initial regulatory flexibility analysis. If a substantial number of small entities are affected by the proposed rule, but the per-entity economic impact is not significant, the USFWS may certify. Likewise, if the per-entity economic impact is likely to be significant, but the number of affected entities is not substantial, the USFWS may also certify.

In our 2015 10(j) rule, we found that the experimental population would not have significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. The 2015 10(j) rule expanded the geographic boundaries of the MWEPA, established new management zones with provisions for initial release and translocation of Mexican wolves, revised and added allowable forms of take, and clarified definitions. We concluded that the rule would not significantly change costs to industry or governments. Furthermore, the rule produced no adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. enterprises to compete with foreign-based enterprises in domestic or export markets. We further concluded that no significant direct costs, information collection, or recordkeeping requirements were imposed on small entities by the action and that the rule was not a major rule as defined by 5 U.S.C. 804(2) (80 FR 2512, January 16, 2015, pp. 2553–2556).

Under this proposal, we would modify the population objective, establish a genetic objective, and temporarily restrict three of the forms of take of Mexican wolves in the MWEPA that we adopted in the January 16, 2015, final rule. We are proposing these revisions to ensure the long-term conservation and recovery of the Mexican wolf. In addition, we are proposing to maintain the nonessential designation for the experimental population. We are not proposing to revise the geographic boundaries of the MWEPA.

Because of the regulatory flexibility for Federal agency actions provided by the MWEPA's 10(j) designation, we continue to expect this rule not to have significant effects on any activities within Federal, State, or private lands within the experimental population. In regard to section 7(a)(2) of the ESA, except on National Park Service and National Wildlife Refuge System lands, the population is treated as proposed for listing, and Federal action agencies are not required to consult on their activities. Section 7(a)(4) of the ESA requires Federal agencies to confer (rather than consult) with the USFWS on actions that are likely to jeopardize the continued existence of a species. However, because a nonessential experimental population is, by definition, not essential to the survival of the species, conferencing is unlikely to be required within the MWEPA. Furthermore, the results of a conference are strictly advisory in nature and do not restrict agencies from carrying out, funding, or authorizing activities. In addition, section 7(a)(1) of the ESA requires Federal agencies to use their authorities to carry out programs to further the conservation of listed species, which would apply on any lands within the experimental population area. As a result, and in accordance with these regulations, if we adopt this rule as proposed, some modifications to the Federal actions within the experimental population area may occur to benefit the Mexican wolf, but we do not expect projects on Federal lands to be halted or substantially modified as a result of these regulations.

However, this proposed rule would allow a larger population of Mexican wolves to occupy the MWEPA, which has the potential to affect a greater number of small entities involved in ranching and livestock production, particularly beef cattle ranching (business activity code North American Industry Classification System (NAICS) 112111), sheep farming (business activity code NAICS 112410), and outfitters and guides (business activity code NAICS 114210). Small entities in these sectors may be affected by Mexican wolves depredating on, or causing weight loss of, domestic animals (particularly beef cattle), or preying on wild native ungulates, respectively. We have updated our assessment to small entities in the DSEIS.

Small businesses involved in ranching and livestock production may be affected by Mexican wolves depredating on domestic animals, particularly beef cattle. Direct effects to small businesses could include foregone calf or cow sales at auctions due to depredations. Indirect effects could include impacts such as increased ranch operation costs for surveillance and oversight of the herd, and weight loss of livestock when wolves are present. Ranchers have also expressed concern that a persistent presence of wolves may negatively impact their property and business values. We do not foresee a significant economic impact to a substantial number of small entities in the ranching and livestock production sector based on the following information:

The small size standard for beef cattle ranching entities and sheep farms as defined by the Small Business Administration are those entities with less than $1.0 million in average annual receipts (*http://www.sba.gov/content/summary-size-standards-industry-sector*). We consider close to 100 percent of the cattle ranches and sheep farms in Arizona and New Mexico to be small entities. The 2017 Census of Agriculture reports that there were 7,057 cattle and calf operations and 7,509 sheep farms in Arizona, and 10,880 cattle and calf operations and 4,047 sheep farms in New Mexico.

Of the approximately 18,000 cattle ranches in Arizona and New Mexico, 12,334 occur in counties in the MWEPA (2017 Census of Agriculture data by county). These operations account for approximately 69 percent of the total for both States. The actual number of ranches within the project area is far less than this estimate because several counties extend beyond the borders of the project area or the ranches occur in areas where we do not expect wolf occupancy due to low habitat suitability. The Agricultural Census does not report sub-county farms or inventory, so relying on the county numbers is the best available data for estimating the number of potentially affected small ranching operations.

Cattle ranches vary significantly in herd size, with classifications ranging from a herd of 1 to 9 animals, to those with more than 2,500 animals (2017 Census of Agriculture). Over 80 percent of these ranches have fewer than 50 head of cattle.

We assessed whether a substantial number of entities would be impacted by this proposed rule by estimating the annual number of depredations we expect to occur within the project area when the Mexican wolf population will be at its largest. Between 1998 and 2019, on average, there were 151 total depredations (confirmed and unconfirmed) by Mexican wolves in any given year, which equates to 1.7 cow/calves killed for every Mexican wolf. Based on this, we estimate the average number of cattle killed (both confirmed and unconfirmed) in any given year for 320 wolves will be 544 individuals. We expect the experimental population to grow from its current minimum population estimate of 186 wolves to an 8-year average population of 320. Assuming that one cow is depredated per ranch, we expect the number of affected ranches to increase from 151 ranches to 544 ranches when the wolf population reaches 320 individuals. At this point, if each expected depredation affects a unique ranch, then a total of approximately four percent of ranches in the area would be impacted.

To the extent that some cattle ranches will most likely not be impacted by wolf recovery because they are not located in suitable habitat but are included in the total estimate of potentially affected ranches because the Agricultural Census does not provide data at a sub-county level, this estimate could understate the percentage of ranches potentially affected. However, for other reasons, this estimate could very well overstate the percentage of cattle ranches affected as we recognize that annual depredation events have not been, and may not be, uniformly distributed across the ranches operating in occupied wolf range. Rather, wolves seem to concentrate in particular areas, and to the extent that livestock are targeted by the pack for depredations, some ranch operations will be disproportionately affected. Therefore, it is more likely that fewer than 544 ranches may experience more than one depredation, rather than each of 544 ranches experiencing one depredation.

Compared to the 2017 total inventory of estimated ranch cattle (259,192) for the project area of the Blue Range Wolf Recovery Area (BRWRA), both confirmed and unconfirmed depredations per 100 Mexican wolves account for 0.2 percent of the herd size. The economic cost of Mexican wolf depredations in this time period has been a small percentage of the total value of the livestock operations. With a population objective of an average of 320 Mexican wolves in the MWEPA, the expected value of 544 cattle (174.3 cattle killed per 100 Mexican wolves on average for any year) at auction based on a weighted average market value for a depredated cow/calf of $1,094.72 ($2020), the total annual impact would be $595,500. If depredations uniquely affect a separate operation, then a total of 544 operations would incur an expected corresponding loss of $1,095.

Small businesses involved in ranching and livestock production could also be indirectly affected by weight loss of livestock due to the presence of Mexican wolves. For example, livestock may lose weight because wolves force them off suitable grazing habitat or away from water sources. Livestock may try to protect themselves by staying close together in protected areas where they are more easily able to see approaching wolves and defend themselves and their calves. A consequence of such a behavioral change would likely be weight loss, especially if the wolves are allowed to persist in the area for a significant amount of time because the cattle would be afraid to spread out to find more lucrative forage areas. Weight loss could also occur if the presence of wolves causes the herd to move around more rapidly as they try to keep away from wolves. Based on Ramler et al. 2014, weight loss of cattle is associated with the ranches that have suffered depredations. Therefore, we would expect the same ranches—that is, 544 ranches or fewer—that are impacted by depredations to potentially be impacted by weight loss of their cattle. Because wolves' tendency to prey on cattle is localized, we would not expect all 544 ranches and their associated herds to be impacted.

Using a mid-point estimate of 6 percent weight loss for calves at the time of auction, we calculated the impact on 2019 model ranches assuming that wolf presence pressures were allowed to persist throughout the foraging year. Based on mean market prices, a 6 percent weight loss for the herd at the time of sale could result in a profit loss of $3,079 to $16,613 depending on the size of the ranch. Under such a scenario, an affected ranch could incur a 20 percent loss in profit using the model ranch assumptions discussed in the report. This, however, is likely an overestimate of impacts that would occur, as once wolves are detected in an area, a variety of proactive and reactive management tools are available to the landowner or the USFWS and our designated agencies such that wolf presence would not persist throughout a foraging year.

This proposed rule is based on alternative one in our DSEIS. Under this alternative, the experimental population regulations would continue to offer several forms of harassment and take of Mexican wolves on Federal and non-Federal land to address conflict situations between wolves and livestock, although we are also proposing to temporarily restrict two of these until we reach the proposed genetic objective of 22 released wolves surviving to breeding age. The regulations would also continue to provide for initial release of captive wolves into suitable habitat in Zones 1 and 2, and we have demonstrated our intention to reduce nuisance behavior associated with adult releases by using the cross-fostering technique. Further, depredation compensation programs are available to offset some of the economic impacts of livestock depredations (see Recovery Efforts, above); these payments fully offset the impacts of confirmed depredations for some operators but do not fully offset impacts for all operators, such as those who experience unconfirmed losses for which payment is not provided.

Based on the preceding information, we find that the impact of direct and indirect effects of Mexican wolf depredations on livestock is not significant and substantial. That is, if impacts are evenly spread, less than 5 percent of small ranches in the MWEPA will be impacted, which we do not consider to be a substantial number. If impacts are disproportionately felt (several ranchers bear the burden of the depredations), the number of affected ranches will be even less (not substantial), but the impact to those affected may be significant depending on the number of cattle on the ranch and other characteristics.

Our proposed revision of the experimental designation may also impact small business entities associated with big game hunting, due to wolves' predation on wild ungulates, specifically elk, in the MWEPA. Effects to small businesses in this sector could occur from impacts to big game populations, loss of hunter visitation, or a decline in hunter success, leading to lost income or increased costs to guides and outfitters. We would expect impacts to big game hunting to potentially occur from the increased number of wolves in the MWEPA under our proposed population objective or from the temporary restriction of the provision

for take in response to an unacceptable impact to a wild ungulate herd. Negative impacts to the big game hunting economic sector would be most likely to occur during the period that this take provision is restricted because State agencies would not be able to request the removal of wolves if they are causing ungulate herds to fall below management goals (*i.e.,* an unacceptable impact).

As we describe in the DSEIS, we do not have a high degree of certainty as to when impacts to ungulates may occur, but we speculate based on information from gray wolves in other geographic areas that impacts will not occur prior to the wolf-to-1,000-elk ratio reaching above 4 wolves to 1,000 elk (potentially around 2024). We expect to meet our proposed genetic objective by 2030, resulting in the temporary restriction of this take provision for not more than 6 years. After the proposed genetic objective is reached and the restriction on this take provision would be lifted, the States could request the removal of wolves causing unacceptable impacts, which would result in mitigation of any reduction in hunting revenue occurring in that area. Currently, we do not have information suggesting that impacts have occurred. No observable impact on wild ungulates due to wolves has been documented, nor reductions in big game hunting. In Arizona, total harvest of elk and percent success of hunters increased from 2012 to 2017 (the most recent year for which we have data) (Hunt Arizona 2011 and 2017, Survey, Harvest and Hunt Data for Big and Small Game), and stayed stable or increased slightly in New Mexico from 2012 to 2019 (NMDGF files).

For the above reasons and based on currently available information, we certify that, if adopted as proposed, the proposed revision to the existing nonessential experimental population designation of the Mexican wolf would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

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.*):

(1) This proposed rule would not ''significantly or uniquely'' affect small governments. We have determined and certify pursuant to the Unfunded Mandates Reform Act that, if adopted, this rulemaking would not impose a cost of $100 million or more in any given year on local or State governments or private entities. A Small Government Agency Plan is not required. Small governments would not be affected because the experimental designation would not place additional requirements on any city, county, or other local municipalities.

(2) This proposed rule would not produce a Federal mandate of $100 million or greater in any year (*i.e.,* it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act). The proposed revisions to the MWEPA would not impose any additional management or protection requirements on the States or other entities.

Takings—Executive Order 12630

In accordance with Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), this proposed rule does not have significant takings implications. When reestablished populations of federally listed species are designated as nonessential experimental populations, the ESA's regulatory requirements regarding the reestablished listed species within the experimental population are significantly reduced. In the 1998 final rule (63 FR 1752; January 12, 1998), we stated that one issue of concern is the depredation of livestock by reintroduced Mexican wolves, but such depredation by a wild animal would not be a taking under the 5th Amendment. One of the reasons for the experimental population is to allow the agency and private entities flexibility in managing Mexican wolves, including the elimination of a wolf when there is a confirmed kill of livestock.

A takings implication assessment is not required because this proposed rule would not effectively compel a property owner to suffer a physical invasion of property and would not deny all economically beneficial or productive use of the land or aquatic resources. Damage to private property caused by protected wildlife does not constitute a taking of that property by a government agency that protects or reintroduces that wildlife. This proposed rule would substantially advance a legitimate government interest (conservation and recovery of a listed species) and would not present a barrier to all reasonable and expected beneficial use of private property.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), we have considered whether this proposed rule has significant federalism effects and have determined that a federalism summary impact statement is not required. This proposed rule would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. In keeping with Department of the Interior policy, we requested information from and coordinated development of this proposed rule with the affected resource agencies in New Mexico and Arizona. Achieving the population objective for the MWEPA, which serves as one of the recovery criteria for the Mexican wolf, will contribute to the rangewide recovery of the species, which will contribute to its eventual delisting and its return to State management. No intrusion on State policy or administration is expected, roles or responsibilities of Federal or State governments will not change, and fiscal capacity will not be substantially or directly affected. This proposed rule would operate to maintain the existing relationship between the State and the Federal Government. Therefore, this proposed rule does not have significant federalism effects or implications to warrant the preparation of a federalism summary impact statement under the provisions of Executive Order 13132.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (February 7, 1996; 61 FR 4729), we have determined that this proposed rule will not unduly burden the judicial system and will meet the requirements of sections (3)(a) and (3)(b)(2) of the Order.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relatives with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we have notified the Native American Tribes within and adjacent to the nonessential experimental population area about the proposed rule and DSEIS. They have been advised through written contact, including informational mailings from the USFWS and email notifications to attend video and teleconference informational sessions, and will be provided an opportunity to comment on the DSEIS and proposed rule. If future activities resulting from this proposed rule may affect Tribal

resources, the USFWS will communicate and consult on a government-to-government basis with any affected Native American Tribes in order to find a mutually agreeable solution.

Paperwork Reduction Act

This proposed rule does not contain any new collection of information that requires approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). OMB has previously approved the information collection requirements associated with permitting and reporting requirements associated with native endangered and threatened species, and experimental populations, and assigned the following OMB control numbers:

- 1018–0094, ''Federal Fish and Wildlife Permit Applications and Reports—Native Endangered and Threatened Species; 50 CFR 10, 13, and 17'' (expires 01/31/2024), and
- 1018–0095, ''Endangered and Threatened Wildlife, Experimental Populations, 50 CFR 17.84'' (expires 9/30/2023).

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

We have prepared a draft supplemental environmental impact statement (DSEIS) pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with this proposed rule to revise the Mexican wolf experimental population designation. The purpose of the DSEIS is to identify and disclose the environmental consequences resulting from the proposed action of revising the existing experimental population designation of the Mexican wolf. On April 15, 2020, we published a notice of intent (85 FR 20967) to prepare the DSEIS, which opened a public scoping period from April 15, 2020, to June 15, 2020. We used the information gathered during scoping to inform the DSEIS and this proposed rule.

Energy Supply, Distribution, or Use—Executive Order 13211

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. This proposed rule is not expected to significantly affect energy supplies, distribution, or use because the actions contemplated in this proposed rule involve the reintroduction of Mexican wolves. Mexican wolves reintroduced in the MWEPA do not change where, when, or how energy resources are produced or distributed. Because this action is not a significant energy action, no statement of energy effects is required.

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, or other appropriate recommendations.

References Cited

A complete list of all references cited in this proposed rule is available at *http://www.regulations.gov* at Docket No. FWS–R2–ES–2021–0103, or upon request from the Mexican Wolf Recovery Program, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this document are the staff members of the Mexican Wolf Recovery Program (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authorities for this action are the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, we propose to 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 § 17.84, in paragraph (k), by:

■ a. Revising paragraph (k)(1);

■ b. Adding paragraphs (k)(7)(iv)(C)(*1*) and (*2*), (k)(7)(v)(A)(*1*) and (*2*), and (k)(7)(vi)(E);

■ c. Revising paragraph (k)(9)(iii);

■ d. Adding paragraph (k)(9)(v); and

■ e. Revising paragraph (k)(10).

The revisions and additions read as follows:

§ 17.84 Special rules—vertebrates.

* * * * *

(k) * * *

(1) *Purpose of the rule.* The U.S. Fish and Wildlife Service (USFWS) finds that reestablishment of an experimental population of Mexican wolves into the subspecies' probable historical range will further the conservation and recovery of the Mexican wolf subspecies. The USFWS also finds that the experimental population is not essential under § 17.81(c)(2).

* * * * *

(7) * * *

(iv) * * *

(C) * * *

(1) Until the USFWS has achieved the genetic objective for the MWEPA set forth at paragraph (k)(9)(v) of this section by documenting that at least 22 released wolves have survived to breeding age in the MWEPA, the USFWS or a designated agency may issue permits only on a conditional, annual basis according to the following provisions: Either

(*i*) Annual release benchmarks (for the purposes of this paragraph, the term ''benchmark'' means the minimum cumulative number of released wolves surviving to breeding age since January 1, 2016, as documented annually in March) have been achieved based on the following schedule:

TABLE 1 TO PARAGRAPH (k)(7)(iv)(C)(1)(i)

Year	Benchmark
2021	7

TABLE 1 TO PARAGRAPH (k)(7)(iv)(C)(1)(i)—Continued

Year	Benchmark
2022	9
2023	11
2024	13
2025	14
2026	15
2027	16
2028	18
2029	20
2030	22

; or

(ii) Permitted take on non-Federal land, or on Federal land under paragraph (k)(7)(v) of this section, during the previous year (April 1 to March 31) did not include the lethal take of any released wolf or wolves that were or would have counted toward the genetic objective set forth at paragraph (k)(9)(v) of this section.

(2) After the USFWS has achieved the genetic objective set forth at paragraph (k)(9)(v) of this section, the conditional annual basis for issuing permits will no longer be in effect.

(v) * * *

(A) * * *

(1) Until the USFWS has achieved the genetic objective for the MWEPA set forth at paragraph (k)(9)(v) of this section by documenting that at least 22 released wolves have survived to breeding age, the USFWS or a designated agency may issue permits only on a conditional, annual basis according to the following provisions: Either

(i) Annual release benchmarks (for the purposes of this paragraph, the term ''benchmark'' means the minimum cumulative number of released wolves surviving to breeding age since January 1, 2016, as documented annually in March) have been achieved based on the following schedule:

TABLE 2 TO PARAGRAPH (k)(7)(v)(A)(1)(i)

Year	Benchmark
2021	7
2022	9
2023	11
2024	13
2025	14
2026	15
2027	16
2028	18
2029	20
2030	22

; or

(ii) Permitted take on Federal land, or on non-Federal land under paragraph (k)(7)(iv) of this section, during the previous year (April 1 to March 31) did not include the lethal take of any released wolf or wolves that were or would have counted toward the genetic objective set forth at paragraph (k)(9)(v) of this section.

(2) After the USFWS has achieved the genetic objective set forth at paragraph (k)(9)(v) of this section, the conditional annual basis for issuing permits will no longer be in effect.

* * * * *

(vi) * * *

(E) No requests for take in response to unacceptable impacts to a wild ungulate herd may be made by the State game and fish agency or accepted by the USFWS until the genetic objective at paragraph (k)(9)(v) of this section has been met.

* * * * *

(9) * * *

(iii) Based on end-of-year counts, we will manage to achieve and sustain a population average greater than or equal to 320 wolves in Arizona and New Mexico. In order to achieve the current demographic recovery criteria for the United States, this average must be achieved over an 8-year period, the population must exceed 320 Mexican wolves each of the last 3 years of the 8-year period, and the annual population growth rate averaged over the 8-year period must be stable or increasing.

* * * * *

(v) The USFWS and designated agencies will conduct a sufficient number of releases into the MWEPA from captivity to result in at least 22 released Mexican wolves surviving to breeding age.

(10) *Evaluation.* The USFWS will continue to evaluate Mexican wolf reestablishment progress and prepare periodic progress reports and detailed annual reports. In addition, approximately 5 years after [EFFECTIVE DATE OF FINAL RULE], the USFWS will prepare a one-time overall evaluation of the experimental population program that focuses on modifications needed to improve the efficacy of this rule and the progress the experimental population is making to the recovery of the Mexican wolf.

* * * * *

Martha Williams,

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

[FR Doc. 2021–23627 Filed 10–28–21; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register

Vol. 86, No. 207

Friday, October 29, 2021

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding these information collections are best assured of having their full effect if received by November 29, 2021. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Agricultural Statistics Service (NASS)

Title: 2020 Local Foods Marketing Practices Survey—Substantive Change.

OMB Control Number: 0535–0259.

Summary of Collection: The primary objective of the National Agricultural Statistics Service (NASS) is to collect, prepare and issue State and national estimates of crop and livestock production, prices, and disposition; as well as economic statistics, environmental statistics related to agriculture and also to conduct the Census of Agriculture.

Need and Use of the Information: NASS will collect information about these types of operations to understand conservation practices within the United States in terms of the following: (1) How often are specific conservation practices adopted without assistance, with technical assistance and/or financial assistance. (2) How does adoption evolve over time? What proportion of producers who ''try'' a given practice continue or expand use over time? How many discontinue the practice? (3) What motivates farmers to initially try a practice and then continue, expand, or discontinue use? The questions reflect a range of factors including conservation need(s), experience(s) of neighbors, financial benefits or costs, producer's time and effort, availability of technical and financial assistance, regulation or conservation compliance, and concern about the environmental quality. The United States Department of Agriculture's Natural Resources Conservation Service has entered into an interagency agreement with NASS to conduct this survey.

Description of Respondents: The 2022 survey will target operations who own or operate cropland as well as confined livestock feeding operations. Operators who have grazing land or forestry land will be done at a later date.

Number of Respondents: 35,200.

Frequency of Responses: Once.

Total Burden Hours: 35,614.

Dated: October 26, 2021.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2021–23614 Filed 10–28–21; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

October 26, 2021.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding: Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques and other forms of information technology.

Comments regarding this information collection received by November 29, 2021 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Forest Service

Title: Special Use Administration.

OMB Control Number: 0596–0082.

Summary of Collection: Several statutes authorize the Forest Service (FS) to issue and administer authorizations for use and occupancy of National Forest System (NFS) lands and require the collection of information from the public for those purposes. The laws for authorizing the use and managing these uses of NFS lands include: The Organic Administration Act of 1897 (16 U.S.C. 551); Title V of the Federal Land Policy and Management Act of 1976 (FLPMA, 43 U.S.C. 1761–1771); The Act of March 4, 1915 (16 U.S.C. 497); The National Forest Ski Area Permit Act (16 U.S.C. 497b); Section 28 of the Mineral Leasing Act (30 U.S.C. 185); The National Forest Roads and Trails Act (FRTA, 16 U.S.C. 532–538); Section 7 of the Granger-Thye Act (16 U.S.C. 480d); The Act of May 26, 2000 (16 U.S.C. 460*l*–6d); The Federal Lands Recreation Enhancement Act (16 U.S.C. 6801–6814); Act of September 3, 1954 (68 Stat. 1146; 43 U.S.C. 931c, 931d); Archeological Resource Protection Act of October 31, 1979 (16 U.S.C. 1996); The Rural Electrification Act of 1936, as amended; and Title VI of the Civil Rights Act of 1964.

Forest Service regulations implementing these authorities are found under Title 36, Code of Federal Regulations, Section 251, Subpart B (36 CFR 251, Subpart B). Information collected include submission of applications, execution of forms, and imposition of terms and conditions that entail information collection requirements, such as the requirement to submit annual financial information; to prepare and update an operating plan; to prepare and update a maintenance plan; and to submit compliance reports and information updates.

Need and Use of the Information: The information collected is evaluated by the FS to ensure that authorized uses of NFS lands are in the public interest and are compatible with the agency's mission. The information helps each agency identify environmental and social impacts of special uses for purposes of compliance with the National Environmental Policy Act and program administration. Information is collected under six categories: (1) Information required from proponents and applicants to evaluate proposals and applications to use or occupy NFS lands; (2) information required from applicants to complete special use authorizations; (3) annual financial information required from holders to determine land use fees; (4) information required from holders to prepare and update operating plans; (5) information required from holders to prepare and update maintenance plans; and (6) information required from holders to complete compliance reports and information updates.

Description of Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; Federal Government; State, Local or Tribal Government.

Number of Respondents: 153,584.

Frequency of Responses: Reporting: Annually, On occasion.

Total Burden Hours: 149,803.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2021–23558 Filed 10–28–21; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Supplemental Nutrition Assistance Program (SNAP) Benefit Expungement and Off-Line Storage

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection associated with SNAP benefit storage and expungement provisions of the 2008 and 2018 Farm Bills. This collection involves both a new collection and an existing collection in use without an Office of Management and Budget (OMB) control number. The new collection is for providing SNAP households advance or concurrent notice prior to the State agency expunging unused SNAP benefits from the household's Electronic Benefit Transfer (EBT) account due to nine months of account inactivity. The existing collection is for providing SNAP households advance or concurrent notice of State agency action to store unused SNAP benefits offline due to three or more months of account inactivity and for those households to seek reinstatement of benefits prior to permanent expungement. A 60-Day **Federal Register** Notice for this proposed information collection was previously published on February 11, 2020 (85 FR 7716). The Department was unable to submit an Information Collection Request (ICR) to OMB within a reasonable timeframe following the publication of the 2020 notice. In an effort to be fully transparent, the Department is publishing the notice again for public comment and plans to submit an ICR to OMB following an analysis of comments.

DATES: Written comments must be received on or before December 28, 2021.

ADDRESSES: The Food and Nutrition Service, USDA, invites interested persons to submit written comments on this information collection. Comments may be submitted in writing by one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Comments should be addressed to Shanta Swezy, Chief, Issuance Support Branch, Retailer and Issuance Policy and Innovation Division, Food and Nutrition Service (FNS), U.S. Department of Agriculture (USDA), 1320 Braddock Place, 5th Floor, Alexandria, Virginia 22314.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Shanta Swezy at 703–305–2238.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: SNAP Benefit Storage and Expungement.

Form Number: Not Applicable.

OMB Number: 0584–NEW.

Expiration Date: Not Yet Determined.

Type of Request: New collection.

Abstract: The Department published the final rule, ''Supplemental Nutrition Assistance Program: 2008 Farm Bill Provisions on Clarification of Split Issuance; Accrual of Benefits and Definition Changes,'' on August 24, 2020, (85 FR 52025), to implement the mandatory SNAP benefit storage and expungement provisions of the Food, Conservation and Energy Act of 2008, Public Law 110–234 (2008 Farm Bill). In the final rule, the Department also adopted as final the provisions in the Agriculture Improvement Act of 2018, Public Law 115–334 (2018 Farm Bill), which made additional mandatory changes to the provisions governing the storage and expungement of unused benefits.

These Farm Bill provisions require State agencies to provide a 30-day advance notice prior to permanently expunging unused SNAP benefits after nine months of inactivity. State agencies that opt to take unused benefits off-line after three months of SNAP EBT account inactivity must also provide up to 10 days advance or concurrent notice prior to taking such action and to reinstate benefits stored off-line within 48 hours of a household's request if the benefits have not reached the expungement timeframe. Currently, only six State agencies are exercising the option to store unused benefits off-line prior to expungement. This information is currently being collected without OMB approval.

1. Expungement Notice

Affected Public: (a) Individuals/Households and (b) State agencies: Respondent groups identified include: (1) 2,961,834 SNAP households (Approximately 16 percent of all SNAP households nationwide) who do not access their benefits within nine months and (2) 53 State SNAP agencies. Out of the 2,961,834 Individuals/Households involved in this data collection request, approximately 540,818 will also receive an Off-line Storage Notice. Of that 540,818, approximately 33,260 will receive an Off-line Benefit Reinstatement. Therefore, the agency is not double counting the same respondents for the different activities involved in this data collection.

a. Individuals/Households Annual Burden

Estimated Annual Number of Respondents: 2,961,834.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Responses: 2,961,834.

Estimated Annual Time per Response: 2 minutes or 0.0334 hours.

Estimated Total Annual Burden on Respondents: 98,925 hours.

b. State Agency Annual Burden

Estimated Annual Number of Respondents: 53.

Estimated Annual Number of Responses per Respondent: 55,884.

Estimated Total Annual Responses: 2,961,852.

Estimated Annual Time per Response: 30 seconds or 0.0083 hours.

Estimated Total Annual Burden on Respondents: 24,583 hours.

2. Off-Line Storage Notice

Affected Public: (a) Households and (b) State agencies: Respondent groups identified include: (1) 540,818 SNAP households (Approximately 14 percent of all SNAP households in the six States that currently take benefits off-line) who do not access their benefits within three months and (2) Six State SNAP agencies that have opted to store unused benefits off-line.

a. Individual/Household Annual Burden

Estimated Number of Respondents: 540,818.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Responses: 540,818.

Estimated Time per Response: 3.5 minutes or .0583 hours.

Estimated Total Annual Burden on Respondents: 31,530 hours.

b. State Agency Annual Burden

Estimated Number of Respondents: 6.

Estimated Number of Responses per Respondent: 90,136.

Estimated Total Annual Responses: 540,818.

Estimated Time per Response: 30 seconds or 0.0083 hours.

Estimated Total Annual Burden on Respondents: 4,489 hours.

3. Off-Line Benefit Reinstatement

Affected Public: (a) Households and (b) State agencies: Respondent groups identified include: (1) 33,260 SNAP households (Approximately 6 percent of the estimated number of households whose benefits are taken off-line) who get their off-line benefits reinstated and (2) Six State SNAP agencies that have opted to store unused benefits off-line.

a. Individual/Household Annual Burden

Estimated Number of Respondents: 33,260.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Responses: 33,260.

Estimated Time per Response: 5 minutes or 0.0835 hours.

Estimated Total Annual Burden on Respondents: 2,777 hours.

b. State Agency Annual Burden

Estimated Number of Respondents: 6.

Estimated Number of Responses per Respondent: 5,543.

Estimated Total Annual Responses: 33,260.

Estimated Time per Response: 3 minutes or .0501 hours.

Estimated Total Annual Burden on Respondents: 1,666 hours.

Respondent	CFR citation	Activity	Estimated annual number respondent	Responses annually per respondent	Total annual responses	Estimated avg. number of hours per response annually	Estimated annual total hours
Individuals or Households SNAP Recipients.		Expungement Notice	2,961,834	1	2,961,834	0.0334	98,925
		Off-line Storage Notice	540,818	1	540,818	0.0583	31,530
		Off-line Benefit Reinstatement	33,260	1	33,260	0.0835	2,777
Sub-total of Individual/Households SNAP Recipients.			2,961,834	1	3,535,912	0.1752	133,232
State Agencies		Expungement Notice	53	55,884	2,961,834	0.0083	24,583
		Off-line Storage Notice	6	90,136	540,818	0.0083	4,489
		Off-line Benefit Reinstatement	6	5,543	33,260	0.0501	1,666
Sub-total of State Agencies	53	66,715	3,535,912	0.0667	30,738		

Respondent	CFR citation	Activity	Estimated annual number respondent	Responses annually per respondent	Total annual responses	Estimated avg. number of hours per response annually	Estimated annual total hours
Grand Total Reporting Burden with both Affect Public.		.....	2,961,887	2	7,071,824	0.0232	163,970

This information is currently being collected without OMB approval.

Cynthia Long,

Administrator, Food and Nutrition Service.

[FR Doc. 2021–23600 Filed 10–28–21; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Fiscal Year 2021 Raw Cane Sugar Tariff-Rate Quota Extension of the Entry Period

AGENCY: Foreign Agricultural Service, U.S. Department of Agriculture.

ACTION: Notice.

SUMMARY: The Foreign Agricultural Service of the U.S. Department of Agriculture is providing notice of an extension of the tariff-rate quota (TRQ) entry period for the fiscal year (FY) 2021 raw cane sugar TRQ.

DATES: *Applicable:* October 29, 2021.

FOR FURTHER INFORMATION CONTACT: Souleymane Diaby, Multilateral Affairs Division, Trade Policy and Geographic Affairs, Foreign Agricultural Service, U.S. Department of Agriculture, Stop 1070, 1400 Independence Avenue SW, Washington, DC 20250–1070; by telephone (202) 720–2916; or by email *Souleymane.Diaby@usda.gov.*

SUPPLEMENTARY INFORMATION: The Foreign Agricultural Service announces that all sugar entering the United States under the FY 2021 raw sugar TRQ will be permitted to enter U.S. Customs territory through December 31, 2021, two months later than the previous extension of October 31. The Department previously announced on August 24, 2021, that sugar entering under the FY 2021 raw sugar TRQ will be permitted to enter U.S. Customs territory through October 31, 2021, a month later than the usual last entry date. Additional U.S. Note 5(a)(iv) of Chapter 17 of the U.S. Harmonized Tariff Schedule provides: ''(iv) Sugar entering the United States during a quota period established under this note may be charged to the previous or subsequent quota period with the written approval of the Secretary.'' The Secretary's authority under paragraph (a)(iv) of Additional U.S. Note 5 has been delegated to the Under Secretary for Trade and Foreign Agricultural Affairs (7 CFR 2.26). The Under Secretary has subsequently delegated this authority to the Administrator, Foreign Agricultural Service (7 CFR 2.601).

These actions are being taken after a determination that additional supplies of raw cane sugar are required in the U.S. market. USDA will closely monitor stocks, consumption, imports and all sugar market and program variables on an ongoing basis.

Daniel Whitley,

Administrator, Foreign Agricultural Service.

[FR Doc. 2021–23679 Filed 10–27–21; 11:15 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Forest Service

Final Record of Decision for the Helena-Lewis and Clark National Forest Land Management Plan

AGENCY: Forest Service, USDA.

ACTION: Notice of plan approval for the Helena-Lewis and Clark National Forest.

SUMMARY: William Avey, the Forest Supervisor for the Helena-Lewis and Clark National Forest (referred to as the Forest), Northern Region, signed the record of decision (ROD) for the Helena-Lewis and Clark National Forest Land Management Plan (Forest Plan). The final ROD documents the rationale for approving the Land Management Plan and is consistent with the reviewing officer's responses to objections and instructions.

DATES: The revised Land Management Plan for the Helena-Lewis and Clark National Forest will become effective 30 days after the publication of this notice of approval in the **Federal Register**.

ADDRESSES: To view the final ROD, final environmental impact statement (FEIS), Land Management Plan, and other related documents, please visit the Helena-Lewis and Clark National Forest Plan Revision website at: *www.fs.usda.gov/goto/hlc/forestplanrevision.* A legal notice of approval is also being published in the Helena-Lewis and Clark National Forest's newspaper of record, Helena Independent Record. A copy of this legal notice will be posted on the website listed above.

FOR FURTHER INFORMATION CONTACT: Deborah Entwistle, weekdays, 8:30 a.m. to 3:00 p.m. Mountain Daylight Time, at 406–449–5201. Written requests for information may be sent to Helena-Lewis and Clark National Forest, Attn: Plan Revision, 2880 Skyway Drive, Helena, MT 59601.

Individuals who use telecommunication devices for the hearing-impaired (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Daylight Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Land Management Plan describes the Helena-Lewis and Clark National Forest's distinctive roles and contributions within the broader landscape and details forest wide and geographic area desired conditions, objectives, standards, and guidelines. It identifies suitable uses of National Forest System lands and provides estimates of the planned timber sale quantity. The Land Management Plan identifies priority watersheds for restoration and includes recommended wilderness areas and eligible wild and scenic rivers. This Land Management Plan provides for efficient and effective management of the Helena-Lewis and Clark National Forest with desired conditions for coordination, partnerships, and shared stewardship with State, local, and Tribal governments, other federal agencies, adjacent landowners, and stakeholders. The development of the Land Management Plan was shaped by the best available scientific information, current laws, and public input.

The Helena-Lewis and Clark National Forest initiated plan revision in spring 2014 with open houses held at multiple locations across the planning area. The Forest invited State, local and Tribal governments, and other federal agencies from around the region to participate in the process to revise the Land Management Plan. An interagency working group met regularly throughout the plan revision effort. After two years of public engagement, the Forest

released the Proposed Action in December 2016. Comments received on the Proposed Action were used in development of the draft Land Management Plan and draft EIS which were released in June 2018. The Forest received over 1,000 public comments on the draft Land Management Plan. The Land Management Plan, final EIS, and draft Record of Decision were released in May 2020, initiating a 60-day opportunity to object. The Forest Service received 88 eligible objections. The Regional Forester, Reviewing Official, issued a written response to the objection issues on February 19, 2021. The final ROD documents the rationale for approving the Land Management Plan and is consistent with the Reviewing Officer's response to objections and instructions.

Responsible Official

The Responsible Official for approving the Land Management Plan is William Avey, Forest Supervisor, Helena-Lewis and Clark National Forest.

Dated: June 7, 2021.

Barnie Gyant,

Associate Deputy Chief, National Forest System.

Editorial note: This document was received for publication by the Office of the Federal Register on October 26, 2021.

[FR Doc. 2021–23607 Filed 10–28–21; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; 2020 Census Count Question Resolution Operation

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 August 4, 2020 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: U.S. Census Bureau, Commerce.

Title: 2020 Census Count Question Resolution Operation.

OMB Control Number: 0607–0879.

Form Number(s): None.

Type of Request: Regular submission, Request for a Reinstatement, with Change, of a Previously Approved Collection.

Number of Respondents: 1,500.

Average Hours per Response: 5.2 (based on 40 records per case).

Burden Hours: 7,800.

Needs and Uses:

Introduction

The 2020 Census Count Question Resolution Operation (CQR) provides a mechanism for tribal, state, and local governmental units in the United States and Puerto Rico, or their designated representatives, to request that the Census Bureau review their boundaries and/or housing counts by block to correct any in-scope error(s) affecting the inclusion and/or geographic allocation of housing and population. The term ''housing'' refers to individual housing units and group quarters. Please note, the population counts for a census block or other geographic units below the state level may seem inaccurate due to disclosure avoidance measures the Census Bureau applies to the published data. Population counts at the block level have the most ''noise'' of any geographic level due to disclosure avoidance and differential privacy to protect against data disclosure. Additional information on both disclosure avoidance and differential privacy is available at the following URL: *www.census.gov/programs-surveys/decennial-census/decade/2020/planning-management/process/disclosure-avoidance.html.*

The Census Bureau will accept 2020 Census CQR cases from tribal, state, and local governmental units from January 3, 2022 through June 30, 2023. The eligible governmental units and geographies are the same as in previous decades for the 2020 Census CQR. The Census Bureau will conduct CQR case research by examining the census records for the 2020 tabulation block(s) identified in the CQR case. All boundaries in the published 2020 Census results are current as of January 1, 2020, and all housing and population counts are current as of April 1, 2020; therefore, any changes to boundaries or housing counts that occurred past those dates are out of scope. No new Census information products will be created by the 2020 Census CQR and no revisions will be made to 2020 Census information products, such as the apportionment counts delivered to the President for apportionment or the 2020 Census Public Law 94–171 Redistricting Data Files and Geographic Products. Federal law requires data collection for the census to end, so the Census Bureau cannot continue collecting information for the census through the Count Question Resolution operation (CQR). CQR can correct only errors that occurred during the processing of information collected during the 2020 enumeration.

Once a resolution is determined for each CQR case, the Census Bureau will respond to the governmental unit in writing with an official determination letter, even if the case is determined to be out of scope or that no corrections are warranted. However, if research determines that changes are appropriate, the determination letter will be accompanied by certified housing and population count corrections, which governmental units can use for any purpose requiring their official Census counts. The Census Bureau will incorporate all CQR revisions into the intercensal population estimates and American Community Survey estimates starting in 2022 and will post the new counts on the CQR website. The Census Bureau will attempt to respond to each inquiry within 90 days of receipt and complete all case research and resolution by no later than September 30, 2023.

Eligible Participants

The Census Bureau will only accept cases from the eligible participants listed below or their designee. Details on how to designate someone else to submit on a government's behalf will be explained further in the guides that will be posted on the CQR website. The Census Bureau will not accept cases from any other type of statistical or legally defined areas, or any other individual, group, or organization not included in this list.

1. Tribal areas, including federally recognized American Indian tribes with reservation and/or off-reservation trust lands, Alaska Native Regional Corporations, and Alaska Native villages.

○ A review of statistically defined boundaries (*e.g.,* boundaries of the tribal designated statistical areas, Oklahoma tribal statistical areas, and Oklahoma tribal statistical area tribal subdivisions) is out of scope for 2020 Census CQR.

○ A review of the statistically defined Alaska Native village statistical area boundaries is out of scope for 2020 Census CQR.

2. States and equivalent entities (*e.g.,* District of Columbia and Puerto Rico).

○ States and equivalent entities can ask the Census Bureau to review the boundaries for all legally functioning governments within their jurisdiction.

▪ Hawaii can ask the Census Bureau to review the boundaries for the Hawaiian home lands and census designated places within their state.

▪ Puerto Rico can ask the Census Bureau to review the boundaries for their sub-minor civil divisions (*e.g.,* subbarrios).

▪ A review of the statistically defined boundaries, such as those for state designated tribal statistical areas is out of scope for 2020 Census CQR.

3. Counties and equivalent entities (*e.g.,* parishes in Louisiana, boroughs in Alaska, municipios in Puerto Rico).

○ County and equivalent entities can ask the Census Bureau to review the boundaries for all legally functioning governments within their jurisdiction.

▪ Counties in Hawaii can ask the Census Bureau to review the boundaries for the census designated places within their jurisdiction because they are the equivalent of an incorporated place.

▪ Municipios in Puerto Rico can ask the Census Bureau to review boundaries for their sub-minor civil divisions (*e.g.,* subbarrios).

4. Minor civil divisions (*e.g.,* townships).

○ Minor civil divisions can ask the Census Bureau to review the boundaries for all legally functioning governments within their jurisdiction.

5. Consolidated cities.

6. Incorporated places (*e.g.,* villages, towns, cities).

○ Because census designated places in Hawaii are the equivalent of an incorporated place, they can ask the Census Bureau to review the boundary and/or housing counts for their census designated place.

CQR Case Types

The 2020 Census CQR includes boundary and/or housing count cases. Boundary cases request a Census Bureau review of legal boundaries in effect as of January 1, 2020, and the associated addresses affected by the boundaries identified in the inquiry. Housing count cases request a Census Bureau review of the geographic location of housing within 2020 tabulation blocks specified in the eligible governmental unit's inquiry, as well as a review of the census records to determine whether census processing error(s) excluded valid housing and associated population data.

Boundary cases must include a map (*e.g.,* digital or hard copy) indicating the portion of the boundary that the Census Bureau potentially depicted incorrectly, as well as depicting the corrected boundary as of January 1, 2020; a list of residential addresses in the 2020 tabulation blocks affected by the incorrect boundary, indicating their correct coordinates or location in relationship to the boundary; and supporting documentation which may include legal documentation for certain circumstances as described in the CQR Participant Guides. The Census Bureau provides partnership shapefiles and 2020 Census Block Map Adobe .pdf files on the CQR website to support governmental units creating boundary cases.

Housing count cases must include a list of contested 2020 tabulation blocks with their current housing counts, and the corrected housing counts for both housing units and group quarters as of April 1, 2020, as well as supporting documentation as described in the CQR Participant Guides.

CQR Case Submission

To determine whether submitting a CQR case is necessary, governmental units need to review their boundaries and housing counts in the published 2020 Census data. The Census Bureau recommends a review of the Public Law 94–171 data tables to review their counts of total housing units (Table H1), total population (Table P1), and population of group quarters by type of group quarters (Table P5). These data were made available on September 16, 2021 on *data.census.gov*.

In addition to the redistricting data tables mentioned, governmental units can also use the Address Count Listing Files Viewer tool available from the CQR website to identify the specific 2020 tabulation blocks where governmental units suspect boundary or housing count errors. The tool permits users to navigate to their governmental unit through a web map interface, select individual census blocks, and display the associated counts of housing units and group quarters. If an error exists with their legal boundary(s) or housing counts, governmental units may prepare and submit a CQR case.

To prepare a CQR case, the Census Bureau encourages the use of digital materials from the CQR website. Governmental units that are unable to use digital materials to prepare their case may download and print paper copies of the digital materials to prepare their case on paper. The Census Bureau also provides the Geographic Update Partnership Software (GUPS) for use in preparing a CQR case. The GUPS is a self-contained, customized geographic information system (GIS) software application available free for download from the CQR website.

To submit any CQR case, the Census Bureau encourages governmental units to use the Secure Web Incoming Module (SWIM), available at *respond.census.gov/swim*. Governmental units submitting a CQR case on paper must ship their submission following specific guidance presented in the participant guides to the Census Bureau at the following address:

U.S. Census Bureau, National Processing Center, ATTN: CQR Geography Bldg. 63E, 1201 E 10th St., Jeffersonville, IN 47132

CQR Case Disposition

Boundary and/or housing count cases can result in certified housing and/or population count corrections if during CQR case research, Census staff discover evidence showing a boundary, geocoding, and/or coverage error in the published 2020 Census results.

The Census Bureau will only make CQR boundary corrections if the boundary error identified affects the location of housing in the published 2020 Census results. Boundary cases that do not affect the location of housing in the published results, or boundary changes that occurred after January 1, 2020, will be resolved through the Boundary and Annexation Survey as they are out of scope for CQR.

Census staff can resolve two kinds of housing count errors: Geocoding and coverage. Geocoding errors involve housing that was enumerated in the 2020 Census and is present in the published 2020 Census results in the incorrect 2020 tabulation block. The Census Bureau will correct geocoding errors discovered in the published results during CQR research by moving the address(es) into the appropriate 2020 tabulation block and will provide certified housing and/or population count corrections to any governmental unit affected by the case.

Coverage errors involve housing (including group quarters) that was or should have been enumerated in the 2020 Census, but which were excluded from the published 2020 Census results due to a processing error. Coverage errors discovered in the published results can be resolved by adding or reinstating the address(es) in the appropriate 2020 tabulation block. The Census Bureau will provide certified housing and/or population count corrections as appropriate.

Affected Public: Tribal, State, and Local governmental units in the United States and Puerto Rico.

Frequency: Every ten years following the publication of data from the Decennial Census.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C. Section 141.

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 0607–0879.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021–23567 Filed 10–28–21; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Amendments to the Trade Mission to South America in Conjunction With the Trade Americas-Business Opportunities in South America Conference

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The United States Department of Commerce, International Trade Administration, is amending the Notice published at 86 FR 21697 (April 23, 2021), regarding the Trade Mission to South America in conjunction with the Trade Americas—Business Opportunities in South America Conference, scheduled from December 5–10, 2021, to amend the dates and deadline for submitting applications for the event.

SUPPLEMENTARY INFORMATION: Amendments to Revise the Regional Conference Dates, and Deadline for Submitting Applications

Background

The dates of ITA's planned Trade Mission to the Caribbean Region and Conference have been modified from December 5–10, 2021, to May 15–20, 2022. The new deadline for applications has been extended to January 28, 2022 (and after that date if space remains and scheduling constraints permit). Interested U.S. companies and trade associations/organizations that have not already submitted an application are encouraged to do so. The proposed schedule is updated as follows:

PROPOSED TIMETABLE

Saturday, May 14, 2022	Travel Day/Arrival in São Paulo. *Optional Local Tour/Activities.*
Sunday, May 15, 2022	São Paulo, Brazil. Afternoon: Registration, Briefing and U.S. Embassy Officer Consultations. Evening: Networking Reception.
Monday, May 16, 2022	São Paulo, Brazil. Morning: Registration and Trade Americas—Business Opportunities in South America Conference. Afternoon: U.S. Embassy Officer Consultations. Evening: Networking Reception.
Optional	
Tuesday–Friday, May 17–20, 2022	Travel and Business-to-Business Meetings in (choice of two markets): Option (A) Brazil. Option (B) Argentina. Option (C) Bolivia. Option (D) Chile. Option (E) Colombia. Option (F) Guyana. Option (G) Peru. Option (H) Paraguay. Option (I) Suriname. Option (J) Uruguay.)
Saturday, May 21, 2022	Travel Day.

The U.S. Department of Commerce will review applications and make selection decisions on a rolling basis in accordance with the Notice published at 86 FR 21697 (April 23, 2021). The applicants selected will be notified as soon as possible.

Contacts

U.S. Trade Americas Team Contact Information:

Laura Krishnan, International Trade Specialist, Office of Latin America and the Caribbean—International Trade Administration—Washington, DC, *laura.krishnan@trade.gov,* Tel: 202–482–4187

Diego Gattesco, Director, U.S. Commercial Service Wheeling, WV, *Diego.Gattesco@trade.gov*

Gemal Brangman,

Acting Director, ITA Events Management Task Force.

[FR Doc. 2021–23615 Filed 10–28–21; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–873]

Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel From India: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2019–2020

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that Tube Products of India, Ltd., a unit of Tube Investments of India Limited (collectively, TII) made sales of subject merchandise in the United States at prices below normal value during the

period of review (POR) June 1, 2019, through May 31, 2020. In addition, Commerce determines that Goodluck India Limited (Goodluck) had no shipments during the POR.

DATES: Applicable October 29, 2021.

FOR FURTHER INFORMATION CONTACT: Alexis Cherry or Samantha Kinney, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0607 or (202) 482–5305, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 28, 2021, Commerce published the *Preliminary Results* of the 2019–2020 administrative review of the antidumping duty order on certain cold-drawn mechanical tubing of carbon and alloy steel (cold-drawn mechanical tubing) from India.[1] The administrative review covers two producers and/or exporters of the subject merchandise, Goodluck[2] and TII. For the events that occurred since Commerce published the *Preliminary Results,* see the Issues and Decision Memorandum.[3] Commerce conducted this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order[4]

The product covered by this *Order* is cold-drawn mechanical tubing from India. A full description of the scope of the *Order* is contained in the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised by parties in the case and rebuttal briefs are addressed in the Issues and Decision Memorandum. A list of the issues addressed in the Issues and Decision Memorandum is 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 *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade/gov/public/FRNoticesListLayout.aspx.*

Changes Since the Preliminary Results

We made no changes to the *Preliminary Results.*

Final Determination of No Shipments

In the *Preliminary Results,* Commerce determined that Goodluck did not have shipments of subject merchandise during the POR.[5] As we received no information to contradict our preliminary determination, we continue to find that Goodluck made no shipments of subject merchandise to the United States during the POR. We will issue appropriate instructions that are consistent with our ''automatic assessment'' clarification for Goodluck.

Final Results of the Administrative Review

We determine that the following weighted-average dumping margin exists for the period June 1, 2019, through May 31, 2020:

Producer or exporter	Weighted-average dumping margin (percent)
Tube Products of India, Ltd., a unit of Tube Investments of India Limited	13.06

Disclosure

Normally, Commerce will disclose to the parties in a proceeding the calculations performed in connection with a final results of review in accordance with 19 CFR 351.224(b). However, because Commerce made no adjustments to the margin calculation methodology used in the *Preliminary Results,* there are no calculations to disclose for the final results of review.

Assessment Rates

Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries in accordance with section 751(a)(2)(C) of the Act and 19 CFR 351.212(b). 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).

Pursuant to 19 CFR 351.212(b)(1), where the respondent 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 the respondent did not report entered value, we calculated importer-specific per-unit duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total quantity of those sales. Where an importer-specific assessment rate is *de minimis* (*i.e.,* less than 0.5 percent), the entries by that importer will be liquidated without regard to antidumping duties. To determine whether an importer-specific per-unit duty assessment rate is *de minimis,* we calculated an estimated entered value.

The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results

[1] *See Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India: Preliminary Results of Antidumping Duty Administrative Review, 2019–2020,* 86 FR 33980 (June 28, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] Commerce is only reviewing entries that were produced, but not exported, by Goodluck, and/or entries that were exported, but not produced, by Goodluck. Pursuant to a Court of International Trade (CIT) decision, effective May 10, 2020, Commerce excluded from the antidumping duty order certain cold-drawn mechanical tubing of carbon and alloy steel that is produced and exported by Goodluck. *See Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India: Notice of Court Decision Not in Harmony with Final Determination of Sales at Less Than Fair Value; Notice of Amended Final Determination Pursuant to Court Decision;* and *Notice of Revocation of Antidumping Duty Order, in Part,* 85 FR 31742 (May 27, 2020) (*Timken Notice*). On August 31, 2021, the Court of Appeals for the Federal Circuit reversed the CIT's decision, finding that Commerce's initial determination to reject Goodluck's supplemental submission was supported by substantial evidence and not contrary to law. *See Goodluck India* v. *United States,* 11 F.4th 1335 (Fed. Cir. 2021); *Goodluck India Ltd.* v. *United States,* 439 F. Supp. 3d 1366 (CIT 2020); and *Goodluck India Ltd.* v. *United States,* 393 F. Supp. 3d 1352 (CIT 2019).

[3] *See* Memorandum, ''Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India: Issues and Decision Memorandum for the Final Results of Antidumping Duty Administrative Review; 2019–2020,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[4] *See Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China, the Federal Republic of Germany, India, Italy, the Republic of Korea, and Switzerland: Antidumping Duty Orders; and Amended Final Determinations of Sales at Less Than Fair Value for the People's Republic of China and Switzerland,* 83 FR 26962 (June 11, 2018) (*Order*).

[5] *See Preliminary Results,* 86 FR at 33981, and PDM at 5–6.

of this review and for future deposits of estimated duties, where applicable.[6]

Consistent with Commerce's clarification of its assessment practice, for entries of subject merchandise during the POR produced by TII for which it did not know the 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(ies) involved in the transaction.[7] Additionally, because we determined that Goodluck had no shipments of subject merchandise to the United States during the POR, for entries of subject merchandise during the POR produced, but not exported by Goodluck, and/or entries of subject merchandise exported, but not produced by Goodluck, we will instruct CBP to liquidate any entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[8]

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of cold-drawn mechanical tubing from India entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for TII will be equal to the weighted-average dumping margin established in the final results of the review; (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior completed segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published in the completed segment for the most recent period; (3) if the exporter is not a firm covered in this review or the original less-than-fair-value (LTFV) investigation, but the producer is, then the cash deposit rate will be the rate established in the completed segment for the most recent period for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will continue to be 5.87 percent, the all-others rate established in the LTFV investigation in this proceeding. [9] 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 double antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(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 subject to sanction.

Notification to Interested Parties

We are issuing and publishing these results of administrative review in accordance with sections 751(a) and 777(i) of the Act, and 19 CFR 351.221(b)(5).

Dated: October 25, 2021.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the 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. Discussion of the Issues
Comment: Section 232 Duties
V. Recommendation

[FR Doc. 2021–23562 Filed 10–28–21; 8:45 am]

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[6] *See* section 751(a)(2)(C) of the Act.

[7] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[8] For a full discussion, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[9] *See Order,* 83 FR at 26962, 26965.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–504]

Petroleum Wax Candles From the People's Republic of China: Continuation of the Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC) that revocation of the antidumping duty (AD) order on petroleum wax candles (candles) from the People's Republic of China (China) would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, Commerce is publishing a notice of continuation of this AD order.

DATES: Applicable October 29, 2021.

FOR FURTHER INFORMATION CONTACT: Jasun Moy, 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) 482–8194.

SUPPLEMENTARY INFORMATION:

Background

On August 28, 1986, Commerce published the AD order on candles from China.[1] On March 31, 2021, Commerce initiated,[2] and on April 1, 2021, the ITC instituted,[3] the fifth sunset review of the *Order,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). As a result of its review, Commerce determined that revocation of the *Order* would likely lead to continuation or recurrence of dumping and, therefore, notified the ITC of the magnitude of the margins likely to prevail should the *Order* be revoked.[4]

On October 19, 2021, the ITC published its determination, pursuant to sections 751(c) and 752(a) and (c) of the Act, that revocation of the *Order* would likely lead to continuation or recurrence of material injury to an industry in the

[1] *See Antidumping Duty Order: Petroleum Wax Candles from the People's Republic of China,* 51 FR 30686 (August 28, 1986) (*Order*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 86 FR 16701 (March 31, 2021).

[3] *See Petroleum Wax Candles from China; Institution of a Five-Year Review,* 86 FR 17203 (April 1, 2021).

[4] *See Petroleum Wax Candles from the People's Republic of China: Final Results of the Expedited Fifth Sunset Review of the Antidumping Duty Order,* 86 FR 36523 (July 12, 2021).

United States within a reasonably foreseeable time.[5]

Scope of the Order

The products covered by the *Order* are certain scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks. They are sold in the following shapes: Tapers, spirals and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers. The products were originally classifiable under the Tariff Schedules of the United States item 755.25, Candles and Tapers. The products are currently classifiable under the Harmonized Tariff Schedule (HTSUS) subheading 3406.00.00. The HTSUS subheading is provided for convenience and customs purposes. The written description remains dispositive.

Continuation of the Order

As a result of the determinations by Commerce and the ITC that revocation of the *Order* would likely lead to a continuation or a recurrence of dumping as well as material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218(a), Commerce hereby orders the continuation of the *Order.*

U.S. Customs and Border Protection will continue to collect AD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of the *Order* will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), Commerce intends to initiate the next five-year review of the *Order* no later than 30 days prior to the fifth anniversary of the effective date of continuation.

Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO which may be subject to sanctions.

Notification to Interested Parties

This five-year sunset review and this notice are in accordance with sections 751(c) and 751(d)(2) of the Act and published in accordance with section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: October 25, 2021.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2021–23560 Filed 10–28–21; 8:45 am]

BILLING CODE 3510–DS–P

[5] *See Petroleum Wax Candles from China,* 86 FR 57855 (October 19, 2021).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–883]

Certain Hot-Rolled Steel Flat Products From the Republic of Korea: 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 finds that the producers/exporters subject to this review made sales of subject merchandise at less than normal value during the period of review (POR), October 1, 2019, through September 30, 2020. We invite interested parties to comment on these preliminary results.

DATES: Applicable October 29, 2021.

FOR FURTHER INFORMATION CONTACT: Christopher Williams or Thomas Schauer, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5166 or (202) 482–0410, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 3, 2016, Commerce published in the **Federal Register** an antidumping duty order on certain hot-rolled steel flat products (hot-rolled steel) from the Republic of Korea (Korea).[1] On October 1, 2020, we published in the **Federal Register** a notice of opportunity to request an administrative review of the *Order.*[2] On December 8, 2020, based on timely requests for an administrative review, Commerce initiated an administrative review of ten companies.[3] On June 8, 2021, Commerce extended the time limit for issuing the preliminary results of this review by 60 days to no later than September 1, 2021.[4] On August 16, 2021, Commerce fully extended the time limit for issuing the preliminary results of this review by an additional 55 days to no later than October 26, 2021.[5]

Scope of the Order

The products covered by this *Order* are hot-rolled steel. A full description of the scope of the *Order* is contained in the Preliminary Decision Memorandum.[6]

Methodology

Commerce is conducting this review in accordance with section 751(a) of the Act. Export price and constructed export price are calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying these preliminary results, *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 made available to the public 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 is available at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Rates for Non-Examined Companies

The statute and Commerce's regulations do not address the establishment of a rate to be applied to

[1] See Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Amended Final Affirmative Antidumping Determinations for Australia, the Republic of Korea, and the Republic of Turkey and Antidumping Duty Orders, 81 FR 67962 (October 3, 2016) (*Order*).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 85 FR 61926 (October 1, 2020).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 78990 (December 8, 2020).

[4] *See* Memorandum, ''Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review; 2019–2020,'' dated June 8, 2021.

[5] *See* Memorandum, ''Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review; 2019–2020,'' dated August 16, 2021.

[6] *See* Memorandum, ''Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review; 2019–20120,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

companies not selected for examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or de minimis margins, and any margins determined entirely {on the basis of facts available}.'' In this review, we preliminarily calculated weighted-average dumping margins for the two mandatory respondents, Hyundai Steel Company (Hyundai Steel) and POSCO,[7] that are not zero, *de minimis,* or determined entirely on the basis of facts available. Accordingly, Commerce preliminarily assigned to the companies not individually examined, listed in the chart below, a margin of 3.50 which is the weighted average of Hyundai Steel's and POSCO's calculated weighted-average margins.[8]

Preliminary Results of Administrative Review

We preliminarily determine that the following weighted-average dumping margins exist for the period October 1, 2019, through September 30, 2020:

Exporter/producer	Weighted-average dumping margin (percent)
Hyundai Steel Company	4.03
POSCO/POSCO International Corporation	2.43

[7] We initiated this review with respect to POSCO and POSCO Daewoo Corporation. We preliminarily find that POSCO International Corporation is the successor-in-interest to POSCO Daewoo Corporation and we are preliminarily treating POSCO and POSCO International Corporation as a single entity, hereinafter collectively referred to as POSCO. *See* Preliminary Decision Memorandum.

[8] For more information regarding the calculation of this margin, *see* Memorandum, ''Preliminary Results of Antidumping Duty Administrative Review of Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Calculation of the margin for Non-Examined Companies,'' dated concurrently with this notice. As the weighting factor, we relied on the publicly ranged sales data reported in the quantity and value charts submitted by Hyundai Steel and POSCO.

REVIEW-SPECIFIC AVERAGE RATE APPLICABLE TO THE FOLLOWING COMPANIES

Exporter/producer	Average dumping margin (percent)
Dongkuk Industries Co., Ltd	3.50
Dongkuk Steel Mill Co., Ltd	3.50
KG Dongbu Steel Co., Ltd	3.50
Marubeni-Itochu Steel Korea, Ltd	3.50
Snp Ltd	3.50
Soon Hong Trading Co	3.50
Sungjin Co., Ltd	3.50

Disclosure and Public Comment

We intend to disclose the calculations performed to parties within five days after public announcement of the preliminary results.[9] Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs no 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 not later than seven days after the date for filing case briefs.[10] Commerce modified certain of its requirements for serving documents containing business proprietary information until further notice.[11] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[12]

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. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. An electronically filed hearing request must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice.

Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, unless extended, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Assessment Rates

Upon completion of the final results, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. If either of the respondents' weighted-average dumping margins is not zero or *de minimis* (*i.e.,* less than 0.50 percent) in the final results of this review, we intend to calculate an importer-specific assessment rate based on the ratio of the total amount of dumping calculated for each importer's examined sales and the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).[13] If either of the respondents' weighted-average dumping margin or an importer-specific assessment rate is zero or *de minimis* in the final results of review, we intend to instruct CBP not to assess duties on any entries in accordance with the *Final Modification for Reviews.*[14] The final results of this administrative review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.[15]

For entries of subject merchandise during the POR produced by either of the respondents for which they did not know that the merchandise was destined to 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(ies) involved in the transaction.[16]

[9] *See* 19 CFR 351.224(b).

[10] *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).'')

[11] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[12] *See* 19 CFR 351.309(c)(2) and (d)(2).

[13] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101, 8103 (February 14, 2012).

[14] *Id.* at 8102–03; *see also* 19 CFR 351.106(c)(2).

[15] *See* section 751(a)(2)(C) of the Act.

[16] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

For the companies identified above that were not selected for individual examination, we will instruct CBP to liquidate entries at the rates established after the completion of the final results of 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).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication in the **Federal Register** of the notice of final results of administrative review for all shipments of hot-rolled steel from Korea entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the respondents will be equal to the weighted-average dumping margin established in the final results of this administrative review; (2) for merchandise exported by a company 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 in the completed segment for the most recent period; (3) if the exporter is not a firm covered in this review or the original investigation but the producer is, then the cash deposit rate will be the rate established in the completed segment for the most recent period for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will continue to be 6.05 percent, the all-others rate established in the less-than-fair-value investigation.[17] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also 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 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.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: October 25, 2021.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the 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. Successor-In-Interest Determination
V. Affiliation and Single Entity Treatment
VI. Particular Market Situation Allegation
VII. Discussion of the Methodology
VIII. Currency Conversion
IX. Recommendation

[FR Doc. 2021–23593 Filed 10–28–21; 8:45 am]

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[17] *See Order,* 81 FR at 67965.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–970]

Multilayered Wood Flooring From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, Final Successor-in-Interest Determination, and Final Determination of No Shipments; 2018–2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that Jiangsu Senmao Bamboo and Wood Industry Co., Ltd. (Senmao) has not made sales of multilayered wood flooring (wood flooring) from the People's Republic of China (China) at prices below normal value during the period of review (POR) December 1, 2018, through November 30, 2019. In addition, Commerce determines that certain companies had no shipments during the POR and that Arte Mundi (Shanghai) Aesthetic Home Furnishings Co., Ltd. (Arte Mundi) is the successor-in-interest to Scholar Home (Shanghai) New Material Co., Ltd. (Scholar Home).

DATES: Applicable October 29, 2021.

FOR FURTHER INFORMATION CONTACT: Sergio Balbontin or Alexis Cherry, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: 202–482–6478 and 202–482–0607, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the *Preliminary Results* of the administrative review on April 26, 2021.[1] For the events that occurred since Commerce published the *Preliminary Results, see* the Issues and Decision Memorandum.[2] Commerce conducted this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). On July 26, 2021, we extended the deadline for these final results to October 22, 2021.[3]

Scope of the Order [4]

The product covered by the *Order* is wood flooring from China. A full description of the scope of the *Order* is contained in the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in the parties' briefs are addressed in the Issues and Decision Memorandum. A list of these issues is attached to this notice.[5] 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

[1] *See Multilayered Wood Flooring from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review, Preliminary Determination of No Shipments, Preliminary Successor in-Interest Determination, and Rescission of Review, in Part; 2018–2019,* 86 FR 22016 (April 26, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Memorandum, ''Issues and Decision Memorandum: Antidumping Duty Administrative Review of Multilayered Wood Flooring from the People's Republic of China; 2018–2019,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See* Memorandum, ''Multilayered Wood Flooring from the People's Republic of China: Extension of Deadline for Final Results of Antidumping Duty Administrative Review,'' dated July 26, 2021.

[4] *See Multilayered Wood Flooring from the People's Republic of China: Notice of Amended Final Affirmative Determination of Sales at Less than Fair Value and Antidumping Duty Order,* 76 FR 76690 (December 8, 2011), as amended in *Multilayered Wood Flooring from the People's Republic of China: Amended Antidumping and Countervailing Duty Orders,* 77 FR 5484 (February 3, 2012) (collectively, *Order*); *see also Multilayered Wood Flooring from the People's Republic of China: Final Clarification of the Scope of the Antidumping and Countervailing Duty Orders,* 82 FR 27799 (June 19, 2017).

[5] *See* Appendix I.

version of the Issues and Decision Memorandum can be accessed directly at *http://access.trade.gov/public/FRNoticesListLayout.aspx.*

Changes From the Preliminary Results

Based on information received since the *Preliminary Results,* we determine that one additional company, Kemian Wood Industry (Kunshan) Co., Ltd., is eligible for a separate rate.[6]

Final Determination of No Shipments

In the *Preliminary Results,* Commerce determined that certain companies did not have shipments of subject merchandise during the POR. As we received no information to contradict our preliminary determination with respect to those companies, we continue to find that they made no shipments of subject merchandise to the United States during the POR. Accordingly, we will issue appropriate instructions that are consistent with our ''automatic assessment'' clarification for all of the companies listed in Appendix II.[7]

Final Results of Successor-in-Interest Analysis

In the *Preliminary Results,* Commerce determined that Arte Mundi is the successor-in-interest to Scholar Home.[8] No party commented on this issue and we have not received any information to contradict our preliminary finding. Therefore, we continue to find that Arte Mundi is the successor-in-interest to Scholar Home.

Separate Rates

We determine that Senmao and 35 additional companies that were not selected for individual review demonstrated their eligibility for separate rates.[9] We continue to find that Dalian Qianqiu Wooden Product Co., Ltd., Fusong Jinlong Wooden Group Co., Ltd., Fusong Jinqiu Wooden Product Co., Ltd., and Fusong Qianqiu Wooden Products Co., Ltd. (collectively, Jinlong) is not eligible for a separate rate.[10]

Rate for Non-Examined Separate Rate Respondents

The statute and our regulations do not address the establishment of a rate to be assigned to respondents not selected for individual examination when we limit our examination of companies subject to the administrative review pursuant to section 777A(c)(2)(B) of the Act. Generally, we look to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents not individually examined in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely {on the basis of facts available}.'' Accordingly, Commerce's usual practice in determining the rate for separate-rate respondents not selected for individual examination, has been to average the weighted-average dumping margins of the selected companies, excluding rates that are zero, *de minimis,* or based entirely on facts available.[11] However, when the weighted-average dumping margins established for all individually investigated respondents are zero, *de minimis,* or based entirely on facts available, section 735(c)(5)(B) of the Act permits Commerce to ''use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated weighted-average dumping margins determined for the exporters and producers individually investigated.''[12]

For the final results of this review, we continue to determine the estimated dumping margin for Senmao to be zero. Thus, consistent with the *Preliminary Results,* we are assigning this rate to the non-examined respondents which qualify for a separate rate in this review through use of the expected method as a ''reasonable method'' for assigning a rate to the non-examined respondents.[13]

The China-Wide Entity

Aside from the companies for which we made a final no-shipment determination, Commerce considers all other companies for which a review was requested, and which did not demonstrate separate rate eligibility, to be part of the China-wide entity.[14]

Final Results of Administrative Review

For the companies subject to this administrative review which established their eligibility for a separate rate, Commerce determines that the following weighted-average dumping margins exist for the period December 1, 2018, through November 30, 2019:

Producer/exporter	Weighted-average dumping margin (percent)
Jiangsu Senmao Bamboo and Wood Industry Co., Ltd.	0.00
Non-Selected Companies Under Review Receiving a Separate Rate[15]	0.00

Disclosure

Normally, Commerce discloses to the parties in a proceeding the calculations performed in connection with a final results of review in accordance with 19 CFR 351.224(b). However, because Commerce made no adjustments to the margin calculation methodology used in the *Preliminary Results,* there are no calculations to disclose for the final results of review.

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b), 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 these final results of review. We intend to issue assessment instructions to CBP no earlier than 35 days after the date of publication of these final results. 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).

For Senmao, and the respondents which were not selected for individual examination in this administrative review and which qualified for a separate rate, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. For entries that were not reported in the U.S. sales databases submitted by

[6] *See* Issues and Decision Memorandum at the ''Changes to the Preliminary Results'' section.

[7] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011) (*Assessment Notice*); *see also* ''Assessment Rates'' section, below.

[8] *See Preliminary Results* PDM at 9–10.

[9] *See* Appendix IV.

[10] *See* Issues and Decision Memorandum at Comment 1.

[11] *See Longkou Haimeng Mach. Co.* v. *United States,* 581 F. Supp. 2d 1344, 1357–60 (CIT 2008) (affirming Commerce's determination to assign a 4.22 percent dumping margin to the separate-rate respondents in a segment where the three mandatory respondents received dumping margins of 4.22 percent, 0.03 percent, and zero percent, respectively); *see also Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 74 FR 36656, 36660 (July 24, 2009).

[12] *See Albemarle Corp.* v. *United States,* 821 F.3d 1345 (Fed. Cir. 2016).

[13] *See Preliminary Results* PDM at 15–16; *see also* Issues and Decision Memorandum at Comment 1; and section 735(c)(5)(B) of the Act.

[14] *See* Appendix III.

[15] *See* Appendix IV.

Senmao, and for the companies that did not qualify for a separate rate in the administrative review, Commerce will instruct CBP to liquidate such entries at the China-wide rate (*i.e.,* 85.13 percent).[16]

Consistent with Commerce's assessment practice in non-market economy cases, for the companies which Commerce determined had no shipments of the subject merchandise, any suspended entries made under those exporters' case numbers (*i.e.,* at the exporters' rates) will be liquidated at the China-wide rate.[17]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of these final results for shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by sections 751(a)(2)(C) of the Act: (1) For companies which were found eligible for a separate rate in this review, the cash deposit rate will be zero; (2) for previously investigated or reviewed Chinese and non-Chinese exporters that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be that for the China-wide entity; and (4) for all non-Chinese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Reimbursement of Duties

This notice also serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the POR. 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.

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, 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 sanctionable violation.

This determination is issued and published in accordance with sections 751(a) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: October 22, 2021.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Changes to the *Preliminary Results*
V. Discussion of the Issues
General Issues
Comment 1: The Separate Rate
Senmao Issues
Comment 2: Deduction of Irrecoverable Value-Added Tax (VAT)
Non-Selected Company Issues
Comment 3: Inclusion of Fine Furniture in the Current and Future Administrative Reviews
Comment 4: Kember's Untimely-Filed Supplemental Questionnaire Response
VI. Recommendation

Appendix II

No Shipments

Anhui Longhua Bamboo Product Co., Ltd.
Baroque Timber Industries (Zhongshan) Co., Ltd.
Benxi Flooring Factory (General Partnership)
Dalian Jaenmaken Wood Industry Co., Ltd.
Dalian Shengyu Science And Technology Development Co., Ltd.
Dalian T-Boom Wood Products Co., Ltd.
Dunhua City Dexin Wood Industry Co., Ltd.
Dunhua City Jisen Wood Industry Co., Ltd.
Fine Furniture (Fine Furniture (Shanghai) Limited and Double F Limited)
Innomaster Home (Zhongshan) Co., Ltd.
Jiangsu Yuhui International Trade Co., Ltd.
Linyi Anying Wood Co., Ltd.
Power Dekor Group Co., Ltd.
Shandong Longteng Wood Co., Ltd.
Yekalon Industry Inc.
Yingyi-Nature (Kunshan) Wood Industry Co., Ltd.
Zhejiang Biyork Wood Co., Ltd.
Zhejiang Shiyou Timber Co., Ltd.
Zhejiang Shuimojiangnan New Material Technology Co., Ltd.
Zhejiang Simite Wooden Co., Ltd.

Appendix III

China-Wide Entity

Anhui Boya Bamboo & Wood Products Co., Ltd.
Anhui Yaolong Bamboo & Wood Products Co. Ltd.
Armstrong Wood Products (Kunshan) Co., Ltd.[18]
Armstrong World Industries Inc.
Changzhou Hawd Flooring Co., Ltd.
Chinafloors Timber (China) Co., Ltd.
Dalian Dajen Wood Co., Ltd.
Dalian Guhua Wooden Product Co., Ltd.
Dalian Huade Wood Product Co., Ltd.
Dalian Huilong Wooden Products Co., Ltd.
Dalian Qianqiu Wooden Product Co., Ltd., Fusong Jinlong Wooden Group Co., Ltd., Fusong Jinqiu Wooden Product Co., Ltd., and Fusong Qianqiu Wooden Product Co., Ltd. (collectively, Jinlong)
Guangzhou Homebon Timber Manufacturing Co., Ltd.
Guangzhou Panyu Kangda Board Co., Ltd.
Guangzhou Panyu Southern Star Co., Ltd.
Hangzhou Hanje Tec Company Limited
Hangzhou Zhengtian Industrial Co., Ltd.
Hunchun Forest Wolf Wooden Industry Co., Ltd.
Jiafeng Wood (Suzhou) Co., Ltd.
Jilin Xinyuan Wooden Industry Co., Ltd.
Karly Wood Product Limited.
Kember Flooring, Inc. (a.k.a. Kember Hardwood Flooring, Inc.)
Linyi Bonn Flooring Manufacturing Co., Ltd.
Mudanjiang Bosen Wood Industry Co., Ltd.
Nakahiro Jyou Sei Furniture (Dalian) Co., Ltd.
Omni Arbor Solution Co., Ltd.
Power Dekor North America Inc.
Shanghai Lairunde Wood Co., Ltd.
Shanghaifloor Timber (Shanghai) Co., Ltd.
Shenyang Haobainian Wooden Co., Ltd.
Shenzhenshi Huanwei Woods Co., Ltd.
Xiamen Yung De Ornament Co., Ltd.
Xuzhou Antop International Trade Co., Ltd.
Xuzhou Shenghe Wood Co., Ltd.
Zhejiang Fudeli Timber Industry Co., Ltd
Zhejiang Jiechen Wood Industry Co., Ltd.

Appendix IV

Non-Selected Companies Under Review Receiving a Separate Rate

A&W (Shanghai) Woods Co., Ltd.
Arte Mundi (Shanghai) Aesthetic Home Furnishings Co., Ltd. (successor-in-interest to Scholar Home (Shanghai) New Material Co., Ltd.)
Benxi Wood Company
Dalian Jiahong Wood Industry Co., Ltd.
Dalian Kemian Wood Industry Co., Ltd.
Dalian Penghong Floor Products Co., Ltd./ Dalian Shumaike Floor Manufacturing Co., Ltd.
Dongtai Fuan Universal Dynamics, LLC

[16] *See Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2016–2017,* 84 FR 38002, 38003 (August 5, 2019).

[17] For a full discussion of this practice, *see Assessment Notice.*

[18] These results apply only to entries where Armstrong Wood Products (Kunshan) Co., Ltd. was the exporter but not the producer of subject merchandise.

Dun Hua Sen Tai Wood Co., Ltd.
Dunhua City Hongyuan Wood Industry Co., Ltd.
Dunhua Shengda Wood Industry Co., Ltd
Hailin Linjing Wooden Products Co., Ltd.
Hunchun Xingjia Wooden Flooring Inc.
Huzhou Chenghang Wood Co., Ltd
Huzhou Fulinmen Imp. & Exp. Co., Ltd.
Huzhou Jesonwood Co., Ltd.
Huzhou Sunergy World Trade Co., Ltd.
Jiangsu Guyu International Trading Co., Ltd
Jiangsu Keri Wood Co., Ltd.
Jiangsu Mingle Flooring Co., Ltd
Jiangsu Simba Flooring Co., Ltd.
Jiashan HuiJiaLe Decoration Material Co., Ltd.
Jiashan On-Line Lumber Co., Ltd.
Jiaxing Hengtong Wood Co., Ltd.
Kemian Wood Industry (Kunshan) Co., Ltd.
Kingman Floors Co., Ltd.
Linyi Youyou Wood Co., Ltd.
Metropolitan Hardwood Floors, Inc.
Pinge Timber Manufacturing (Zhejiang) Co., Ltd.
Sino-Maple (Jiangsu) Co., Ltd.
Suzhou Dongda Wood Co., Ltd.
Tongxiang Jisheng Import and Export Co., Ltd.
Yihua Lifestyle Technology Co., Ltd. (successor-in-interest to Guangdong Yihua Timber Industry Co., Ltd.)
Zhejiang Dadongwu Greenhome Wood Co., Ltd.
Zhejiang Fuerjia Wooden Co., Ltd
Zhejiang Longsen Lumbering Co., Ltd.

[FR Doc. 2021–23561 Filed 10–28–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Alaska Cost Recovery and Fee Programs

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before December 28, 2021.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *Adrienne.thomas@noaa.gov.* Please reference OMB Control Number 0648–0711 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Gabrielle Aberle, 907–586–7228.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Service (NMFS), Alaska Regional Office, is requesting renewal of a currently approved information collection that contains requirements for the NMFS Alaska Region cost recovery fee programs and the observer coverage fee program. A slight revision is requested to change the title of the collection from ''Alaska Quota Cost Recovery Programs'' to ''Alaska Cost Recovery and Fee Programs.''

This information collection is necessary under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), which authorizes observer deployment fees and cost recovery fees. Section 304(d) of the Magnuson-Stevens Act authorizes and requires the collection of cost recovery fees for limited access privilege programs and community development quota programs. Section 313 of the Magnuson-Stevens Act authorizes a system of fees to support a fisheries research plan and deploy observers in the North Pacific fisheries. The fee documentation forms and volume and value reports that are included in this collection are necessary to track, verify, and enforce the fee collection systems.

This information collection is required in Federal regulations at 50 CFR parts 679 and 680. Information on the observer coverage fee and cost recovery fee programs is provided on the NMFS Alaska Region website at *https://www.fisheries.noaa.gov/alaska/commercial-fishing/cost-recovery-programs-fee-collection-and-fee-payment-alaska.*

Cost recovery fees may not exceed 3 percent of the ex-vessel value of the fishery, and must recover the incremental (program) costs associated with management, data collection, and enforcement of these programs that are directly incurred by government agencies tasked with overseeing these fisheries. NMFS recovers program costs of seven cost recovery programs in this information collection: Pacific Halibut and Sablefish Individual Fishing Quota (IFQ) Program; Bering Sea and Aleutian Islands Crab Rationalization Program; Central Gulf of Alaska Rockfish Program; Western Alaska Community Development Quota Program; American Fisheries Act Program; Aleutian Islands Pollock Program; and Amendment 80 Program. The party responsible for paying the cost recovery fee varies by program.

The observer coverage fee funds deployment of observers and electronic monitoring in the partial coverage category of the North Pacific Observer Program (Observer Program). Unlike the cost recovery fees, this is a straight fee and does not recover incremental costs associated with the program. NMFS assesses a fee of 1.25 percent of the ex-vessel value of groundfish and halibut landed in the partial coverage category under the Observer Program. The information collected by observers provides scientific information for minimizing bycatch and managing the groundfish and halibut fisheries in the Bering Sea and Aleutian Islands and Gulf of Alaska.

Catcher vessel owners split the observer coverage fee with the registered buyers or owners of shore side or stationary floating processors. While the owners of catcher vessels and processors in the partial coverage category are each responsible for paying their portion of the fee, the owners of shore side or stationary floating processors and registered buyers are responsible for collecting the fees from catcher vessels, and remitting the full fee to NMFS. Owners of catcher/processors in the partial coverage category are responsible for remitting the full fee to NMFS.

Processors that receive and purchase landings of IFQ halibut or sablefish, rockfish, groundfish, and crab subject to observer and/or cost recovery fees must annually submit an ex-vessel volume and value report that provides information on the pounds purchased and value paid. NMFS uses this information to establish the total ex-vessel value of the fishery, calculate standard prices, and establish annual fee percentages in each fishery.

IFQ permit holders and registered crab receivers that do not agree with their NMFS assessed IFQ fee liability summary and who are paying a revised fee, use the fee documentation forms to calculate and submit documentation supporting their revised fee.

Any person who receives an initial administrative determination for

incomplete payment of a cost recovery fee or observer coverage fee may appeal under the appeals procedures set out at 15 CFR part 906.

II. Method of Collection

NMFS collects all fees and the volume and value reports online through eFISH at *https://alaskafisheries.noaa.gov/webapps/efish/login.* The IFQ Permit Holder Fee Documentation Form, Registered Crab Receiver Fee Documentation Form, and the IFQ Register Buyer Ex-vessel Volume and Value Report form are available as fillable pdfs on the NMFS Alaska Region website at *https://www.fisheries.noaa.gov/region/alaska.* These forms and administrative appeals are submitted by mail or fax.

III. Data

OMB Control Number: 0648–0711.

Form Number(s): None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Individuals or households; Business or other for-profit organizations.

Estimated Number of Respondents: 2,047.

Estimated Time per Response: Fee payments: 1 minute; volume and value reports (electronic submission): 1 minute; IFQ Registered Buyer Ex-vessel Volume and Value Report (non-electronic submission): 2 hours; fee documentation forms: 30 minutes; administrative appeals: 4 hours.

Estimated Total Annual Burden Hours: 97 hours.

Estimated Total Annual Cost to Public: $516 in recordkeeping/reporting costs.

Respondent's Obligation: Mandatory.

Legal Authority: Magnuson-Stevens Fishery Conservation and Management Act.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021–23571 Filed 10–28–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB528]

South Atlantic Fishery Management Council; Public Hearings

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

ACTION: Notice of public hearings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a series of public hearings via webinar pertaining to Amendment 34 to the Fishery Management Plan for Coastal Migratory Pelagic Resources in the Gulf of Mexico and Atlantic Region. The amendment addresses Atlantic migratory group king mackerel catch levels and Atlantic king and Spanish mackerel management measures.

DATES: The public hearings will be held via webinar on November 15 and 16, 2021. See **SUPPLEMENTARY INFORMATION**.

ADDRESSES: *Council address:* South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; phone: (843) 571–4366 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net*.

SUPPLEMENTARY INFORMATION: The public hearings will be conducted via webinar. Registration for the webinars is required. The public hearings will begin at 6 p.m. Eastern. Public hearing documents, an online public comment form, and webinar registration information will be posted to the Council's website at *https://safmc.net/safmc-meetings/public-hearings-scoping-meetings/* as it becomes available. Public comments must be received by 5 p.m. on November 17, 2021.

Amendment 34 to the Coastal Migratory Pelagics FMP

The South Atlantic and Gulf of Mexico Fishery Management Councils are considering action to address updated scientific information provided by an update to the Southeast Data Assessment and Review (SEDAR) stock assessment for Atlantic king mackerel (SEDAR 38 Update 2020). The stock assessment, which included revised recreational landings that are based on the Marine Recreational Information Program's newer Fishing Effort Survey method, indicated that Atlantic king mackerel was not overfished nor undergoing overfishing. The draft amendment currently includes actions to update the Atlantic king mackerel acceptable biological catch, annual catch limits, sector allocations, and recreational annual catch targets, and modify recreational bag limits, commercial and recreational minimum size limits, and the requirement to land Atlantic king and Spanish mackerel with heads and fins intact.

During the public hearings, Council staff will present an overview of the amendment and will be available for informal discussions and to answer questions via webinar. Members of the public will have an opportunity to go on record to record their comments for consideration by the Council.

Special Accommodations

These hearings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 3 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: October 25, 2021.

Tracey L. Thompson,

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

[FR Doc. 2021–23524 Filed 10–28–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB548]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of webconference.

SUMMARY: The North Pacific Fishery Management Council (Council) Groundfish Plan Teams will meet November 15, 2021 through November 19, 2021.

DATES: The meetings will be held on Monday, November 15, 2021 through Friday, November 19, 2021, from 8 a.m. to 4 p.m. Alaska Time.

ADDRESSES: The meeting will be a webconference. Join online through the link at *https://meetings.npfmc.org/Meeting/Details/2673*.

Council address: North Pacific Fishery Management Council, 1007 W 3rd Ave, Anchorage, AK 99501–2252; telephone: (907) 271–2809. Instructions for attending the meeting are given under **SUPPLEMENTARY INFORMATION**, below.

FOR FURTHER INFORMATION CONTACT: Sara Cleaver or Diana Stram, Council staff; phone: (907) 271–2809 and email: *sara.cleaver@noaa.gov* or *diana.stram@noaa.gov*. For technical support please contact our administrative staff; email: *npfmc.admin@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Agenda

Monday, November 15, 2021 to Friday, November 19, 2021

The Bering Sea and Aleutian Islands (BSAI) and Gulf of Alaska (GOA) Plan Teams will compile and review the annual BSAI and GOA Groundfish Stock Assessment and Fishery Evaluation (SAFE) reports, and recommend final groundfish OFL and ABCs for 2022/23. The Plan Teams will also review the Economic Report and the Ecosystem Status Reports. The agenda is subject to change, and the latest version will be posted at *https://meetings.npfmc.org/Meeting/Details/2673*. prior to the meeting, along with meeting materials.

Connection Information

You can attend the meeting online using a computer, tablet, or smart phone; or by phone only. Connection information will be posted online at: *https://meetings.npfmc.org/Meeting/Details/2673*.

Public Comment

Public comment letters should be submitted electronically to *https://meetings.npfmc.org/Meeting/Details/2673*.

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

Dated: October 25, 2021.

Tracey L. Thompson,

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

[FR Doc. 2021–23526 Filed 10–28–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB533]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Research Steering Committee will hold a meeting.

DATES: The meeting will be held on Tuesday, November 16, 2021, starting at 10 a.m. and continue through 4 p.m. See **SUPPLEMENTARY INFORMATION** for agenda details.

ADDRESSES: The meeting will take place over webinar using the Webex platform with a telephone-only connection option. Details on how to connect to the webinar by computer and by telephone will be available at: *http://www.mafmc.org*.

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; website: *www.mafmc.org*.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is for the Research Steering Committee to review proposed updates to the Council's Five Year (2020–24) Research Priorities document and to also develop the objectives and agenda for planned in-person workshop regarding the redevelopment of the Council's Research Set-Aside (RSA) program. Committee feedback and recommendations on both topics will be presented to the full Council at their December meeting.

A detailed agenda and background documents will be made available on the Council's website (*www.mafmc.org*) prior to the meeting.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to Shelley Spedden, (302) 526–5251, at least 5 days prior to the meeting date.

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

Dated: October 25, 2021.

Tracey L. Thompson,

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

[FR Doc. 2021–23525 Filed 10–28–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB549]

Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) and its advisory entities will hold online public meetings.

DATES: The Pacific Council and its advisory entities will meet online November 15–19 and 21–22, 2021, noting there will be no meetings held on Saturday, November 20, 2021. The Pacific Council meeting will begin on Tuesday, November 16, 2021, at 8 a.m. Pacific Standard Time (PST), reconvening at 8 a.m. on Wednesday, November 17 through Friday, November 19, 2021. The Council will reconvene Sunday, November 21, through Monday, November 22. All meetings are open to the public, except for a Closed Session held from 8 a.m. to 10 a.m., Tuesday, November 16, to address litigation and personnel matters. The Pacific Council will meet as late as necessary each day to complete its scheduled business.

ADDRESSES: Meetings of the Pacific Council and its advisory entities will be webinar only. Specific meeting information, including directions on joining the meeting, connecting to the

live stream broadcast, and system requirements will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Chuck Tracy, Executive Director, Pacific Council; telephone: (503) 820–2415 or (866) 806–7204 toll-free, or access the Pacific Council website, *www.pcouncil.org,* for the proposed agenda and meeting briefing materials.

SUPPLEMENTARY INFORMATION: The November 15–19 and 21–22, 2021 meeting of the Pacific Council will be streamed live on the internet. The broadcasts begin initially at 10 a.m. PST Tuesday, November 16, 2021, and continue at 8 a.m. Wednesday, November 17 through Monday, November 22, 2021, except no meetings are scheduled for Saturday, November 20. Broadcasts end when business for the day is complete. Only the audio portion and presentations displayed on the screen at the Pacific Council meeting will be broadcast. The audio portion for the public is listen-only except that an opportunity for oral public comment will be provided prior to Council Action on each agenda item. Additional information and instructions on joining or listening to the meeting can be found on the Pacific Council's website (see *www.pcouncil.org*).

The following items are on the Pacific Council agenda, but not necessarily in this order. Agenda items noted as ''Final Action'' refer to actions requiring the Council to transmit a proposed fishery management plan, proposed plan amendment, or proposed regulations to the U.S. Secretary of Commerce, under Sections 304 or 305 of the Magnuson-Stevens Fishery Conservation and Management Act. Additional detail on agenda items, Council action, and advisory entity meeting times, are described in Agenda Item A.4, Proposed Council Meeting Agenda, and will be in the advance November 2021 briefing materials and posted on the Pacific Council website at *www.pcouncil.org* no later than Monday, November 1, 2021.

A. Call to Order

1. Opening Remarks
2. Roll Call
3. Executive Director's Report
4. Approve Agenda

B. Open Comment Period

1. Comments on Non-Agenda Items

C. Administrative Matters

1. Council Coordination Committee Meeting Report
2. Marine Planning
3. Final Regional Operating Agreement
4. Preliminary West Coast Regional Framework for Determining the Best Scientific Information Available
5. Fiscal Matters
6. Legislative Matters
7. Approval of Council Meeting Record
8. Standardized Bycatch Reporting Methodology—Final Action
9. Membership Appointments and Council Operating Procedures
10. Future Council Meeting Agenda and Workload Planning

D. Habitat Issues

1. Current Habitat Issues

E. Groundfish Management

1. National Marine Fisheries Service Report
2. Adopt Stock Assessments
3. Harvest Specifications for 2023–24 Management Including Final Overfishing Limits and Acceptable Biological Catches
4. Preliminary Exempted Fishing Permit Approval for 2023–2024
5. Biennial Management Measures for 2023–24
6. Non-trawl Sector Area Management Measures
7. Inseason Adjustments Including Pacific Whiting Set-Asides for 2022—Final Action

F. Salmon Management

1. Final Methodology Review
2. 2022 Preseason Management Schedule
3. Southern Oregon/Northern California Coast Coho Endangered Species Act Harvest Control Rule—Final Action

G. Pacific Halibut Management

1. Commercial-Directed Fishery Regulations for 2022—Final Action
2. 2022 Catch Sharing Plan and Annual Regulations—Final Action

H. Highly Migratory Species Management

1. National Marine Fisheries Service Report
2. International Management Activities
3. Drift Gillnet Fishery Hard Caps

I. Coastal Pelagic Species Management

1. Preliminary Review of New Exempted Fishing Permits for 2022
2. Fishery Management Plan Management Categories

Advisory Body Agendas

Advisory body agendas will include discussions of relevant issues that are on the Pacific Council agenda for this meeting and may also include issues that may be relevant to future Council meetings. Proposed advisory body agendas for this meeting will be available on the Pacific Council website, *www.pcouncil.org,* no later than Monday November 1, 2021.

SCHEDULE OF ANCILLARY MEETINGS

	Time
Day 1—Monday, November 15, 2021:	
Enforcement Consultants	8 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Habitat Committee	8 a.m.
Highly Migratory Species Advisory Subpanel	8 a.m.
Highly Migratory Species Management Team	8 a.m.
Salmon Advisory Subpanel	8 a.m.
Salmon Technical Team	8 a.m.
Scientific and Statistical Committee	8 a.m.
Budget Committee	10 a.m.
Legislative Committee	1 p.m.
Day 2—Tuesday, November 16, 2021:	
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Coastal Pelagic Species Advisory Subpanel	8 a.m.
Coastal Pelagic Species Management Team	8 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Highly Migratory Species Advisory Subpanel	8 a.m.
Highly Migratory Species Management Team	8 a.m.
Salmon Advisory Subpanel	8 a.m.
Salmon Technical Team	8 a.m.
Scientific and Statistical Committee	8 a.m.
Enforcement Consultants	As Necessary
Day 3—Wednesday, November 17, 2021:	

SCHEDULE OF ANCILLARY MEETINGS—Continued

	Time
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Coastal Pelagic Species Advisory Subpanel	8 a.m.
Coastal Pelagic Species Management Team	8 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Highly Migratory Species Advisory Subpanel	8 a.m.
Highly Migratory Species Management Team	8 a.m.
Enforcement Consultants	As Necessary
Day 4—Thursday, November 18, 2021:	
Coastal Pelagic Species Advisory Subpanel	8 a.m.
Coastal Pelagic Species Management Team	8 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Highly Migratory Species Advisory Subpanel	8 a.m.
Highly Migratory Species Management Team	8 a.m.
Enforcement Consultants	As Necessary
Day 5—Friday, November 19, 2021:	
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Enforcement Consultants	As Necessary
* No Meetings Scheduled for Saturday, November 20.	
Day 6—Sunday, November 21, 2021:	
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.

SCHEDULE OF ANCILLARY MEETINGS—Continued

	Time
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Enforcement Consultants	As Necessary
Day 7— Monday, November 22, 2021:	
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 business days prior to the meeting date.

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

Dated: October 25, 2021.

Tracey L. Thompson,

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

[FR Doc. 2021–23527 Filed 10–28–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB537]

West Coast Groundfish Trawl Seabird Cable Strike Meeting; Meeting Announcement

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

ACTION: Notice of public meeting.

SUMMARY: NMFS announces a meeting to present the results of research studies conducted on seabird cable strikes in the West Coast at-sea whiting fishery. The meeting topics are described under the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: The virtual meeting will be held on December 10, 2021, from 9 a.m. to 2 p.m., Pacific Standard Time (or until business is concluded).

ADDRESSES: Instructions for attending the meeting will be provided on the web at *https://www.fisheries.noaa.gov/species/west-coast-groundfish* and through a public notice to be emailed out to the West Coast Groundfish Listserv. Sign up to receive West Coast Groundfish public notices at *https://public.govdelivery.com/accounts/USNOAAFISHERIES/subscriber/new.* After entering your contact information, check the boxes for the ''Groundfish'' and/or ''Pacific Whiting'' topics under ''West Coast Updates''.

FOR FURTHER INFORMATION CONTACT: Keeley Kent, West Coast Region, at *keeley.kent@noaa.gov* or 206–247–8252.

SUPPLEMENTARY INFORMATION: Seabirds congregate around trawlers to feed on offal putting them at risk of colliding with cables (trawl warps and data cables) that run aft of trawlers. Cable strikes are a known source of seabird mortality worldwide, particularly on at-sea factory trawlers (referred to as catcher/processors). Research projects observing seabird cable strikes and other interactions, as well as testing of mitigation measures, have been conducted in the West Coast at-sea Pacific whiting fishery. NMFS will present results from these studies to inform a discussion of their application to management.

Trawl Seabird Bycatch Meeting Topics

This meeting will have an agenda that will be distributed to participants in advance of the meeting. The meeting agenda will include, but is not limited to, the following topics:

(1) Presentation of research studies conducted on seabird interactions in at-sea Pacific whiting fisheries, including cable strikes;

(2) Discussion of seabird bycatch mitigation measure trials; and

(3) Application of research results to management.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Keeley Kent (see **ADDRESSES**) by November 5, 2021.

Authority: 16 U.S.C. 951 *et seq.,* 16 U.S.C. 1801 *et seq.,* and 16 U.S.C. 6901 *et seq.*

Dated: October 25, 2021.

Jennifer M. Wallace,

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

[FR Doc. 2021–23609 Filed 10–28–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB502]

Fisheries of the U.S. Caribbean; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 80 workshop webinars for U.S. Caribbean Queen Triggerfish Fishery Topical Working Group.

SUMMARY: The SEDAR 80 assessment process of U.S. Caribbean Queen Triggerfish will consist of a series of webinars. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 80 U.S. Caribbean Queen Triggerfish Fishery Topical Working Group workshop will be held via webinar from 9 a.m. to 1 p.m. eastern each day November 16–18, 2021. The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the assessment process. Such adjustments may result in the meeting being extended from or completed prior to the time established by this notice.

ADDRESSES:

Meeting address: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator; (843) 571–4366; email: *Julie.neer@safmc.net*.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data Workshop, (2) a series of assessment webinars, and (3) A Review Workshop. The product of the Data Workshop is a report that compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The assessment webinars produce a report that describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The product of the Review Workshop is an Assessment Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species (HMS) Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-government organizational representatives (NGOs); International experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion during the workshop are as follows:

Working Group members will discuss factors that may impact the fishery for U.S. Caribbean Queen Triggerfish. Potential assessment data may also be reviewed.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 5 business days prior to each workshop.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: October 25, 2021.

Tracey L. Thompson,

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

[FR Doc. 2021–23523 Filed 10–28–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB550]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scallop Survey Working Group via webinar to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This webinar will be held on Wednesday, November 17, 2021 at 9 a.m. Webinar registration URL information *https://attendee.gototraining.com/r/1548650451610382849.*

ADDRESSES: *Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Scallop Survey Working Group (SSWG) will meet to review progress updates to address the Terms of Reference (TORs): Methods and analyses identified to address TORs, including timelines for completion, and SSWG sub-groups activities. Other business may be discussed, as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues

arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

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

Dated: October 25, 2021.

Tracey L. Thompson,

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

[FR Doc. 2021–23542 Filed 10–28–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Request for Information on NOAA Actions To Advance the Goals and Recommendations in the Report on Conserving and Restoring America The Beautiful, Including Conserving At Least 30 Percent of U.S. Lands and Waters By 2030

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice; request for information.

SUMMARY: On May 6, 2021, the U.S. Departments of the Interior, Agriculture, Commerce, and the White House Council on Environmental Quality released a preliminary report on *Conserving and Restoring America the Beautiful* (Report). The Report recommends a decade-long national initiative to advance locally led conservation and restoration in public, private, and tribal lands and waters toward addressing three threats: Disappearance of nature, climate change, and inequitable access to the outdoors. Guided by eight core principles and six focus areas for early action and progress in the Report, NOAA is seeking public input on how NOAA should, using its existing authorities and associated measures, conserve and restore America's ocean, coasts, and Great Lakes.

DATES: Interested persons are invited to submit comments on or before December 28, 2021.

NOAA will host virtual public listening sessions at the following dates and times:

- Monday, November 8, 2021, 2:00–4:00 p.m. Eastern Time
- Tuesday, November 16, 2021, 4:00–6:00 p.m. Eastern Time

NOAA may end a meeting before the time noted above if all those participating have completed their oral comments.

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

Federal eRulemaking Portal: Responses can be submitted electronically to the Federal e-Rulemaking Portal at *https://www.regulations.gov/docket/NOAA-HQ-2021-0109.* Click the ''Comment Now!'' button, complete the required fields, and enter or attach your comments.

Public Listening Sessions: Provide oral comments during virtual public listening sessions, as described under **DATES**. Registration details and additional information about how to participate in these public listening sessions is available at *www.noaa.gov/america-the-beautiful.*

Instructions: Response to this request for information (RFI) is voluntary. Attachments will be accepted in plain text, Microsoft Word, or Adobe PDF formats only. Each individual or institution is requested to submit only one response. NOAA requests that all letter writing campaigns submit one letter with an attachment that includes signatures to your letter, which will aid in review. The number of signatures will be taken into account in the summary of comments. DOC may post responses to this RFI, without change, on a Federal website. NOAA, therefore, requests that no business proprietary information, copyrighted information, or personally identifiable information be submitted in response to this RFI. Please note that the U.S. Government will not pay for response preparation, or for the use of any information contained in the response.

FOR FURTHER INFORMATION CONTACT: Visit *www.noaa.gov/america-the-beautiful.* For technical questions about this notice, email *americathebeautiful@noaa.gov* (please do not submit public comments directly to this email address).

SUPPLEMENTARY INFORMATION: On January 27, 2021, the White House issued *Executive Order 14008 on Tackling the Climate Crisis at Home and Abroad (Executive Order).* 86 FR 7619 Section 216(a) of the Executive Order directs the Secretary of the Interior, in consultation with the Secretary of Agriculture, the Secretary of Commerce, the Chair of the Council on Environmental Quality, and the heads of other relevant agencies, to submit a report to the National Climate Task Force within 90 days of the date of the order recommending steps that the United States should take, working with state, local, tribal, and territorial governments, agricultural and forest landowners, fishermen, and other key stakeholders, to achieve the goal of conserving at least 30 percent of U.S. lands and waters by 2030.

In accordance with Section 216(a) of the Executive Order, on May 6, 2021, the U.S. Departments of the Interior, Agriculture, Commerce, and the White House Council on Environmental Quality released a preliminary report on *Conserving and Restoring America the Beautiful: www.doi.gov/sites/doi.gov/files/report-conserving-and-restoring-america-the-beautiful-2021.pdf.* The Report calls for a decade-long national initiative to advance locally led conservation and restoration in public, private, and tribal lands and waters. The Report recommends eight core principles:

- Principle 1: Pursue a Collaborative and Inclusive Approach to Conservation.
- Principle 2: Conserve America's Lands and Waters for the Benefit of All People.
- Principle 3: Support Locally Led and Locally Designed Conservation Efforts.
- Principle 4: Honor Tribal Sovereignty and Support the Priorities of Tribal Nations.
- Principle 5: Pursue Conservation and Restoration Approaches that Create Jobs and Support Healthy Communities.
- Principle 6: Honor Private Property Rights and Support the Voluntary Stewardship Efforts of Private Landowners and Fishers.
- Principle 7: Use Science as a Guide.
- Principle 8: Build on Existing Tools and Strategies with an Emphasis on Flexibility and Adaptive Approaches.

The Report also recommends six areas of early focus and progress:

- Create More Parks and Safe Outdoor Opportunities in Nature-Deprived Communities.
- Support Tribally Led Conservation and Restoration Priorities.
- Expand Collaborative Conservation of Fish and Wildlife Habitats and Corridors.

• Increase Access for Outdoor Recreation.

• Incentivize and Reward the Voluntary Conservation Efforts of Fishers, Ranchers, Farmers, and Forest Owners.

• Create Jobs by Investing in Restoration and Resilience.

As directed by Section 216(a) of the Executive Order, the Report proposes guidelines for determining whether lands and waters qualify for conservation, and establishes mechanisms to measure and monitor progress toward the 30-percent goal. This will be accomplished through two complementary steps described in the Report. The first is the development of an American Conservation and Stewardship Atlas, which will provide a baseline assessment of the amount and types of lands and waters that are currently being managed for conservation and restoration purposes, as well as track progress of conservation and restoration efforts going forward. The Atlas will be developed by an interagency working group of agency experts, co-chaired by NOAA, with input from the public, states, tribal nations, scientists, and a wide range of stakeholders. The second step is the publication of annual America the Beautiful updates on Federal efforts to support locally led conservation and restoration efforts, with the first update due by the end of 2021.

Section 216(a) of the Executive Order further directs the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce through the NOAA Administrator, and the Chair of the Council on Environmental Quality to solicit input from state, local, tribal, and territorial officials, agricultural and forest landowners, fishermen, and other key stakeholders in identifying strategies that will encourage broad participation in the goal of conserving at least 30 percent of U.S. lands and waters by 2030. NOAA has significant experience in the conservation and restoration of U.S. lands and waters. Accordingly, NOAA has existing authorities, as well as associated regulations, conservation and management plans, and similar measures. These include the National Marine Sanctuaries Act, Coastal Zone Management Act, Magnuson-Stevens Fishery Conservation and Management Act, Marine Mammal Protection Act, Endangered Species Act, Coral Reef Conservation Act, and others. NOAA is seeking public input on the use of NOAA's existing authorities and associated measures to advance the goals and recommendations in the Report, including the eight core principles and six areas of early focus and progress. As such, NOAA invites the public to provide input to help guide NOAA's conservation and restoration of ocean, coastal, and Great Lakes resources; NOAA's engagement on the development of the American Conservation and Stewardship Atlas; and NOAA's efforts to track its progress toward advancing the goals and recommendations in the Report for inclusion in the annual updates. Specifically, NOAA is seeking public input on the following:

• Which of NOAA's existing authorities and associated measures, as listed above, are most appropriate for addressing the threats identified in the Report, which are the disappearance of nature, climate change, and inequitable access to the outdoors.

• Whether NOAA should better apply its existing authorities and associated measures, as listed above, to advance the goals and recommendations in the Report.

• What criteria NOAA should consider in working with other agencies to identify existing or potential new ''conserved'' or ''restored'' areas for the purpose of advancing the goals and recommendations in the Report.

• What additional scientific information, Indigenous Knowledge, or other expertise NOAA should consider in order to advance the goals and recommendations in the Report.

• How NOAA should consider tracking its actions and measuring its progress, including with partners, toward advancing the goals and recommendations in the Report.

• What actions NOAA should consider taking to support non-Federal entities, including tribal, state, territorial, and local governments and non-governmental organizations and other private entities, to advance their efforts to conserve and restore U.S. lands and waters.

• What actions NOAA should consider taking to facilitate broad participation in the America the Beautiful initiative.

• What additional information NOAA should consider as relevant to its role in implementing the America the Beautiful initiative.

Respondents are encouraged to focus their comments on actions that NOAA is authorized to take under its existing authorities and associated measures, as listed above. More information on NOAA's authorities, the eight core principles and six areas of early focus and progress in the Report, and other relevant resources is available at NOAA's website for Conserving and Restoring America the Beautiful: *https://noaa.gov/america-the-beautiful.*

Richard W. Spinrad,

Under Secretary of Commerce for Oceans and Atmosphere, and Administrator, National Oceanic and Atmospheric Administration.

[FR Doc. 2021–23590 Filed 10–28–21; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB542]

Endangered Species; File No. 25686

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that the NMFS Southeast Fisheries Science Center, 75 Virginia Beach, Miami, FL, 33149 (Responsible Party: Lisa Desfosse, Ph.D.) has applied in due form for a permit to take green (*Chelonia mydas*), hawksbill (*Eretmochelys imbricata*), Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), loggerhead (*Caretta caretta*), and unidentified sea turtles for purposes of scientific research.

DATES: Written, telefaxed, or email comments must be received on or before November 29, 2021.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 25686 from the list of available applications. These documents are also available upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

Written comments on this application should be submitted via email to *NMFS.Pr1Comments@noaa.gov.* Please include File No. 25686 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to *NMFS.Pr1Comments@noaa.gov.* The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Erin Markin or Amy Hapeman, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act

of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The applicant proposes to evaluate modifications to commercial fishing gear to mitigate sea turtle interactions and capture under two projects in the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea and their estuarine and coastal environments: (1) Turtle Excluder Device (TED) Evaluations in Trawl Fisheries and (2) Evaluation of Longline Alternative Methods. These evaluations and subsequent gear modifications could help reduce incidental turtle bycatch in the gear types studied. The applicant proposes to conduct research on sea turtles bycaught in fisheries managed by Federal authority or during directed research to test different gear configurations. For the TED Evaluations project, the applicant requests the following annual take numbers to study turtles bycaught in commercial fisheries or directly captured by researchers using trawls: 160 loggerhead, 42 Kemp's ridley, 10 leatherback, 21 green, and 10 hawksbill sea turtles. For the Evaluation of Longline Alternative Methods project, the applicant requests the following annual take numbers for those individuals bycaught in commercial fisheries: 3 loggerhead, 2 Kemp's ridley, 18 leatherback, 2 green, and 2 hawksbill sea turtles. All individuals captured will be handled, measured, weighed, photographed, flipper tagged, passive integrated transponder tagged, skin biopsied, and released. Biological samples may be imported for analysis and curation. For each project, up to 10 unidentified sea turtle carcasses that unintentionally die in a fishery may be salvaged. The applicant requests 3 loggerhead, 2 Kemp's ridley, 2 green, and 2 leatherback sea turtle mortalities for the life of the permit for individuals that may unintentionally die during research. The permit would be valid for five years from the date of issuance.

Dated: October 25, 2021.

Julia M. Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2021–23631 Filed 10–28–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB553]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a joint public meeting of its Skate Committee and Advisory Panel via webinar to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This webinar will be held on Tuesday, November 16, 2021, at 9 a.m. Webinar registration URL information: *https://attendee.gotowebinar.com/register/6528466157133795344.*

ADDRESSES: *Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Skate Committee and Advisory Panel will develop Framework Adjustment 9 which the Council initiated in September to consider revising the Northeast Skate Complex FMP objectives and the Federal skate permit characteristics. They will also finalize recommendations for 2022 Council work priorities regarding skates. The Council will consider these recommendations at the December Council meeting. Other business may be discussed, as necessary.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: October 26, 2021.

Tracey L. Thompson,

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

[FR Doc. 2021–23634 Filed 10–28–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB538]

Fisheries of the Northeastern United States; Atlantic Surfclam and Ocean Quahog Fisheries; Notice That Vendor Will Provide 2022 Cage Tags

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

ACTION: Notice.

SUMMARY: NMFS informs surfclam and ocean quahog individual transferable quota allocation holders that they will be required to purchase their fishing year 2022 (January 1, 2022–December 31, 2022) cage tags from the National Band and Tag Company. The intent of this notice is to comply with regulations for the Atlantic surfclam and ocean quahog fisheries and to promote efficient distribution of cage tags.

FOR FURTHER INFORMATION CONTACT: Aimee Ahles, Fishery Management Specialist, (978) 281–9373.

SUPPLEMENTARY INFORMATION: The Federal Atlantic surfclam and ocean quahog fishery regulations at 50 CFR 648.77(b) authorize the Regional Administrator of the Greater Atlantic Region, NMFS, to specify in the **Federal Register**, a vendor from whom cage tags, required under the Atlantic Surfclam and Ocean Quahog Fishery Management Plan, shall be purchased. Notice is hereby given that National Band and Tag Company of Newport, Kentucky, is the authorized vendor of cage tags required for the fishing year 2022 Federal surfclam and ocean quahog

fisheries. Detailed instructions for purchasing these cage tags will be provided in a letter to individual transferable quota allocation holders in these fisheries from NMFS within the next several weeks.

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

Dated: October 25, 2021.

Jennifer M. Wallace,

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

[FR Doc. 2021–23530 Filed 10–28–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Collection of High Resolution Spatial and Temporal Fishery Dependent Data To Support Scientific Research

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before December 28, 2021.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *Adrienne.thomas@noaa.gov.* Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Katie Burchard, Operations Specialist, National Marine Fisheries Service, 28 Tarzwell Drive, Narragansett, RI 02882, 508–667–8158, *Katie.Burchard@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This is a request for a new collection of information.

NOAA's National Marine Fisheries Service (NMFS) Northeast Fisheries Science Center (NEFSC) will collaborate with regional harvesters to self-collect high resolution effort and catch fishery dependent data electronically using the Fisheries Logbook Data Recording Software (FLDRS), developed by the NEFSC. For trip level, this includes information such as sail date, trip end date, crew size, port landed. For haul level, this includes information such as date/time and location of every effort, details on gear used, catch (species and species' weight) for kept and discard of every effort. The FLDRS software is installed on a laptop which is dedicated to the data collection effort. FLDRS has the ability to collect data at the subtrip level, which can be used to satisfy Federal electronic vessel trip reporting, and at a higher resolution haul level, which is used by various Cooperative Research Branch programs and projects without the data needing to be collected more than once.

Respondents will be asked to sign a one page data waiver that documents the respondent agreement to the release of the data they collect to the Northeast Fisheries Science Center Cooperative Research Branch.

The data collected will provide scientists with more precise and accurate fishery-dependent data than is collected on mandatory Federal Vessel Trip Reports (VTRs).

Collection of information about commercial fisheries is necessary to fulfill the statutory requirements of the *Magnuson-Stevens Fishery Conservation and Management Act* (16 U.S.C. 1801 *et seq.*). By collecting this high resolution, fine scale spatial and temporal fishery dependent data we are improving the data available to support improved understanding of population, ecosystem, and fishery dynamics in the northeast region. These improved understandings help the Northeast Fisheries Science Center conduct accurate stock assessments and inform fisheries management, which is essential to achieve the standards laid out in the Magnuson Stevens Act.

By collecting fine scale spatial and temporal fisheries information, fishers provide scientists with data from areas and seasons that are not sampled by Federal and state surveys. This fishery dependent data can be used with fishery independent data to improve species mapping. Fishery dependent data catch per unit effort (CPUE) calculations can be standardized and integrated into stock assessment models as indices of abundance. Collecting this fine scale commercial fisheries data also helps scientists understand patterns in fishing effort and relationships between catch and variables such as time of day, location, temperature, and depth.

II. Method of Collection

The data waiver can either be returned via email, fax or the postal service. The fishery dependent high resolution catch and effort data collection will be self-collected electronically by commercial harvesters using the Fisheries Logbook Data Recording Software (FLDRS).

III. Data

OMB Control Number: 0648–XXXX.

Form Number(s): None.

Type of Review: Regular submission: New information collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 39.

Estimated Time per Response: Data Waiver: 6 minutes; High Resolution Catch and Effort Data Collection: 35 minutes.

Estimated Total Annual Burden Hours: 892 hours.

Estimated Total Annual Cost to Public: $39,025.74.

Respondent's Obligation: Voluntary.

Legal Authority: Magnuson-Stevens Fishery Conservation and Management Act.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that

your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021–23570 Filed 10–28–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Broadband Grant Programs Technical Assistance Sessions

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice.

SUMMARY: The National Telecommunications and Information Administration (NTIA) will host Technical Assistance (TA) sessions in connection with the Connecting Minority Communities (CMC) Pilot Program authorized and funded by the Consolidated Appropriations Act, 2021. The CMC TA Sessions are designed to help prospective applicants understand the eligibility and programmatic requirements of the CMC Pilot Program and to assist applicants prepare high quality grant applications before the application deadline on December 1, 2021 at 11:59 p.m. Eastern Standard Time (EST). The CMC program team will address live questions during these technical assistance sessions to aid prospective CMC Pilot Program applicants.

DATES: NTIA will offer 60-minute CMC TA Sessions on the following dates:

- November 17, 2021 at 2:30pm EST
- November 18, 2021 at 2:30pm EST

ADDRESSES: The CMC TA Sessions will be hosted via NTIA's virtual platform and conducted as a live webinar. NTIA will post the registration information on its BroadbandUSA website at *https://broadbandusa.ntia.doc.gov/events/latest-events*.

FOR FURTHER INFORMATION CONTACT: Maci Morin, National Telecommunications and Information Administration, U.S. Department of Commerce, Room 4872, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4884; email: *BroadbandUSAwebinars@ntia.gov*. Please direct media inquiries to NTIA's Office of Public Affairs, (202) 482–7002; email *press@ntia.gov*.

SUPPLEMENTARY INFORMATION: Division N, Title IX—Broadband internet Access Service, of the Consolidated Appropriations Act, 2021 (Pub. L. 116–260) authorized and funded three new broadband grant programs to be administered by NTIA: The Broadband Infrastructure Program, the Tribal Broadband Connectivity Program, and the Connecting Minority Community Pilot Program. On March 19, 2021, NTIA published a Notice in the **Federal Register** announcing a webinar series designed to help prospective applicants understand the grant programs and to assist applicants to prepare high quality grant applications. *See* NTIA, Notice of Open Meetings—NTIA Broadband Grant Programs Webinars, 86 FR 14882 (March 19, 2021); NTIA, Notice of Change to Schedule for Open Meetings—NTIA Broadband Grant Programs Webinars, 86 FR 18965 (April 12, 2021). Additionally, on July 6, 2021, NTIA published a Notice in the **Federal Register** announcing a continuation of the webinar series, scheduling an additional 12 public webinar opportunities. See NTIA, Notice of Open Meetings, 86 FR 35496 (July 6, 2021). Participants have communicated that they found the webinars to be informative in understanding the rules associated with the programs.

NTIA seeks to continue to provide technical assistance to potential applicants of the CMC Pilot Program through TA sessions. Details about specific TA sessions, their content, and session registration information will be posted on the BroadbandUSA website at *https://broadbandusa.ntia.doc.gov/events/latest-events*.

These CMC TA Sessions are subject to change. Session time changes will be posted on the BroadbandUSA website at *https://broadbandusa.ntia.doc.gov/events/latest-events*. Any CMC TA Session cancellations will also be posted on the same website. Any date change to a scheduled CMC TA Sessions will be provided in a notice in the **Federal Register**.

The presentation and recording of each CMC TA Session will be posted on the BroadbandUSA website at *https://broadbandusa.ntia.doc.gov/* and NTIA's YouTube channel at: *https://www.youtube.com/ntiagov* within seven (7) days following the live session.

The public is invited to participate in these CMC TA Sessions. The sessions are open to the public and press. Pre-registration is required as space is limited to the first 1000 participants. NTIA asks each registrant to provide their first and last name, city, state, zip code, job title, organization and email address for registration purposes.

Individuals requiring accommodations, such as sign language interpretation or other ancillary aids, are asked to notify the NTIA contact listed above at least ten (10) business days before the session. General questions and comments are welcome via email to *BroadbandUSAwebinars@ntia.gov*.

Dated: October 25, 2021.

Kathy Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2021–23544 Filed 10–28–21; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Members of the 2021 Performance Review Board

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Notice.

SUMMARY: Notice is given of the names of members of the 2021 Performance Review Board for the Department of the Air Force effective December 6, 2021.

FOR FURTHER INFORMATION CONTACT: Please direct any written comments or requests for information to Ms. Rosario Caruth, Air Force Civilian Senior Executive Management Office, AF/A1LS, 1040 Air Force Pentagon, Washington, DC 20330–1040, (PH: 703–693–6447; or via email at *rosario.caruth@us.af.mil*).

SUPPLEMENTARY INFORMATION: Pursuant to 5 U.S.C. 4314(c) (1–5), the Department of the Air Force announces the appointment of the following members to its 2021 Senior Executive Service Performance Review Board:

1. Hon. Gina Ortiz Jones (Advisor), Under Secretary of the Air Force
2. Gen David Allvin (Co-Chair), Vice Chief of Staff of the Air Force
3. Gen David Thompson, Vice Chief of Space Operations for U.S. Space Force
4. Mr. John Fedrigo (Co-Chair), Principal Deputy Assistant Secretary of the Air Force for Manpower and Reserve Affairs
5. Mr. Steven Herrera, Principal Deputy Assistant Secretary of the Air Force for Financial Management and Comptroller
6. Lt Gen Nina Armagno, Director of Staff for U.S. Space Force
7. RADM Trey Wheeler, Chief of Staff for U.S. Strategic Command
8. Mr. Anthony Reardon, Administrative Assistant to the Secretary of the Air Force

9. Ms. Gwendolyn DeFilippi, Assistant Deputy Chief of Staff for Manpower, Personnel and Services
10. Ms. Patricia Young, Air Force Materiel Command Executive Director
11. Ms. Darlene Costello, Principal Deputy Assistant Secretary of the Air Force Acquisition, Technology & Logistics
12. Mr. Craig Smith, Principal Deputy General Counsel of the Air Force
13. Ms. Patricia Mulcahy, Deputy Chief of Space Operations for Personnel and Logistics Services, U.S. Space Force
14. Ms. Shannon McGuire (Legal Advisor), Deputy General Counsel for Fiscal Ethics and Administrative Law
15. Mr. Richard Desmond (Legal Advisor), Associate General Counsel of the Air Force

The following Tier 3 Career SES members will serve as alternates:

1. Mr. Douglas Bennett, Auditor General of the Air Force
2. Mr. Richard Lombardi, Deputy Chief Management Officer
3. Ms. Kelli Seybolt, Deputy Under Secretary of the Air Force, International Affairs
4. Mr. Randall Walden, Director and Program Executive Officer for the Air Force Rapid Capabilities Office
5. Mr. Daniel Fri, Assistant Deputy Chief of Staff, Logistics, Engineering and Force Support
6. Mr. Douglas Sanders, Deputy Administrative Assistant to the Secretary of the Air Force
7. Mr. Michael Shoults, Assistant Deputy Chief of Staff, Strategy Integration and Requirements
8. Ms. Jennifer Miller, Principal Deputy Assistant Secretary of the Air Force for Installations, Environment and Energy
9. Ms. Lauren Knausenberger, Deputy Chief Information Officer
10. Mr. John Salvatori, Director, Concepts, Development, and Management Office or Director, Capabilities Management Office
11. Mr. Joseph McDade, Assistant Deputy Chief of Staff for Strategic Plans and Programs
12. Mr. James Brooks, Assistant Deputy Chief of Staff for Strategic Deterrence and Nuclear Integration
13. Mr. Rowayne Schatz, Jr., Director, Air Force Studies and Analyses, Assessments and Lessons Learned
14. Ms. Lisa Costa, Deputy Chief of Space Operations for Technology and Innovation
15. Ms. Wanda JonesHeath, Principal Cyber Advisor

Adriane Paris,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2021–23528 Filed 10–28–21; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2021–HQ–0017]

Submission for OMB Review; Comment Request

AGENCY: U.S. Army Corps of Engineers, Department of the Army, Department of Defense (DoD).

ACTION: 30-day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by November 29, 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: Angela Duncan, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION: *Title; Associated Form; and OMB Number*: Rapid Ordinary High Water Mark Field Identification Datasheet; ENG Form 6250; OMB Control Number 0710–OHWM.

Type of Request: New.

Number of Respondents: 45,001.

Responses per Respondent: 1.

Annual Responses: 45,001.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 22,500.5.

Needs and Uses: The U.S. Army Corps of Engineers, through its Regulatory Program, regulates certain activities in waters of the United States. Waters of the United States are defined under 33 CFR part 328. In order for the Corps to determine the amount and extent of waters of the United States at a site, aquatic resources must be geographically delineated in accordance with established Regulatory regulations, policy, and guidance. Non-tidal, non-wetland waters of the United States must be delineated to the extent of the ordinary high water mark (OHWM), which is defined at 33 CFR 328.3(7). The OHWM defines the lateral extent of non-tidal aquatic features in the absence of adjacent wetlands in the United States. The U.S. Army Corps of Engineers Engineer Research and Development Center (ERDC) has drafted the first national manual that provides and describes indicators and a methodology which will help improve consistency in the identification and delineation of the OHWM by (1) providing consistent definitions of OHWM indicators; (2) outlining a clear, step-by-step process for identifying the OHWM using a Weight-of-Evidence approach; and (3) providing a datasheet for logging information at a site. Information collected on OHWM datasheets help inform the lateral limits of the Corps' jurisdiction in non-tidal, non-wetland aquatic resources (*e.g.,* streams or rivers). This information can then be used to inform jurisdictional determinations or permit evaluations. Applicants for Corps permits are generally required to submit delineations of aquatic resources as part of their permit application or in support of the permit evaluation process. The OHWM form will provide applicants with a tool to easily document and submit this information in a consistent format.

Affected Public: Individuals or households.

Frequency: As required.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Vlad Dorjets.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: October 25, 2021.

Aaron T. Siegel,

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

[FR Doc. 2021–23546 Filed 10–28–21; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Board of Visitors, United States Military Academy (USMA)

AGENCY: Department of the Army, Department of Defense.

ACTION: Notice of open Federal Advisory Committee combined meeting: In-person and virtual.

SUMMARY: The Department of the Army is publishing this notice to announce the Federal Advisory Committee meeting of the U.S. Military Academy Board of Visitors (Board). This meeting is open to the public. For additional information about the Board, please visit the committee's website at *https://www.westpoint.edu/about/superintendent/board-of-visitors.*

DATES: The United States Military Academy Board of Visitors will conduct an in-person and Microsoft Office 365 Teams virtual meeting from 09:00 a.m. to 11:30 a.m., November 19, 2021.

ADDRESSES: The U.S. Military Academy Board of Visitors meeting will be a combined in-person and Microsoft Office 365 Teams virtual meeting. The in-person meeting will be held at West Point in Jefferson Hall's Haig Room. The meeting may be virtually accessed via Microsoft Office 365 Teams. To participate in the meeting, see the Meeting Accessibility section for instructions.

FOR FURTHER INFORMATION CONTACT: Mrs. Deadra K. Ghostlaw, the Designated Federal Officer (DFO) for the committee, in writing at: Secretary of the General Staff, ATTN: Deadra K. Ghostlaw, 646 Swift Road, West Point, NY 10996; by email at: *deadra.ghostlaw@westpoint.edu* or *BoV@westpoint.edu;* or by telephone at (845) 938–4200.

SUPPLEMENTARY INFORMATION: The USMA BoV provides independent advice and recommendations to the President of the United States on matters related to morale, discipline, curriculum, instruction, physical equipment, fiscal affairs, academic methods, and any other matters relating to the Academy that the Board decides to consider.

Purpose of the Meeting: This is the 2021 Annual Meeting of the USMA BoV. Members of the Board will be provided updates on Academy issues. Agenda: Board Business; Strategy Update: Develop Leaders of Character; Cultivate a Culture of Character Growth; Build Diverse and Effective Teams; Modernize, Sustain, and Secure; and Strengthen Partnerships.

Availability of Materials for the Meeting: A copy of the agenda or any updates to the agenda for the November 19, 2021 meeting will be available in person, or through MS Office 365 Teams. The final version will be available in person, or at the Microsoft Office 365 Teams virtual meeting. All materials will be posted to the website after the meeting.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended and 41 CFR 102–3.140 through 102–3.165, and seating, for members of the public who wish to attend the meeting in person, is on a space available basis; and is open through Microsoft Office 365 Teams to the public from time in 8:45 a.m.–11:30 p.m. Persons desiring to attend the meeting are required to submit their name, organization, email and telephone contact information to Mrs. Deadra K. Ghostlaw at *deadra.ghostlaw@westpoint.edu* not later than Wednesday, November 9, 2021; please indicate at that time whether attendance is in person or virtually, via MS Office 365 Teams. Specific instructions for Microsoft Office 365 Teams participation in the meeting, will be provided by reply email. The meeting agenda will be available to those attending the meeting virtually prior to the meeting on the Board's website at: *https://www.westpoint.edu/about/superintendent/board-of-visitors.*

Public's Accessibility to the Meeting and Special Accommodations: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165 and subject to the availability of space, this meeting is open to the public. In-person seating is on a first to arrive basis; individuals requiring any special accommodations related to the in-person or virtual public meeting or seeking additional information about the procedures should contact Mrs. Ghostlaw, the committee DFO, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section, at least seven (7) business days prior to the meeting so that appropriate arrangements can be made. Attendees are requested to submit their name, affiliation, and daytime phone number seven business days prior to the meeting to Mrs. Ghostlaw, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Because the committee meeting will be held in a Federal Government facility on a military post, pursuant to Army Regulation 190–13, security screening is required for all members of the public wishing to attend the meeting in-person. A government photo ID is required to enter post. In order to enter the installation, members of the public must first go to the Visitor Control Center in the Visitor Center and go through a background check before being allowed access to the installation. Members of the public then need to park in Buffalo Soldier Field parking lot and ride the north-bound Central Post Area (CPA) shuttle bus to Thayer Road, get off at the Thayer Road Extension and walk up the road to the Guard Station; a member of the USMA staff will meet members of the public wishing to attend the meeting at 08:30 a.m. and escort them to the meeting location. Please note that all vehicles and persons entering the installation are subject to search and/or an identification check. Any person or vehicle refusing to be searched will be denied access to the installation. Members of the public should allow at least an hour for security checks and the shuttle ride. The United States Military Academy, Jefferson Hall, is fully handicap accessible. Wheelchair access is available on the south (Main) entrance of the building. For additional information about public access procedures, contact Mrs. Ghostlaw, the committee's Designated Federal Officer, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Written Comments or Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the Board about its mission and/or the topics to be addressed in this combined in-person/Microsoft Office 365 Teams virtual public meeting. Written comments or statements should be submitted to Mrs. Ghostlaw, the committee DFO, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section in the following formats: Adobe Acrobat or Microsoft Word. The comment or statement must include the author's name, title, affiliation, address, and daytime telephone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the committee DFO at least seven (7) business days prior to the meeting so that they may be made available to the Board for its consideration prior to the meeting. Written comments or statements received after this date may not be provided to the Board until its next meeting. Please note that because the Board operates under the provisions of the Federal Advisory Committee Act,

as amended, all written comments will be treated as public documents and will be made available for public inspection.

Pursuant to 41 CFR 102–3.140d, the committee is not obligated to allow a member of the public to speak or otherwise address the committee during the meeting. However, the committee Designated Federal Official and Chairperson may choose to invite certain submitters to present their comments verbally during the open portion of this meeting or at a future meeting. The Designated Federal Officer, in consultation with the committee Chairperson, may allot a specific amount of time for submitters to present their comments verbally.

James W. Satterwhite, Jr.,

Army Federal Register Liaison Officer.

[FR Doc. 2021–23557 Filed 10–28–21; 8:45 am]

BILLING CODE 5001–03–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS–2021–0022; OMB Control Number 0704–0231]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement (DFARS) Part 237, Service Contracting, and Related Clauses and Forms

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, DoD announces a proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. *DoD invites comments on:* Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; the accuracy of the estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection requirement for use through February 28, 2022. DoD proposes that OMB extend its approval for three additional years.

DATES: Consideration will be given to all comments received by December 28, 2021.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0231, using any of the following methods:

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

○ *Email: osd.dfars@mail.mil.* Include OMB Control Number 0704–0231 in the subject line of the message.

Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara J. Trujillo, 571–372–6102.

SUPPLEMENTARY INFORMATION:

Title, Associated Form, and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 237, Service Contracting, associated DFARS Clauses at DFARS 252.237, DD Form 2062, and DD Form 2063; OMB Control Number 0704–0231.

Affected Public: Businesses and other for-profit and not-for profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Type of Request: Extension of a currently approved collection.

Number of Respondents: 2,737.

Responses per Respondent: 1.5, approximately.

Annual Responses: 4,019.

Average Burden per Response: 1.5, approximately.

Annual Burden Hours: 6,051.

Frequency: On occasion.

Needs and Uses: This information collection is used for the following purposes—

a. The information collected pursuant to DFARS solicitation provision 252.237–7000(c) is used to verify that the offeror is properly licensed in the state or other political jurisdiction where the offeror operates its professional practice.

b. DFARS 252.237–7011, the DD Form 2062, Record of Preparation and Disposition of Remains (Outside CONUS), and the DD Form 2063, Record of Preparation and Disposition of Remains (Within CONUS), are used to verify that the deceased's remains have been properly cared for by the mortuary contractor.

c. The written plan required by DFARS solicitation provision 252.237–7024, submitted by offerors concurrently with the proposal or offer, allows the contracting officer to assess the offeror's capability to continue providing contractually required services to support the DoD component's mission-essential functions in during periods of crisis.

d. The information collected pursuant to DFARS contract clause 252.237–7023 allows the contracting officer to provide approval of updates to the contractor's plan provided under DFARS clause 252.237–7024, to ensure that the contractor can continue to provide services in support of the DoD component's required mission-essential functions during crisis situations.

Summary of Information Collection

DFARS 237.270(d)(1) prescribes the use of the provision at DFARS 252.237–7000, Notice of Special Standards, in solicitations for the acquisition of audit services. The provision requires the apparently successful offeror to submit evidence that it is properly licensed in the state or political jurisdiction it operates its professional practice.

DFARS 237.7003(a)(8) prescribes the use of the clause at 252.237–7011, Preparation History, in all mortuary service solicitations and contracts. The information collected is used to verify that the remains have been properly cared for and the DD Forms 2062 and 2063 are generally used for this purpose.

DFARS 237.7603(b) prescribes the use of the provision at 252.237–7024, Notice of Continuation of Essential Contractor Services, in solicitations that require the acquisition of services that are in support of mission-essential functions, and that include the clause at 252.237–7023. The provision requires the offeror to submit a written plan demonstrating its capability to continue to provide the contractually required services to support a DoD component's mission-essential functions during crisis situations.

DFARS 237.7603(a) prescribes the use of the clause at DFARS 252.237–7023, Continuation of Essential Contractor Services, in solicitations and contracts for services in support of mission-essential functions. The clause requires the contractor to maintain and update its written plan as necessary to ensure that they can continue to provide services to support the DoD component's required mission-essential functions during crisis situations.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

[FR Doc. 2021–23470 Filed 10–28–21; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Business Board; Notice of Federal Advisory Committee Meeting

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

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Business Board (''the Board'') will take place.

DATES: Day 1—Open to the public Wednesday, November 3, 2021 from 8:55 a.m. to 10:20 a.m. Eastern Standard Time. Closed to the public Wednesday, November 3, 2021 from 11:30 a.m. to 7:30 p.m. Eastern Standard Time. Day 2—Closed to the public Thursday, November 4, 2021 from 8:30 a.m. to 10:30 a.m. Eastern Standard Time. Open to the public Thursday, November 4, 2021 from 10:45 a.m. to 11:40 a.m. Eastern Standard Time. Closed to the public Thursday, November 4, 2021 from 2:00 p.m. to 4:30 p.m.

ADDRESSES: The open and closed portions of the meeting will be in Room 3E869 in the Pentagon, Washington DC. Due to the current guidance on combating the Coronavirus, the open portions will be conducted by teleconference only. To participate in the open portion, see the Meeting Accessibility section for instructions.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Hill, Designated Federal Officer of the Board in writing at Defense Business Board, 1155 Defense Pentagon, Room 5B1088A, Washington, DC 20301–1155; or by email at *jennifer.s.hill4.civ@mail.mil;* or by phone at 571–342–0070.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C.), the Government in the Sunshine Act (5 U.S.C. 552b), and 41 CFR 102–3.140 and 102–3.150. Due to circumstances beyond the control of the Department of Defense and the Designated Federal Officer for the Board, DoD was unable to provide public notification required by 41 CFR 102–3.150(a) concerning its November 3–4, 2021 meeting. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

Purpose of the Meeting: The mission of the Board is to examine and advise the Secretary of Defense on overall DoD management and governance. The Board provides independent advice reflecting an outside private sector perspective on proven and effective best business practices that can be applied to DoD.

Agenda: The open portion of the Board meeting will begin November 3, 2021 at 8:55 a.m. with opening remarks by Jennifer Hill, the Designated Federal Officer. The Board will then receive remarks by the Board Chair, introductions of new Board members, and remarks by the Deputy Secretary of Defense. The open portion of the meeting will conclude at 10:20 a.m. The meeting will move into closed session from 11:30 a.m. to 7:30 p.m. to receive classified briefings from HON Michael McCord, Under Secretary of Defense—Comptroller/Chief Financial Officer, General Mark A. Milley, Chairman of the Joint Chiefs of Staff, HON Frank Kendall, Secretary of the Air Force, Mr. Robin Swan, the Director of the Office of Business Transformation, USA, Mr. Richard Lombardi, Deputy Chief Management Officer, USAF, Ms. Robin Tomlin, Deputy Chief Management Officer, USN, Mr. Dave Spirk, Chief Data Officer, DoD Office of the Chief Information Officer, Dr. Kelly Fletcher, Performing the Duties of the DoD Chief Information Officer, and Mr. Greg Kausner, Performing the Duties of Under Secretary of Defense for Acquisition and Sustainment.

The Board will reconvene in closed session on November 4, 2021 at 8:15 a.m. to 10:30 a.m. with opening remarks by the Designated Federal Officer and the Chair. The Board will then receive classified briefings from Mr. Gregory Little, Director, the Under Secretary of Defense Comptroller/Chief Financial Officer, and HON Gilbert R. Cisneros, Jr., Under Secretary of Defense for Personnel and Readiness. The meeting will move into open session from 10:45 a.m. to 11:40 a.m. to receive a briefing from Mr. Farooq Mitha, Director of DoD Office of Small Business Programs. The meeting will move into closed session from 2:00 p.m. to 4:30 p.m. for classified discussion with the Deputy Secretary of Defense and closing remarks by the Board Chair and Designated Federal Officer. The latest version of the full agenda will be available upon publication in the **Federal Register** on the Board's website at: *https://dbb.defense.gov/Meetings/Meeting-November-2021/.*

Meeting Accessibility: Pursuant to the FACA and 41 CFR 102–3.140, portions of the meeting on November 3, 2021 from 8:55 a.m. to 10:20 a.m. and on November 4, 2021 from 10:45 a.m. to 11:40 a.m. are open to the public. Persons desiring to participate in the public sessions are required to register. Attendance will be by teleconference only. To attend the public session, submit your name, affiliation/organization, telephone number, and email contact information to the Board at *osd.pentagon.odam.mbx.defense-business-board@mail.mil.* Requests to attend the public session must be received no later than 3:00 p.m. Eastern Standard Time, on Tuesday, November 2, 2021. Upon receipt of this information, a teleconference line number will be sent to the email address provided which will allow teleconference attendance to the event. (The DBB will be unable to provide technical assistance to any user experiencing technical difficulties during the meeting.)

In accordance with Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. Appendix and 41 CFR 102–3.155, it is hereby determined that portions of the meeting of the Board include classified information and other matters covered by 5 U.S.C. 552b(c)(1) and that, accordingly, the following dates and times will be closed to the public: November 3, 2021 from 11:30 a.m. to 7:30 p.m., and November 4, 2021 from 8:15 a.m. to 10:30 a.m. and from 2:00 p.m. to 4:30 p.m. The determination is based on the consideration that it is expected that discussions throughout these periods will involve classified matters of national security concern. Such classified material is so intertwined with the unclassified material that it cannot reasonably be segregated into separate discussions without defeating the effectiveness and meaning of the overall meetings. To permit the meeting to be open to the public would preclude discussion of such matters and would greatly diminish the ultimate utility of the Board's findings and recommendations to the Secretary of Defense and to the Deputy Secretary of Defense.

Written Comments and Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the FACA, the public or interested organizations may submit written comments or statements to the Board in response to the stated agenda of the meeting or in regard to the Board's mission in general. Written comments or statements should be submitted to Ms. Jennifer Hill, the Designated Federal Officer, via electronic mail (the preferred mode of submission) at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone

number. The Designated Federal Officer must receive written comments or statements being submitted in response to the agenda set forth in this notice by November 1, 2021 to be considered by the Board. The Designated Federal Officer will review all timely submitted written comments or statements with the Board Chair, and ensure the comments are provided to all members of the Board before the meeting. Written comments or statements received after this date may not be provided to the Board until its next scheduled meeting. Pursuant to 41 CFR 102–3.140d, the Board is not obligated to allow any member of the public to speak or otherwise address the Board during the meeting. Members of the public will be permitted to make verbal comments during the meeting only at the time and in the manner described below. If a member of the public is interested in making a verbal comment at the open meeting, that individual must submit a request, with a brief statement of the subject matter to be addressed by the comment, at least three (3) business days in advance to the Designated Federal Officer, via electronic mail (the preferred mode of submission) at the addresses listed in the **FOR FURTHER INFORMATION CONTACT** section. The Designated Federal Officer will log each request, in the order received, and in consultation with the Board Chair determine whether the subject matter of each comment is relevant to the Board's mission and/or the topics to be addressed in the public meeting. Members of the public who have requested to make a comment and whose comments have been deemed relevant under the process described above will be invited to speak in the order in which the Designated Federal Officer received their requests. The Board Chair may allot a specific amount of time for comments. Please note that all submitted comments and statements will be treated as public documents and will be made available for public inspection, including, but not limited to, being posted on the Board's website.

Dated: October 26, 2021.

Aaron T. Siegel,

Alternate OSD Federal RegisterLiaison Officer, Department of Defense.

[FR Doc. 2021–23592 Filed 10–28–21; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2021–OS–0111]

Proposed Collection; Comment Request

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

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Under Secretary of Defense for Personnel and Readiness announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by December 28, 2021.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Defense Human Resources Activity, 4800 Mark Center Drive, Suite 08F05, Alexandria, VA 22350, LaTarsha Yeargins, 571–372–2089.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: DoD Mortuary Affairs Forms; DD Form(s) 3045, 3046, 3047, 3048, 3049, 3050; OMB Control Number 0704–0581.

Needs and Uses: The information collection requirement is necessary to obtain and document the selection (as applicable) of the Person Authorized to Direct Disposition (PADD), who is authorized to direct disposition of human remains of decedents. As stated in 10 U.S. Code 1481, 'Recovery, Care, and Disposition of Remains: Decedents Covered,' the DoD may provide for the recovery, care, and disposition of the remains for active-duty Regulars, Reserve Component members, applicants, trainees, military prisoners, and others. The Department of Defense is further authorized, per 10 U.S.C. 1482 and 10 U.S.C. 1482a to provide reimbursement, cover expenses, or otherwise provide mortuary services for decedents, including civilian employees serving with the armed forces. In order to provide reimbursement or these services, the DoD is charged with electing and documenting the elections of PADD of the remains, to whom the payment/reimbursement is made. The Service Casualty Office and DoD mortuaries use the information provided in this collection to document the election of the PADD for the preparation, transportation, and final disposition of the remains, as applicable. Depending on the circumstances, a PADD may be asked to complete up to six forms. All PADDs will complete the DD Form 3045, but may additionally be asked to provide information on the DD Forms 3046, 3047, 3048, 3049, and/or 3050. A description of each form has been provided to clarify under which circumstances each form may be used.

Affected Public: Individuals or households.

Annual Burden Hours: 300 hours.

Number of Respondents: 900.

Responses per Respondent: 1.33.

Annual Responses: 1,200.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

Dated: October 25, 2021.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2021–23548 Filed 10–28–21; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2021–OS–0112]

Proposed Collection; Comment Request

AGENCY: Chief Information Officer (CIO), Department of Defense (DoD).

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Defense Information Systems Agency announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by December 28, 2021.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Defense Information Systems Agency, ATTN: CIO/IO2, 6910 Cooper Avenue, Fort Meade, MD 20755, Abigalee Conrad, 301–225–1262.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: System Authorization Access Request Form; DD 2875; OMB Control Number 0704–SAAR.

Needs and Uses: The information collection is necessary for validating the trustworthiness of individuals who request access to DoD systems and information. When an individual requires access to a DoD information system, application, or database, he/she retrieves the DD Form 2875. Executive Order 10450 ''Security Requirements for Government Employment'' establishes the security requirements for government employment. The requestor's security requirements (background investigation and clearance information) are identified on the DD Form 2875 and validated by the cognizant Security Manager. Collection of the requestor's information ensures that any system access granted is consistent with the interests of the national security.

Affected Public: Individuals or households.

Annual Burden Hours: 600,000 hours.

Number of Respondents: 900,000.

Responses per Respondent: 8.

Annual Responses: 7,200,000.

Average Burden per Response: 5 minutes.

Frequency: As required.

Dated: October 25, 2021.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2021–23549 Filed 10–28–21; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Establishing a TRICARE Childbirth and Breastfeeding Support Demonstration

AGENCY: Defense Health Agency, Department of Defense (DoD).

ACTION: Notice of demonstration project.

SUMMARY: The Assistant Secretary of Defense for Health Affairs issues this notice announcing the creation of a demonstration to cover the services of three new classes of extra-medical TRICARE-authorized providers: certified labor doulas (CLDs), certified lactation consultants, and certified lactation counselors. The demonstration also adds childbirth support services, provided by CLDs, as a benefit under TRICARE and expands the existing breastfeeding counseling benefit to include group breastfeeding counseling sessions. The demonstration will commence January 1, 2022, and will be conducted for a period of 5 years covering eligible beneficiaries in the 50 United States and District of Columbia. Eligible beneficiaries in overseas locations will be covered under the demonstration beginning January 1, 2025, until termination of the demonstration project.

FOR FURTHER INFORMATION CONTACT: Erica Ferron, 303–676–3626, *erica.c.ferron.civ@mail.mil.*

SUPPLEMENTARY INFORMATION:

A. Background

The purpose of the demonstration is to study the impact of adding these providers and services on cost, quality of care, and maternal and fetal outcomes for the TRICARE population, as required by Section 746 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (NDAA–2021). The demonstration will also study the appropriateness and administrative feasibility of making coverage under the TRICARE Program permanent.

In the NDAA–2021, enacted January 1, 2021 (Pub. L. 116–283), Congress directed the Secretary of Defense to carry out a demonstration project to evaluate the cost, quality of care, and impact on maternal and fetal outcomes of using extra-medical maternal health providers under the TRICARE Program, and to determine the appropriateness of making coverage of such providers under TRICARE permanent. Extra-medical maternal health care providers under the demonstration include doulas and lactation consultants and counselors not otherwise TRICARE-authorized providers (that is, that are not also physicians, registered nurses, certified nurse midwives, etc.).

In a recent Report to Congress (RTC), DoD reported on maternal and infant mortality rates. Military Health System (MHS) data reflects that from January 2009 to June 2018, the pregnancy-related mortality ratio (PRMR),[1] including the direct care (DC) and private sector care (PC) systems, was 7.40 deaths per 100,000 live births and statistically significantly lower than the benchmark data from National Perinatal Information Center (NPIC)[2] with a comparative rate of 11.3 deaths per 100,000 live births. During that same period, the infant mortality rate was 2.51 deaths per 1,000 live births and

[1] PRMR is defined as CDC as the death of a woman while pregnant or within one year of pregnancy from any cause related to or aggravated by pregnancy or its management, but not from accidental or incidental causes.

[2] The NPIC is a nationwide voluntary obstetric quality improvement database.

was statistically significantly below the NPIC rate of 4.76 per 1,000 live births. Despite generally lower rates of maternal and infant mortality compared with the United States overall and with NPIC member facilities, the MHS continues to actively work to decrease infant and maternal mortality.[3] Nationally, and worldwide the rates of maternal morbidity are increasing related to postpartum bleeding, high blood pressure, infection and mental health disorders. The U.S. maternal mortality rate is greater than 10 other high-income countries and the U.S. is the only developed country in the world where the maternal mortality rate has been steadily increasing. In 1987, the maternal mortality rate was 7.2 deaths per 100,000 live births. By 2018, the maternal mortality rate had increased to 17.4 per 100,000 live births, compared with 3.2 deaths per 100,000 in Germany, or 6.5 deaths per 100,000 in the United Kingdom.[4]

The risk of maternal mortality is not limited to labor and delivery. The three months immediately following birth, sometimes referred to as the ''fourth trimester,'' account for more than half (52 percent) of pregnancy-related deaths in the U.S. (one-third of deaths occur during pregnancy and 17 percent occur on the day of delivery). Of the maternal deaths that occur postpartum, 19 percent occur one to six days postpartum and another 21 percent occur within six weeks of birth. Twelve percent are considered late maternal deaths, occurring later than six weeks post-delivery.[5] Doulas and lactation consultants and counselors provide services during pregnancy and the critical fourth trimester, potentially impacting outcomes for both the parent giving birth and the infant.

1. Childbirth Support and Doulas

Doulas are support personnel; while there are many types of doulas, some maternity related, some not, this demonstration will be limited to the services of labor doulas. Labor doulas, often referred to as birth doulas or labor assistants, provide guidance to the parent giving birth and family through the labor and birthing process, and attend to the needs of the family shortly before delivery; during the birth, whether it be vaginal, or C-section; and immediately after delivery.[6] Labor doulas are not medical personnel and are not qualified to provide medical services, such as examination of the cervix or prescription of medications, and do not give medical advice.[7] Rather, the labor doula provides physical and emotional support, coaching, and guidance. While doulas do not provide medical services, evidence increasingly suggests health benefits may be associated with the use of childbirth support services.

DoD commissioned a technology assessment from Hayes, Inc., in late 2020 in anticipation of this demonstration that evaluated the impact of doula services on maternal and fetal outcomes. The results provided insight into areas for the Defense Health Agency (DHA) to explore in analysis of this demonstration. In particular, the evidence indicates that doula services might have a positive impact on shortened duration of labor, decreased epidural anesthesia, decreased anxiety during labor, decreased rate of stillbirths and low Apgar score in infants, and increased maternal feelings of coping well with labor and feeling that the birth experience was good. Additionally, some outcomes with mixed results, such as emergent C-section rate, warrant further study.[8]

In 2019, the American College of Obstetricians and Gynecologists (ACOG) published a committee opinion in which they recognized the value of labor doulas, stating ''evidence suggests that, in addition to regular nursing care, continuous one-to-one emotional support provided by support personnel, such as a doula, is associated with improved outcomes for women in labor.'' [9] The opinion highlights the benefits of using doula support personnel including: Shortened labor, decreased need for analgesia, fewer operative deliveries (C-sections), and fewer reports of dissatisfaction with the experience of labor. The ACOG opinion noted that one analysis, looking at birth-related outcomes for Medicaid recipients who received prenatal education and childbirth support from trained doulas, suggested that paying for such personnel might result in substantial cost savings annually.[10]

Labor doulas are not currently licensed in any state and are not recognized by Medicare, although a few state Medicaid programs cover doula services. Medicaid reimburses doulas for their services in Oregon, Minnesota, Nebraska, and Indiana, with other states considering legislation. New York has a pilot program for doula services, launched in early 2019. Some state Medicaid programs recommend and recognize certification from approved private certifying organizations, whose certification qualifies a doula to receive Medicaid payment, while others offer their own certification. As of 2018, there were over 100 independent organizations offering some form of doula training or certification. Requirements for certification vary but typically include some combination of training workshops, reading lists, training in breastfeeding and basic childbirth education, networking to develop a doula business, and hands-on support for expectant mothers and their partner/spouse.[11]

2. Breastfeeding Support, Lactation Consultants, and Lactation Counselors

The U.S. Preventive Services Task Force (USPSTF) recommends breastfeeding counseling as a preventive service for pregnant women, new mothers, and their children, and recommends interventions both during pregnancy and after birth to support breastfeeding.[12] According to the Centers for Disease Control and Prevention (CDC), breastfeeding can reduce the risk of infants developing: Asthma, obesity, type-1 diabetes, severe lower respiratory disease, acute otitis media (ear infections), sudden infant death syndrome, gastrointestinal infections, and necrotizing enterocolitis for preterm infants. Breastfeeding may impact maternal health by lowering the

[3] Office of the Secretary of Defense. ''Maternal and Infant Mortality Rates in the Military Health System.'' July 2019. RefID 8–0153FF6.

[4] Tikkanen, R., Gunja, M. Z., FitzGerald, M., & Zephyrin, L. (2020, November 18). Maternal mortality and maternity care in the United States compared to 10 other developed countries. Retrieved March 19, 2021, from *https://www.commonwealthfund.org/publications/issue-briefs/2020/nov/maternal-mortality-maternity-care-us-compared-10-countries.*

[5] Tikkanen, R., Gunja, M. Z., FitzGerald, M., & Zephyrin, L. (2020, November 18). Maternal mortality and maternity care in the United States compared to 10 other developed countries. Retrieved March 19, 2021, from *https://www.commonwealthfund.org/publications/issue-briefs/2020/nov/maternal-mortality-maternity-care-us-compared-10-countries.*

[6] DoulaTraining.net. (2021). Types of Doulas. Retrieved March 19, 2021, from *http://www.doulatraining.net/types-of-doulas.*

[7] American Pregnancy Association. (2021, February 05). Labor and birth. Retrieved March 19, 2021, from *https://americanpregnancy.org/health-pregnancy/labor-and-birth/.*

[8] Hayes, Inc. ''Impact of Doulas on Birth Related Outcomes.'' Long Hayes Technology Assessment, November 16, 2020.

[9] ACOG. ''ACOG Committee Opinion No. 766: Approaches to Limit Intervention During Labor and Birth.'' *Obstet Gynecol.* 2019 Feb;133(2):e164–e173. doi: 10.1097/AOG.0000000000003074. PMID: 30575638. ACOG piece.

[10] Kozhilmannil KB, Hardeman RR, Attanasio LB, Blauer-Peterson C, O'Brien M. Doula care, birth outcomes, and costs among Medicaid beneficiaries. Am J Publish Health 2013; 103;e113–21.

[11] Doulas of North America. (2021, March 04). Become a birth doula—certification. Retrieved March 19, 2021, from *https://www.dona.org/become-a-doula/birth-doula-certification/.*

[12] U.S. Preventive Services Task Force. (2016). Final Recommendation Statement Breastfeeding: Primary Care Interventions (Rep.). USPSTF.

risk of: High blood pressure, type-2 diabetes, ovarian cancer, and breast cancer.[13]

As a result of section 706 of the National Defense Authorization Act for Fiscal Year 2015 (NDAA–2015), TRICARE beneficiaries have access to up to six breastfeeding/lactation counseling sessions per birth event. These sessions are authorized in addition to any breastfeeding/lactation counseling services received as part of an inpatient maternity stay or outpatient obstetrical or well-child visit. Breastfeeding counseling must be provided by an already-authorized TRICARE provider, such as a physician, physician assistant, nurse practitioner, certified nurse midwife, registered nurse, outpatient hospital, or clinic. Despite the expanded breastfeeding benefit, internal analysis found fewer than five percent of TRICARE mothers in FY20 used breastfeeding counseling services in the 12 months following delivery. Low use of this service may be due in part to our current regulatory requirement that all services be provided by a TRICARE-authorized provider, as many lactation consultants and counselors do not have a health profession-related degree or license, and those that do are unlikely to focus on providing lactation services. Low utilization may have been further impacted by the failure to create a new provider class of lactation consultant/counselor, which meant this type of provider cannot be specifically searched for in TRICARE provider directories.

According to the U.S. Breastfeeding Committee, an independent nonprofit coalition, lactation consultants and counselors are the most educated of four lactation specialties (the other two are breastfeeding peer counselors and lactation educators).[14] Lactation consultants and counselors are health care professionals who have received specialized training to aid in breastfeeding and passed a certification exam. Lactation consultants and counselors are not licensed in most states; while some are also licensed medical professionals (such as registered nurses), many are not. Lactation consultants and counselors do not diagnose or assess illnesses, nor do they provide treatment for either the mother or the infant.

B. Description of Demonstration

1. Overall Demonstration Details

The demonstration is designed to evaluate the following hypotheses:

(1) Access to doulas will have a positive and measurable impact on maternal and fetal outcomes.

(2) Access to lactation consultants and lactation counselors will have the same or better impact on maternal and fetal outcomes when compared to the same services provided by other TRICARE-authorized providers.

(3) The cost of providing access to such providers is justified by the impact of the providers on maternal and fetal outcomes.

(4) It is feasible to administer the new provider classes and the services they provide.

In order to evaluate the demonstration, it is divided into two distinct parts: A childbirth support benefit and a breastfeeding support benefit. This division recognizes that the impact on maternal and fetal outcomes, costs, and administrative feasibility must be studied separately for the two benefits (that is, the evaluation may find a positive impact on outcomes for one part of the demonstration but not the other). Each provision adds a new class of extra-medical provider, while the childbirth support portion also adds a new type of benefit. An extra-medical provider as defined in the regulations (Title 32 Code of Federal Regulations (CFR), Part 199.6(c)(iv)) is an individual professional provider who provides ''counseling or nonmedical therapy and whose training and therapeutic concepts are outside the medical field.'' Other extra-medical providers include certified marriage and family therapists, pastoral counselors, supervised mental health counselors, and Christian Science practitioners and Christian Science nurses.

a. Demonstration Scope

The demonstration will be limited to services occurring in PC. TRICARE statutory and regulatory restrictions on providers, from which the NDAA–2021 demonstration offers relief, apply to care administered under PC. By contrast, Military Medical Treatment Facilities (MTFs) under DC are not prevented from hiring such providers under existing statutory and regulatory requirements. Some MTFs already have lactation consultants on staff, from whom beneficiaries are eligible to receive services. As of the drafting of this decision paper, no MTFs had doulas on staff; however, many MTFs do permit beneficiaries to bring a doula with them during labor, whether that doula be a volunteer, paid for by the family, or reimbursed under another program. The evaluation of maternal and fetal outcomes will not be impacted by the limitation of the demonstration to PC.

b. Beneficiary Eligibility

The demonstration will be available to TRICARE Prime and TRICARE Select beneficiaries who receive care in PC under the managed care support contractors (MCSCs). TRICARE Overseas beneficiaries will be eligible to participate in the demonstration beginning January 1, 2025, when the demonstration expands to overseas locations. Not included in the demonstration will be TRICARE for Life, United States Family Health Plan (USFHP), and Continued Health Care Benefit Program (CHCBP) beneficiaries. Excluding beneficiaries not under the MCSCs or the Oversea Program (beginning January 1, 2025) reduces the administrative burden of the demonstration without having a meaningful impact on the demonstration's results (the hypothesis regarding administrative feasibility refers primarily to the management of the new provider categories and benefits, and not to the administrative variations under different TRICARE contracts, which are a known variable that does not require evaluation). Any potential permanent expansion would revisit inclusion of beneficiary categories excluded under the demonstration.

Beneficiaries will be enrolled in the demonstration automatically when accessing one or more covered services from a provider authorized under this demonstration. The contractor will record the beneficiary's enrollment by marking the claims with a special processing code for either the childbirth support or breastfeeding counseling portion of the demonstration. Beneficiaries who are interested in participating in the demonstration will be able to contact the contractor for their area to express interest in participating and receive information on the demonstration requirements and help locating a provider, but such early contact will not be required.

[13] CDC. ''Breastfeeding: Why it Matters.'' Retrieved March 25, 2020, from *https://www.cdc.gov/breastfeeding/about-breastfeeding/why-it-matters.html.*

[14] U.S. Breastfeeding Committee. ''Lactation Support Providers Descriptors Table.'' Accessed online on 3/21/21 at *http://www.usbreastfeeding.org/page/lsp-descriptor-table.*

2. Childbirth Support and Doulas

The childbirth support benefit both adds certified labor doulas (CLDs) as TRICARE-authorized providers and childbirth support services as a benefit. In order to be a CLD under this demonstration, doulas must be at least 18-years-old and have:

(a) A current certification as a labor doula by one of the following organizations:

i. BirthWorks International
ii. Doulas of North America (DONA) International
iii. Childbirth and Postpartum Professional Association (CAPPA)
iv. International Childbirth Education Association (ICEA)
v. toLabor

(b) Attended a training curriculum of at least 24 hours that includes the physiology of labor, labor doula training, antepartum doula training, and postpartum doula training.

(c) Attended one or more breastfeeding courses.

(d) Attended one or more childbirth education courses (*e.g.,* Lamaze).

(e) Within the past three years, provided continuous labor support for at least three childbirths as the primary labor doula supporting the birthing parent, with a minimum of 15 hours over the three childbirths. At least two of the births must have been a vaginal birth.

(f) Within the past three years, provided antepartum and postpartum support for at least one birth.

(g) A current child, infant, and adult cardiopulmonary resuscitation (CPR) certification.

(h) A state license or certification if one is offered by the state, even if such a license or certification is optional.

(i) A national provider identification number (NPI).

A doula cannot use experience gained from their own childbirth experience, to include the labor and any associated classes, to qualify as an authorized provider under TRICARE.

The requirements for doulas selected under the demonstration were based on an analysis of over 150 doula training and certification bodies. The certification bodies selected for inclusion had a time-limited certification and were well-established with a wide-ranging footprint (*i.e.,* national or international); included classroom training and workshops in labor physiology and other childbirth topics; required doulas to have completed at least two deliveries prior to certification; required evaluations from health care professionals for services provided during labor support or a comprehensive examination; and had an established scope of practice, code of ethics, code of conduct, or similar by which the doula is required to agree to abide. Some of our requirements for CLDs may duplicate those under the required certification; this is due to differences in certification requirements for the five selected certification bodies and to ensure a minimum level of education and experience for all CLDs under this demonstration. DoD recognizes that there may be some doulas and doula certification bodies concerned they do not meet inclusion criteria. If DoD determines it is appropriate to move forward with permanent coverage of CLDs under the TRICARE Program at the conclusion of this demonstration, interested individuals and organizations will be invited to provide feedback during notice and comment rulemaking.

TRICARE will cover up to six total antepartum and postpartum CLD visits. One continuous labor support encounter per birth event will be authorized regardless of the location of the childbirth (hospital, birthing center, home delivery, etc.). The birthing parent must be at least 20 weeks pregnant to be eligible for services, and the maternity episode-of-care must be overseen by a TRICARE-authorized provider (that is, childbirth support services are ineligible for reimbursement if the delivery is performed or planned to be performed by other than a TRICARE-authorized provider; *e.g.,* a lay midwife, except in emergency circumstances). No additional reimbursement will be provided for travel to the delivery location or if the doula moves with the patient from an initial location (the home or birthing center) to another location (a hospital), for long or difficult deliveries, or for false labor. Doula services will be eligible whether the labor is completed via vaginal birth or C-section, and whether or not the labor results in a live birth (doula services are excluded for elective abortions not otherwise covered by TRICARE).

Childbirth support reimbursement under the demonstration is as follows:

- Antepartum/Postpartum visits (up to six total): The six authorized antepartum or postpartum visits will be reimbursed at a rate of $46.00 per visit (for Calendar Year (CY) 2021), wage adjusted and updated annually. These visits will be untimed and no more than one visit will be eligible for reimbursement per day.
- Continuous Labor Support: Continuous labor support will be reimbursed at a national rate of 15 times the rate of the antepartum/postpartum visit rate, or $690.00 for CY 2021, wage adjusted and updated annually.

CLDs will be reimbursed the lower of the billed charge or the rates listed above. A CLD who advertises their rate at a rate lower than the TRICARE reimbursement amount but bills TRICARE for the reimbursement rate listed above (*i.e.,* charges TRICARE beneficiaries more than they charge other clients) may be subject to the administrative remedies for fraud, waste, and abuse, pursuant to 32 CFR 199.9 and referral to the appropriate program integrity authority. Additional coding and reimbursement information will be published in the TRICARE manuals prior to the start of the demonstration, and may be updated periodically upon approval of the Director, DHA.

3. Breastfeeding Support, Lactation Consultants, and Lactation Counselors

The breastfeeding support portion of the demonstration creates two new classes of extra-medical providers: Certified lactation consultants and certified lactation counselors. Certified lactation consultants under the demonstration will have a current International Board of Lactation Consultant Examiners (IBLCE) certification as an International Board Certified Lactation Consultant or a current Academy of Lactation Policy and Practice (ALPP) certification as an Advanced Nurse Lactation Consultant or an Advanced Lactation Consultant. Certified lactation counselors must hold a current certification from ALPP as a Certified Lactation Counselor. Both classes of provider will be required to be at least 18-years-old; to maintain a current adult, child, and infant CPR certification; to be licensed or certified in the state in which they practice even if such a licensure or certification is optional; and to bill under an NPI. If DoD determines it is appropriate to move forward with permanent coverage of lactation consultants and/or lactation counselors under the TRICARE Program, interested individuals and organizations will be able to provide feedback on qualification and other requirements during notice and comment rulemaking.

The breastfeeding support benefit under this demonstration conforms with the requirements of the existing breastfeeding counseling benefit as found in the TRICARE Policy Manual, Chapter 8, Section 2.6, paragraph 4.3, which authorizes coverage of up to six outpatient breastfeeding/lactation counseling sessions per birth event using current procedural terminology (CPT) codes 99401 to 99404. Cost-

shares, copays, and deductibles do not apply to covered breastfeeding/lactation counseling services rendered on or after December 19, 2014. This demonstration adds coverage of group breastfeeding counseling, which may include prenatal breastfeeding education. Such services shall be included in the six total breastfeeding counseling visits currently authorized under the benefit.

Group lactation counseling/classes will be billed under CPT code 99411 Preventive Counseling, Group, 30 min, and 99412 Preventive Counseling, Group, 60 min. These codes will be paid at the TRICARE non-physician, non-facility CHAMPUS Maximum Allowable Charge (CMAC) rate ($17.80 and $22.24, respectively, for FY21). Individual lactation counseling sessions will be reimbursed at the non-physician, non-facility CMAC under the existing CPT codes 99401 through 99404.

C. Implementation Details

The DHA will publish additional details on implementation of the demonstration in the TRICARE manuals prior to start of the demonstration. Providers interested in participating in the demonstration should contact the appropriate TRICARE contractor for their area during this period. While interested providers are not required to be network providers to participate in the demonstration, all providers must meet the eligibility requirements under the demonstration to have their services cost-shared. Provider networks overseas will begin development prior to the start of the demonstration expansion. Beneficiaries do not need to enroll or otherwise sign up to participate in the demonstration, but must meet eligibility criteria for the demonstration (*e.g.,* must be at least 20 weeks pregnant for childbirth support services).

D. Beneficiary Survey

The NDAA–2021 mandated the Secretary administer a survey by January 1, 2022, and annually thereafter for the duration of the demonstration. The survey is required to gather information on:

(1) How many members of the Armed Forces or spouses of such members give birth while their spouse or birthing partner is unable to be present due to deployment, training, or other mission requirements; how many single members of the armed forces give birth alone; and how many members of the Armed Forces or spouses of such members use doula, lactation consultant, or lactation counselor support.

(2) The race, ethnicity, age, sex, relationship status, Armed Force, military occupation, and rank, as applicable, of each member surveyed.

(3) If individuals surveyed were members of the Armed Forces or the spouses of such members, or both.

(4) The length of advanced notice received by individuals surveyed that the member of the Armed Forces would be unable to be present during the birth; if applicable.

(5) Any resources or support that individuals surveyed found useful during the pregnancy and birth process, including doula, lactation consultant, and lactation counselor support.

The DoD intends to ask additional questions in the survey to aid in evaluation of the demonstration. Results of the survey will be reported to Congress.

E. Cost Assessment

The demonstration is anticipated to cost $51.16M in health care and administrative costs, with an additional $4.3M estimated for evaluation of the demonstration over the five-year period. Increased costs to the TRICARE Program for breastfeeding counseling are estimated at $7.05M, while $40.18M are estimated for the childbirth support benefit. The childbirth support benefit estimate includes a calculation for offsets from C-section reductions. There is substantial uncertainty surrounding the estimate, given that no commercial insurers and only a few Medicaid programs reimburse for childbirth support services. The estimate includes approximately $3.93M for administrative costs related to credentialing, billing, and contractor reporting requirements.

F. Demonstration Analysis

The DoD will evaluate the success of the demonstration project and report to Congress on the results annually. DoD intends to use an outside firm to assist in its analysis. In order to measure maternal and fetal outcomes, DoD will compare outcomes and use of services: (1) With historical data; (2) between those who choose not to use a service and those who do; and, (3) with nationwide statistics. The analysis will evaluate the childbirth support benefit by reviewing information obtained from claims data, such as C-section rates and use Pitocin, and comparing it to the same outcomes from before the demonstration started (pre/post-test), with beneficiaries who do not use the childbirth support benefit, and with national statistics. To evaluate the breastfeeding support benefit, the analysis will evaluate outcome measures (such as ear infections for infants) for beneficiaries receiving services provided from a lactation consultant/counselor compared to the same outcome for services from an otherwise-authorized TRICARE provider, and when compared to beneficiaries who choose not to use the breastfeeding counseling benefit. The analysis will also compare outcomes to historical data and nationwide statistics. Additionally, we will ask questions on the beneficiary survey to assist in evaluating the quality of care received. The effectiveness of the demonstration will be evaluated by the impact of the demonstration on outcomes, the availability of providers under the demonstration, and beneficiary satisfaction with the providers. Cost will be evaluated by reviewing the overall cost of the demonstration, but also by capturing cost-savings due to improvements in maternal and fetal outcomes (for example, the cost savings associated with avoiding C-sections).

Throughout the demonstration, we will evaluate the effectiveness of the qualification requirements for providers and the reimbursement methodology. We will also evaluate the administrative feasibility of continuing the demonstration and/or implementing permanent coverage under the TRICARE Program. Such feasibility analysis will include: the extent to which TRICARE's contractors are able to build networks, the extent to which TRICARE beneficiaries access the benefit, whether providers under the demonstration are able to file claims for services and otherwise comply with program requirements, the presence of any provider quality concerns, and the cost for TRICARE's contractors to maintain the benefit. The DoD will add, remove, or revise outcome measures under study as needed to ensure a robust evaluation of the demonstration.

Because the providers under this demonstration are not medical providers, but instead are support personnel who work outside the medical field, no clinical care will be provided as part of this demonstration. Neither doulas nor lactation consultants/counselors are qualified to provide clinical care, and both will be required to refer the beneficiary to a qualified medical professional if they identify a medical issue requiring a change to the patient's clinical care. DoD's evaluation will be limited to de-identified evaluation of claims records and survey responses. The ASD(HA) has determined that the demonstration is exempt from the requirements for human subjects research, pursuant to the authority provided by 45 CFR 46.104(d)(5) exempting demonstration

projects by Federal Departments that evaluate public benefit programs.

Dated: October 25, 2021.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2021–23583 Filed 10–28–21; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2021–SCC–0096]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Education Stabilization Fund—Elementary and Secondary School Emergency Relief Fund (ESSER I/ESSER II/ARP ESSER Fund) Recipient Data Collection Form

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 revision of a currently approved collection.

DATES: Interested persons are invited to submit comments on or before November 29, 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 Gloria Tanner, 202–453–5596.

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: Education Stabilization Fund—Elementary and Secondary School Emergency Relief Fund (ESSER I/ESSER II/ARP ESSER Fund) Recipient Data Collection Form.

OMB Control Number: 1810–0749.

Type of Review: A revision of a currently approved collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 14,652.

Total Estimated Number of Annual Burden Hours: 2,051,280.

Abstract: Under the current unprecedented national health emergency, the legislative and executive branches of government have come together to offer relief to those individuals and industries affected by the COVID–19 virus under the Coronavirus Aid, Relief, and Economic Security (CARES) Act (Pub. L. 116–136) authorized on March 27, 2020, and expanded through the Coronavirus Response and Relief Supplemental Appropriations (CRRSA) Act, and the American Rescue Plan (ARP) Act. The ESSER Fund awards grants to SEAs and for the purpose of providing local educational agencies (LEAs), including charter schools that are LEAs, as well as Outlying Areas, with emergency relief funds to address the impact that Novel Coronavirus Disease 2019 (COVID–19) has had, and continues to have, on elementary and secondary schools across the Nation.

This information collection requests approval for a revision to a previously approved collection that includes annual reporting requirements to comply with the requirements of the ESSER program and obtain information on how the funds were used by State and Local Education Agencies. In accordance with the Recipient's Funding Certification and Agreements executed by ESSER grantees, the Secretary may specify additional forms of reporting. This collection has 4 fewer grantee respondents than the originally approved version, as information reported from Outlying Areas will be obtained through a separate collection. The information collection also includes directed questions, in Attachment A, on which the Department is requesting public input.

Dated: October 26, 2021.

Juliana Pearson,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2021–23640 Filed 10–28–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Transitioning Gang-Involved Youth to Higher Education Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications (NIA) for fiscal year (FY) 2021 for the Transitioning Gang-Involved Youth to Higher Education Program, Assistance Listing Number 84.116Y. This notice relates to the approved information collection under OMB control number 1894–0006.

DATES: *Applications available:* October 29, 2021.

Deadline for transmittal of applications: November 29, 2021.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768), and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf.*

FOR FURTHER INFORMATION CONTACT: Jymece Seward, U.S. Department of Education, 400 Maryland Avenue SW, Room 2B159, Washington, DC 20202–4260. Telephone: (202) 453–6138. Email: *Jymece.Seward@ed.gov.*

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

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of this program is to provide gang-involved youth with postsecondary education opportunities that will lead to certification or credentials. Such programs can include apprenticeships or other workforce preparation programs that promote job readiness upon completion of the program, while simultaneously providing essential wrap-around services that include culturally competent social and emotional support.

Background: Recent research indicates that more than one million youth are estimated to be involved in some type of gang, crew, or other group.[1] Interviews with gang-involved youth who had ultimately enrolled in community colleges reported that low expectations and negative stereotypes were part of their schooling experience.[2] According to the research, gang-associated youth are 30 percent less likely to complete high school compared with their non-gang peers.[3] Accordingly, through this grant opportunity, the Department seeks to improve access to postsecondary education and outcomes for gang-involved youth.

The intent of this program is to support community colleges, in partnership with other organizations that are best prepared to provide the supports and services necessary, that will enable these youth, including youth with disabilities, to transition into postsecondary programs that will allow them to pursue a certificate, degree, or other credential. Community colleges serve as affordable, learning- and skills-based higher education providers, especially for non-traditional students.[4] In addition, community colleges have been innovative in partnering with community-based organizations that support the success of low-income students and students with family responsibilities, including improving access, persistence, and academic progress and employing strategies that more effectively link training to work opportunities and employment.[5]

Youth who are gang-involved may benefit from holistic support systems through which their schools provide culturally competent social and emotional support, their families are included in their educational efforts, and they receive employment and resources and support for accessing financial assistance.[6] Because prior research has suggested that stable employment can reduce criminal conduct, this program encourages applicants to collaborate with other organizations to build and support pathways to education and careers for gang-involved youth.[7]

Priorities: This notice contains one absolute priority and one competitive preference priority.

We are establishing these priorities for the FY 2021 grant competition and any subsequent year in which we make awards from the list of unfunded applications from this competition, in accordance with section 437(d)(1) of the General Education Provisions Act (GEPA), 20 U.S.C. 1232(d)(1).

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

This priority is:

Projects that propose partnerships between community colleges and public or private nonprofit organizations, community-based organizations (CBOs), industry partners, or other entities with a demonstrated record of working successfully with youth who are gang-involved to leverage services to support students in acquiring the knowledge, skills, and abilities to transition into an education beyond high school.

To be eligible for this program, community colleges must include the participation of their workforce or career services offices to assist with career placement services and developmental academic coursework for program participants. This may include working through their Workforce Development and Continuing Education divisions or other offices, as appropriate.

Competitive Preference Priority: This priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i), we award up to an additional 15 points to an application, depending on how well the application meets the priority. Applicants are not required to respond to the priority.

This priority is:

Creating a Positive, Inclusive, and Identity-safe Climate (up to 15 points).

Projects that are designed to improve the social, emotional, academic, and career development of youth who are gang-involved, by creating a positive, inclusive, and identity-safe climate through one or more of the following activities:

(1) Fostering a sense of belonging and inclusion for students who are gang-involved. (up to 5 points)

(2) Implementing evidence-based practices for advancing student success for students who are gang-involved. (up to 5 points)

(3) Providing high-quality professional development opportunities designed to reduce bias and build asset-based mindsets for faculty and staff on campus, to include programing for students, faculty, and staff that addresses actionable inclusion efforts with respect to racial, ethnic, cultural, linguistic, disability, age, and gender characteristics. (up to 5 points)

Definitions: We are establishing definitions for ''community-based organization'' and ''community college'' for the FY 2021 grant competition and any subsequent year in which we make awards from the list of unfunded applications from this competition, in accordance with section 437(d)(1) of GEPA. The Fund for the Improvement of Postsecondary Education (FIPSE) does not have specific programmatic definitions; we believe the definitions established here for ''community-based organization'' and ''community college'' best capture the intended purpose of this program. The definition of ''institution of higher education'' is from the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1001). All other definitions are from 34 CFR 77.1.

Community-based organization means a private nonprofit organization (which may include a faith-based organization), that is representative of a community or a significant segment of a community.

Community college means an institution that meets the definition in section 312(f) of the HEA (20 U.S.C. 1058(f)) or an institution of higher education that awards degrees and certificates, more than 50 percent of which are not bachelor's degrees (or an

[1] Pyrooz, D. and Sweeten, G. (2015). Gang Membership Between Ages 5 and 17 Years in the United States. *Journal of Adolescent Health,* 1–6.

[2] Gardenhire-Crooks, A., Collado, H., Martin, K., & Castro, A. (2010). *Terms of engagement: Men of color discuss their experiences in community college.* Oakland, CA: MDRC. Retrieved from: *http://files.eric.ed.gov/fulltext/ED508982.pdf.*

[3] Pyrooz, D.C. (2014). From Colors and Guns to Caps and Gowns? The effect of gang membership on educational attainment. *Journal of Research in Crime and Delinquency* 51(1), 56–87.

[4] Mintz, S. (March 2019). Community Colleges and the Future of Higher Education. Inside Higher Ed. *www.insidehighered.com/blogs/higher-ed-gamma/community-colleges-and-future-higher-education.*

[5] The Aspen Institute. 2021. Role of Community Colleges. *www.aspeninstitute.org/programs/workforce-strategies-initiative/role-community-college/.*

[6] Sharkey, J. (2015). How to Help Me Get Out of a Gang: Youth Recommendations to Family, School, Community, and Law Enforcement Systems. *Research Gate,* 64–100.

[7] Laub, J.H., and R.J. Sampson. 2001. Understanding desistance from crime. *Crime and Justice* 28: 1–69. Retrieved from *https://dash.harvard.edu/handle/1/3226958.*

equivalent) or master's, professional, or other advanced degrees.

Demonstrates a rationale means a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

Evidence-based means the proposed project component is supported by evidence that demonstrates a rationale.

Institution of higher education means (a) an educational institution in any State that—(1) admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate, or persons who meet the requirements of section 1091(d) of the HEA;

(2) is legally authorized within such State to provide a program of education beyond secondary education;

(3) provides an educational program for which the institution awards a bachelor's degree or provides not less than a 2-year program that is acceptable for full credit toward such a degree, or awards a degree that is acceptable for admission to a graduate or professional degree program, subject to review and approval by the Secretary;

(4) is a public or other nonprofit institution; and

(5) is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted pre-accreditation status by such an agency or association that has been recognized by the Secretary for the granting of pre-accreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

(b) The term ''institution of higher education'' also includes—

(1) Any school that provides not less than a 1-year program of training to prepare students for gainful employment in a recognized occupation and that meets the provision of paragraphs (a)(1), (2), (4), and (5); and

(2) A public or nonprofit private educational institution in any State that, in lieu of the requirement in paragraph (a)(1), admits as regular students individuals—

(A) Who are beyond the age of compulsory school attendance in the State in which the institution is located; or

(B) Who will be dually or concurrently enrolled in the institution and a secondary school.

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

Note: In developing logic models, applicants may want to use resources such as the Regional Educational Laboratory Program's (REL Pacific) Education Logic Model Application, available at *https://ies.ed.gov/ncee/edlabs/regions/pacific/elm.asp.* Other sources include: *https://ies.ed.gov/ncee/edlabs/regions/pacific/pdf/REL_2014025.pdf, https://ies.ed.gov/ncee/edlabs/regions/pacific/pdf/REL_2014007.pdf,* and *https://ies.ed.gov/ncee/edlabs/regions/northeast/pdf/REL_2015057.pdf.*

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers).

Relevant outcome means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities, selection criteria, definitions, and other requirements. Section 437(d)(1) of GEPA, however, allows the Secretary to exempt from rulemaking requirements regulations governing the first grant competition under a new or substantially revised program authority. This is the first grant competition for this program, and therefore qualifies for this exemption. In order to ensure timely grant awards, the Secretary has decided to forgo public comment on the priorities, requirements, and definitions, under section 437(d)(1) of GEPA.

Program Authority: 20 U.S.C. 1138–1138d; Departments of Labor, Health and Human Services, and Education and Related Agencies Appropriations Act, 2021, H.R. 7614, 116th Congress (2020); the explanatory statement accompanying H.R. 133 (Pub. L. 116–260).

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in the Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended in 2 CFR part 3474.

II. Award Information

Type of Award: Discretionary grant.

Estimated Available Funds: $990,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Maximum Award: $990,000 for a single budget period of 36 months.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* Community colleges (as defined in this notice).

2. a. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

b. *Supplement-Not-Supplant:* This competition involves supplement-not-supplant funding requirements. This program uses the waiver authority of section 437(d)(1) of GEPA to establish this as a supplement-not-supplant program. Grant funds must be used so that they supplement and, to the extent practical, increase the funds that would otherwise be available for the activities to be carried out under the grant and in no case supplant those funds.

c. *Indirect Cost Rate Information:* This program uses the waiver authority of section 437(d)(1) of GEPA to limit a grantee's indirect cost reimbursement to eight percent (8%) of a modified total direct cost base. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see *www2.ed.gov/about/offices/list/ocfo/intro.html.*

d. *Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform

to Cost Principles described in 2 CFR part 200 subpart E of the Uniform Guidance.

3. *Subgrantees:* A grantee under this competition may award subgrants to entities to directly carry out project activities described in its application.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768), and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf,* which contains requirements and information on how to submit an application.

2. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. However, under 34 CFR 79(a), we waived Intergovernmental Review in order to make awards by December 31, 2021.

3. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

4. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 50 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger, and no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract. However, the recommended page limit does apply to all of the application narrative.

Note: The Budget Information-Non-Construction Programs Form (ED 524) Sections A–C are not the same as the narrative response to the Budget section of the selection criteria.

V. Application Review Information

1. *Selection Criteria:* The following selection criteria for this program are from 34 CFR 75.210.

The points assigned to each criterion are indicated in the parentheses next to the criterion. An applicant may earn up to a total of 100 points based on the selection criteria and up to 15 additional points under the competitive preference priority, for a total score of up to 115 points. All applications will be evaluated based on the selection criteria as follows:

(a) *Quality of the project design.* (Maximum 30 points) The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the proposed project demonstrates a rationale (up to 10 points).

(ii) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs (up to 10 points).

(iii) The extent to which the proposed project will establish linkages with other appropriate agencies and organizations providing services to the target population (up to 10 points).

(b) *Quality of project services.* (Maximum 30 points) The Secretary considers the quality of the services to be provided by the proposed project.

(i) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (up to 5 points).

(ii) In addition, the Secretary considers the following factors:

(A) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services (up to 10 points).

(B) The likely impact of the services to be provided by the proposed project on the intended recipients of those services (up to 10 points).

(C) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of project services (up to 5 points).

(c) *Quality of project personnel.* (Maximum 20 points) The Secretary considers the quality of the personnel who will carry out the proposed project.

(i) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (up to 7 points).

(ii) In addition, the Secretary considers the following factors:

(A) The qualifications, including relevant training and experience, of the project director or principal investigator (up to 7 points).

(B) The qualifications, including relevant training and experience, of key project personnel (up to 6 points).

(d) *Quality of the management plan.* (Maximum 10 points) The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks (up to 5 points).

(ii) How the applicant will ensure that a diversity of perspectives is brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate (up to 5 points).

(e) *Quality of the project evaluation.* (Maximum 10 points) The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable (up to 5 points).

(ii) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project (up to 5 points).

2. *Review and Selection Process:* Potential applicants are reminded that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the

applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

A panel of up to three non-Federal reviewers will review and score each application in accordance with the selection criteria and the competitive preference priorities. A rank order funding slate will be made from this review. Awards will be made in rank order according to the average score received from the peer review.

Tie-breaker: If there is more than one application with the same score and insufficient funds to fund all the applications with the same ranking, the applicant with the highest percentage of students who are Pell grant recipients will be funded.

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

5. *In General:* In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with—

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements, please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

5. *Performance Measures:* Under the Government Performance and Results Act of 1993 and 34 CFR 75.110, the following three performance measures will be used in assessing the performance of the Transitioning Gang-Involved Youth to Higher Education program:

1. Number of project participants enrolled in the postsecondary education program.

2. Number of project participants earning a certificate, degree, or other credential.

3. Number of project participants active in paid internships, apprenticeships, or other work experiences.

These measures constitute the Department's indicators of success for this program. Consequently, we advise an applicant for an award under this program to give careful consideration to the operationalization of the measures in conceptualizing the approach and evaluation for its proposed project.

If funded, you will be required to collect and report data in your project's annual performance report (34 CFR 75.590).

VII. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

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

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

Michelle Asha Cooper,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 2021–23788 Filed 10–28–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards: Center of Educational Excellence for Black Teachers (CEEBT) Program at Historically Black Colleges and Universities (HBCU)

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice inviting applications (NIA).

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for fiscal year (FY) 2021 for the Center of Educational Excellence for Black Teachers Program at Historically Black Colleges and Universities (CEEBT program), Assistance Listing Number (ALN) 84.116V. This notice relates to the approved information collection under OMB control number 1894–0006.

DATES:

Applications available: October 29, 2021.

Deadline for transmittal of applications: November 29, 2021.

ADDRESSES: For the addresses for obtaining and submitting application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768), and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf.*

FOR FURTHER INFORMATION CONTACT: Ms. Wendy Lawrence, U.S. Department of Education, 400 Maryland Avenue SW, Room 2C201, Washington, DC 20202–4260. Telephone: (202) 453–7821. Email: *Wendy.Lawrence@ed.gov.*

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

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The CEEBT program is designed to support a model center of educational excellence at one or more HBCUs with a demonstrable record in graduating highly skilled and well-prepared Black teachers.

Background: In alignment with the Department's strategic goal for a more diverse educator workforce, the CEEBT program is designed to support one or more model centers of educational excellence at HBCUs to help increase the number of well-prepared Black teachers who teach in our Nation's elementary and secondary schools. This program focuses on the various aspects of the teacher preparation pipeline, including the recruitment, preparation, support, and placement of Black teachers.

Increasing educator diversity is critical to our agency's mission of promoting educational excellence and ensuring equal access for all students to a diverse and well-qualified educator workforce. Unfortunately, the current teacher workforce does not reflect the demographics of the Nation's students. In 2017–18, the most recent year for which data were available, 79 percent of public-school educators were White, while 21 percent were teachers of color.[1] Prior research has estimated Black male teachers represent only 2 percent of the teaching workforce.[2] These figures stand in marked contrast with the student population, which in fall 2018 was 47 percent White, 15 percent Black, and 27 percent Hispanic.[3] Research has demonstrated that teachers of color, which includes Black teachers, can be positive role models for all students in breaking down negative stereotypes and preparing students to live and work in a multiracial society.[4] Thus, supporting Black and other teachers of color is a critical strategy for schools to support educational equity for students, particularly Black students and other students of color.

While a diverse educator workforce benefits all students, some research has suggested that it may be particularly important for Black students to share the classroom with Black educators. When they do, higher levels of student achievement,[5] more rigorous course-taking,[6] increased referrals to gifted and talented programs,[7] and reductions in exclusionary discipline,[8] have all been noted. Similarly, research has shown that Black students who are taught by Black teachers are more likely to graduate from high school and to enroll in college compared to their peers who

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[1] *nces.ed.gov/programs/digest/d19/tables/dt19_209.10.asp?current=yes.*

[2] *www2.ed.gov/rschstat/eval/highered/racial-diversity/state-racial-diversity-workforce.pdf.*

[3] *nces.ed.gov/programs/digest/d20/tables/dt20_203.70.asp?current=yes.*

[4] *www2.ed.gov/rschstat/eval/highered/racial-diversity/state-racial-diversity-workforce.pdf.*

[5] Egalite, Anna, Brian Kisida, and Marcus A. Winters. ''Representation in the Classroom: The Effect of Own-race Teachers on Student Achievement,'' Economics of Education Review, 45 (April 2015), 44–52.

[6] Grissom, Jason, Sarah Kabourek, and Jenna Kramer. ''Exposure to Same-race or Same-ethnicity Teachers and Advanced Math Course-taking in High School: Evidence from a Diverse Urban District,'' Teachers College Record, 122 (2020), 1–42.

[7] Egalite, Anna, Brian Kisida, and Marcus A. Winters. ''Representation in the Classroom: The Effect of Own-race Teachers on Student Achievement,'' Economics of Education Review, 45 (April 2015), 44–52.

[8] Grissom, Kabourek, and Kramer, 1–42; Constance, Lindsay, and Cassandra M. D. Hart. ''Exposure to Same-race Teachers and Student Disciplinary Outcomes for Black Students in North Carolina,'' Educational Evaluation and Policy Analysis, 39 (2017), 485–510.

are taught by non-Black teachers.[9] Therefore, by supporting teachers of color, specifically Black teachers, through this grant, the Department seeks to address one of the root causes of institutional barriers to equity in the academic environment.[10]

Accordingly, this program encourages HBCUs to develop and enhance a center of educational excellence that will implement outreach, recruitment, preparation, and support of Black teachers in subject areas that are of critical need in schools (*e.g.,* math, science, special education, multilingual education, career and technical education).

HBCUs are positioned to enhance and develop high-quality programs that improve the preparation, support, and ultimately the retention of Black teachers in critical shortage subject areas. This program is a comprehensive approach to support multiple levels of the educational pipeline leading to educational success.

Priorities: This notice contains one absolute priority and three competitive preference priorities.

We are establishing these priorities for the FY 2021 grant competition and any subsequent year in which we make awards from the list of unfunded applications from this competition, in accordance with section 437(d)(1) of the General Education Provisions Act (GEPA), 20 U.S.C. 1232(d)(1).

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

This priority is:

Projects that are evidence-based comprehensive teacher preparation programs (including extensive clinical experience).

To meet this priority, the applicant must describe its record in graduating highly skilled and well-prepared Black teachers. The applicant must also address how it will prepare teacher candidates to—

(a) Create safe, healthy, inclusive, asset-based (*i.e.,* focusing on students' strengths), and productive classroom environments designed to reduce bias, and increase engagement and belonging;

(b) Integrate universal design for learning principles in pedagogical practices and classroom features;

(c) Design and deliver instruction in ways that are engaging and provide students with opportunities to think critically and solve complex problems, apply learning in authentic and real-world settings, communicate and collaborate effectively, and develop academic mindsets, including through project-based, work-based, or other experiential learning opportunities;

(d) Address inequities and bias and develop racially, ethnically, culturally, and linguistically inclusive pedagogy; and

(e) Build meaningful and trusting relationships with students' families to support in-home, community-based, and in-school learning.

Competitive Preference Priorities: These priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award up to an additional 20 points to an application, depending on how well the application meets these priorities. An applicant may address one, two, or all three competitive preference priorities. The point value for each priority is in parenthesis.

These priorities are:

Competitive Preference Priority 1—Projects that are Designed to Increase the Number of Well-prepared Black Male Teachers (up to 10 points).

Projects that are designed to increase the number of well-prepared Black male teachers who teach in high-need school districts, in a manner permissible by law.

Competitive Preference Priority 2—Increasing the Number of Teachers with Full Certification in a Teacher Shortage Area (up to 5 points).

Projects that are designed to prepare, support, and place fully certified teachers in a teacher shortage area.

Note: For assistance in identifying ''teacher shortage area,'' applicants may refer to the official list of teacher shortage areas (TSA) searchable by State and academic subject at *https://tsa.ed.gov.* In addition, a summary report of TSAs is available at *www2.ed.gov/about/offices/list/ope/pol/bteachershortageareasreport201718.pdf.*

Competitive Preference Priority 3—Increasing Postsecondary Education Access for Undergraduate Students Seeking To Become Teachers (up to 5 points).

Projects that are designed to support the development and implementation of comprehensive teacher preparation programs that integrate multiple services or initiatives across academic and student affairs, such as academic advising, counseling, stipends, childcare, structured/guided pathways, career services, or student financial aid, with the goal of increasing program completion and credential attainment.

Definitions: The following definitions are from 34 CFR part 77.1.

Demonstrates a rationale means a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

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

Note: In developing logic models, applicants may want to use resources such as the Regional Educational Laboratory Program's (REL Pacific) Education Logic Model Application, available at *https://ies.ed.gov/ncee/edlabs/regions/pacific/elm.asp.* Other sources include: *https://ies.ed.gov/ncee/edlabs/regions/pacific/pdf/REL_2014025.pdf, https://ies.ed.gov/ncee/edlabs/regions/pacific/pdf/REL_2014007.pdf,* and *https://ies.ed.gov/ncee/edlabs/regions/northeast/pdf/REL_2015057.pdf.*

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers).

Relevant outcome means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities, selection criteria, definitions, and other requirements. Section 437(d)(1) of GEPA, however, allows the Secretary to exempt from rulemaking requirements regulations governing the first grant competition under a new or substantially revised program authority. This is the first grant competition for this program, and therefore qualifies for this exemption. To ensure timely grant awards, the Secretary has decided to forgo public comment on the priorities and requirements under section 437(d)(1) of GEPA.

Program Authority: 20 U.S.C. 1138–1138d; Departments of Labor, Health and Human Services, and Education and Related Agencies Appropriations Act, 2021, H.R. 7614, 116th Congress (2020); the explanatory statement

[9] *www.nber.org/system/files/working_papers/w25254/w25254.pdf.*

[10] *www2.ed.gov/rschstat/eval/highered/racial-diversity/state-racial-diversity-workforce.pdf.*

accompanying H.R. 133 (Pub. L. 116–260).

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws and Supreme Court precedent.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474.

II. Award Information

Type of Award: Discretionary grant.

Estimated Available Funds: $1,980,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Maximum Award: Up to $1,980,000 for 36 months.

Note: The maximum award is based on a 3-year budget period. Applicants will need to prepare a multiyear budget request for up to 3 years.

Estimated Number of Awards: Up to 2.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* To be eligible to receive a grant under this program, an institution must—

(a) Satisfy section 322(2) of the Higher Education Act of 1965, as amended (HEA); and

(b) Have a State recognized teacher preparation program.

2. a. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

b. *Supplement-Not-Supplant:* This competition involves supplement-not-supplant funding requirements, under the waiver authority of section 437(d)(1) of GEPA. Grant funds must be used so that they supplement and, to the extent practical, increase the funds that would otherwise be available for the activities to be carried out under this grant.

c. *Indirect Cost Rate Information:* This program uses the waiver authority of section 437(d)(1) of GEPA to limit a grantee's indirect cost reimbursement to eight percent (8%) of a modified total direct cost base. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see *www.ed.gov/about/offices/list/ocfo/intro.html.*

d. *Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to Cost Principles described in 2 CFR part 200 subpart E of the Uniform Guidance.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768), and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf,* which contain requirements and information on how to submit an application.

2. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. However, under 34 CFR 79.8(a), we waive intergovernmental review in order to make awards by December 31, 2021.

3. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

4. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 50 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, except titles, headings, footnotes, quotations, references, and captions.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract. However, the recommended page limit does apply to all the application narrative.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210. The points assigned to each criterion are indicated in the parentheses next to the criterion. An applicant may earn up to a total of 100 points based on the selection criteria and up to 20 additional points under the competitive preference priorities, for a total score of up to 120 points. All applications will be evaluated based on the selection criteria as follows:

(a) *Quality of the Project Design.* (Maximum 50 points)

The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(1) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards for students. (Up to 10 points)

(2) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice. (Up to 5 points)

(3) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable. (Up to 5 points)

(4) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs. (Up to 10 points)

(5) The extent to which the proposed project demonstrates a rationale (as defined in this notice). (Up to 10 points)

(6) The extent to which the design for implementing and evaluating the proposed project will result in information to guide possible replication of project activities or strategies, including information about the effectiveness of the approach or strategies employed by the project. (Up to 10 points)

(b) *Significance.* (Maximum 20 points)

The Secretary considers the significance of the proposed project. In determining the significance of the proposed project, the Secretary considers the following factors:

(1) The likelihood that the proposed project will result in a system change or improvement. (Up to 10 points)

(2) The extent to which the results of the proposed project are to be disseminated in ways that will enable others to use the information or strategies. (Up to 10 points)

(c) *Quality of the Project Services.* (Maximum 15 points)

The Secretary considers the quality of the services to be provided by the proposed project. In determining the quality of the services to be provided by the proposed project:

(1) The Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (Up to 5 points)

(2) In addition, the Secretary considers the following factors:

(i) The likely impact of the services to be provided by the proposed project on the intended recipients of those services. (Up to 5 points)

(ii) The extent to which the services to be provided by the proposed project involves the collaboration of appropriate partners for maximizing the effectiveness of project services. (Up to 5 points)

(d) *Quality of the Management Plan.* (Maximum 5 points)

The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(e) *Quality of the Project Evaluation.* (Maximum 10 points)

The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors:

(1) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings. (Up to 5 points)

(2) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes. (Up to 5 points)

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this competition, the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

5. *In General:* In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with—

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the

terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

5. *Performance Measures:* Under the Government Performance and Results Act of 1993, the Department will use the following performance measures to evaluate the success of the CEEBT grants:

(a) The number of teacher candidates who complete the preparation program.

(b) The number of teacher candidates who complete the preparation program who are Black males.

(c) The number of teacher candidates served by the funded program who become fully certified and are placed as teachers of record.

(d) The number of teacher candidates served by the funded program who are Black males and who become fully certified and are placed as teachers of record.

VII. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

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

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

Michelle Asha Cooper,

Acting Assistant Secretary for the Office of Postsecondary Education.

[FR Doc. 2021–23787 Filed 10–28–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

EERE–2013–BT–NOC–0005]

Appliance Standards and Rulemaking Federal Advisory Committee: Notice of Open Meeting

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

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC). The Federal Advisory Committee Act, requires that agencies publish notice of an advisory committee meeting in the **Federal Register**.

DATES: DOE will hold a webinar on December 14, 2021 from 1 p.m. to 5 p.m. See the Public Participation section of this notice for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

FOR FURTHER INFORMATION CONTACT: Mr. John Cymbalsky, ASRAC Designated Federal Officer, U.S. Department of Energy, Building Technologies Program, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121, Telephone: (202) 287–1692. Email: *asrac@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: The primary focus of this meeting will be the discussion and prioritization of topic areas that ASRAC can assist the Appliance and Equipment Standards Program with. DOE plans to hold this meeting virtually via webinar to gather advice and recommendations to the Department on the development of standards and test procedures for residential appliances and commercial equipment. (The final agenda will be available for public viewing at *https://www.regulations.gov/docket?D=EERE-2013-BT-NOC-0005.*)

Public Participation

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://www.energy.gov/eere/buildings/appliance-standards-and-rulemaking-federal-advisory-committee.*

Participants are responsible for ensuring their systems are compatible with the webinar software. If you plan to attend the webinar, please notify the ASRAC staff at *asrac@ee.doe.gov.*

Please note that foreign nationals participating in the webinar are subject to advance security screening procedures which require advance notice prior to attendance at the webinar. If a foreign national wishes to participate in the webinar, please inform DOE as soon as possible by contacting Ms. Regina Washington at (202) 586–1214 or by email: *Regina.Washington@ee.doe.gov* so that the necessary procedures can be completed.

Conduct of Webinar

ASRAC's Designated Federal Officer will preside over the webinar and may also use a professional facilitator to aid discussion. The webinar 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.

A transcript of the webinar will be included on DOE's website: *https://energy.gov/eere/buildings/appliance-standards-and-rulemaking-federal-advisory-committee.*

Signing Authority

This document of the Department of Energy was signed on October 26, 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 October 26, 2021.

Treena V. Garrett,

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

[FR Doc. 2021–23597 Filed 10–28–21; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Proposed Agency Information Collection Extension

AGENCY: Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE), pursuant to the Paperwork Reduction Act of 1995, intends to extend for three years an information collection request with the Office of Management and Budget (OMB).

DATES: Comments regarding this proposed information collection must be received on or before December 28, 2021. If you anticipate difficulty in submitting comments within that period, contact the person listed in **ADDRESSES** as soon as possible.

ADDRESSES: Written comments may be sent: (1) By email to *LPO.PaperworkReductionAct.Comments@hq.doe.gov;* or (2) to Knight Elsberry, U.S. Department of Energy, LPO–70, Room 4B–122, 1000 Independence Avenue SW, Washington, DC 20585 with a mandatory copy by email to *LPO.PaperworkReduction Act.Comments@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Knight Elsberry, *LPO.PaperworkReduction Act.Comments@hq.doe.gov,* (202) 287–6646.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the extended collection of information is necessary for the proper performance of the functions of the agency; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

This information collection request contains: (1) *OMB No.:* 1910–5134; (2) *Information Collection Request Title:* DOE Loan Guarantees for Energy Projects; (3) *Type of Request:* Extension; (4) *Purpose:* This information collection package covers collection of information necessary to evaluate applications for loan guarantees submitted under Title XVII of the Energy Policy Act of 2005, as amended, 16516 (Title XVII), 42 U.S.C. 16511, and under Section 2602(c) of the Energy Policy Act of 1992, as amended (TELGP), 25 U.S.C. 3502(c). Applications for loan guarantees submitted to DOE in response to a solicitation under Title XVII or TELGP must contain certain information. This information will be used to analyze whether a project is eligible for a loan guarantee and to evaluate the application under criteria specified in the final regulations implementing Title XVII, located at 10 CFR part 609, and adopted by DOE for purposes of TELGP, with certain immaterial modifications and omissions. The collection of this information is critical to ensure that the government has sufficient information to determine whether applicants meet the eligibility requirements to qualify for a DOE loan guarantee under Title XVII or TELGP, as the case may be, and to provide DOE with sufficient information to evaluate an applicant's project using the criteria specified in 10 CFR part 609 (for Title XVII applications) or the applicable solicitation (for TELGP applications); (5) *Annual Estimated Number of Respondents:* 92; (6) *Annual Estimated Number of Total Responses:* 92; (7) *Annual Estimated Number of Burden Hours:* 12,190; (8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $2,490,900.

Authority: Title XVII and TELGP authorize the collection of information.

Signing Authority: This document of the Department of Energy was signed on October 25, 2021, by Jigar Shah, Executive Director, Loan Programs Office, 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 October 25, 2021.

Treena V. Garrett,

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

[FR Doc. 2021–23533 Filed 10–28–21; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Stewardship of Software for Scientific and High-Performance Computing

AGENCY: Office of Advanced Scientific Computing Research (ASCR), Office of Science, Department of Energy.

ACTION: Request for information.

SUMMARY: The Office of Science (SC) in the Department of Energy (DOE) invites interested parties to provide input relevant to the stewardship of the software ecosystem for scientific and high-performance computing.

DATES: Written comments and information are requested on or before December 13, 2021.

ADDRESSES: DOE is using the *www.regulations.gov* system for the submission and posting of public comments in this proceeding. All comments in response to this RFI are therefore to be submitted electronically through *www.regulations.gov,* via the web form accessed by following the ''Submit a Formal Comment'' link near the top right of the **Federal Register** web page for this document.

FOR FURTHER INFORMATION CONTACT: Requests for additional information may be submitted to *SS-RFI@science.doe.gov* or to Dr. Hal Finkel at (301) 903–1304.

SUPPLEMENTARY INFORMATION:

Background

A complex ecosystem of software, covering a broad spectrum from *end-user* scientific software through middleware and system software, has become a keystone capability for science and engineering. The continued advancement of this ecosystem is being driven by many factors, including but not limited to, increasing needs for

realism and precision, increasing sophistication of scientific techniques, rapid and diverse evolution of high-performance computing and storage hardware, the obligations to protect private information and ensure the integrity of scientific results, and the requirements associated with the processing of unprecedently-large quantities of data. Meeting the future needs of both ASCR's research program and the computational-science performed in service of the nation's scientific enterprise depends on leveraging a sophisticated, highly interconnected, professionally developed software ecosystem resulting from substantial past investments. Through the efforts of a large community of scientists, engineers, and software professionals, that ecosystem continues to evolve due to advances in scientific methods, advances in computing technology, advances in artificial intelligence, and advances in software-development best practices.

The Exascale Computing Project (ECP),[1] in implementing the priorities of the National Strategic Computing Initiative (NSCI), has created a software ecosystem enabling scientific computing to take advantage of the next-generation supercomputing hardware being deployed across the DOE National Laboratory complex. While the development priorities of all ECP-developed software have been heavily influenced by the needs of ECP's application projects, ASCR anticipates that, with appropriate stewardship, the ECP-developed software stack[2] will be useful across the national scientific- and high-performance-computing user communities on systems large and small. ECP-developed software and other ASCR-funded software contributes significantly to the overall ecosystem for scientific and high-performance computing, which also includes additional capabilities for machine learning, workflow orchestration, data management and analysis, and high-throughput computing. Critically, current and future research and development addressing DOE SC's mission priorities builds on software within this ecosystem, both from ECP and other sources. ASCR's Advanced Scientific Computing Advisory Committee (ASCAC) formed a subcommittee in 2018 to identify the key elements of ECP that need to be transitioned into ASCR's research program or other new SC/ASCR initiatives after the end of the project to address opportunities and challenges for future high-performance-computing capabilities.[3] ASCAC's report, in response to this charge, *Transitioning ASCR after ECP,*[4] states:

> We recommend that ASCR build a shared software stewardship program to leverage and build on the ECP developed ecosystem to develop, curate, harden, and distribute software essential for effective use of HPC systems. ASCR should collaborate with other DOE offices and select outside entities to support development of key applications, especially those which continue to defy attempts to address them at the exascale level of computing performance and problems involving edge computing. We recommend that the ECP collaboration models be extended as appropriate to hardware and independent software vendors to engage them early and substantively in new directions and that similar collaboration with university groups should be explored.

ASCR seeks information on critical software dependencies, development-practice requirements, and other factors relevant to the development of a software stewardship model suitable for sustaining the software ecosystem for scientific and high-performance computing.

Potential Scope: Scientific software stewardship is multi-faceted, potentially including, but not limited to:

- *Training:* Providing training on software-development best practices and the use of core software.
- *Workforce support:* Providing outreach and support activities to build and maintain a diverse, skilled workforce with opportunities for professional recognition and career advancement.
- *Infrastructure:* Providing infrastructure for software packaging, hosting, testing, and other common capabilities.
- *Curation:* Establishing governance processes and standards to enable resource allocation in the most-effective manner balancing stability with the need to satisfy evolving requirements.
- *Maintaining situational awareness:* Defining, publishing, and communicating understandable information about relevant software and its dependencies; collecting information from users and deployment requirements from facilities.
- *Shared engineering resources:* Providing software-engineering resources to assist with maintenance activities of key projects, including triaging problems from testing and adjusting for new compilers; system-software and platform versions; and changing package requirements.
- *Project support:* Providing support for the continued development of key projects, including enhancing them to function efficiently on new hardware platforms; take advantage of emerging hardware and software technologies; comply with best practices; and otherwise provide high priority features desired by other users.

Respondents of Interest: We are particularly interested in responses from researchers, innovators, and entrepreneurs, including individuals from groups historically underrepresented in Science, Technology, Engineering, and Mathematics (STEM)[5] or from underserved communities;[6] incubators and accelerators; investors and funders; businesses of all sizes; institutions of higher education; DOE National Laboratories and other agencies' federally-funded research and development centers (FFRDCs);[7] other federal agencies; non-profit organizations, professional societies, and R&D consortia; and state, local, and

[1] For more information on the Exascale Computing Project, see *www.exascaleproject.org/.*

[2] The Extreme-scale Scientific Software Stack (E4S) integrates and packages nearly all ECP-developed software technology, see *https://e4s-project.github.io/.*

[3] ASCAC charge letter dated September 6, 2018. Available from, *https://science.osti.gov/ascr/ascac/Reports.*

[4] *Transitioning ASCR after ECP,* Report to the DOE Office of Science, Advanced Scientific Computing Research Program. Advanced Scientific Computing Advisory Committee. October 2020. Available from, *https://science.osti.gov/ascr/ascac/Reports.*

[5] According to the National Science Foundation's 2019 report titled, ''Women, Minorities and Persons with Disabilities in Science and Engineering'', women, persons with disabilities, and underrepresented minority groups—blacks or African Americans, Hispanics or Latinos, and American Indians or Alaska Natives—are vastly underrepresented in STEM (science, technology, engineering, and math) fields. That is, their representation in STEM education and STEM employment is smaller than their representation in the U.S. population: *https://ncses.nsf.gov/pubs/nsf19304/digest/about-this-report;* The Computing Research Association's Taulbee Survey, *https://cra.org/resources/taulbee-survey/,* specifically confirms underrepresentation of these same minority groups within computer-science research.

[6] The term ''underserved communities'' refers to populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life, as exemplified by those listed in the definition of ''equity.'' E.O. 13985. For purposes of this RFI, as applicable to geographic communities, applicants can refer to economically distressed communities identified by the Internal Revenue Service as Qualified Opportunity Zones; communities identified as disadvantaged or underserved communities by their respective States; communities identified on the Index of Deep Disadvantage referenced at *https://news.umich.edu/new-index-ranks-americas-100-most-disadvantaged-communities/,* and communities that otherwise meet the definition of ''underserved communities'' stated previously.

[7] An authoritative list of all Federally Funded Research and Development Centers (FFRDCs) may be found at *https://www.nsf.gov/statistics/ffrdclist/*.

tribal governments. Other respondents with relevant insights are welcome to respond. When responding to this RFI, please begin by describing how you, or your organization, are involved with activities that involve, or benefit from, the ecosystem of scientific and high-performance-computing software.

The information received in response to this RFI will inform, and be considered by, the Office of Science in program planning and development. Please be aware that this RFI *is not* a Funding Opportunity Announcement, a Request for Proposals, or other form of solicitation, or bid of DOE to fund potential research, development, planning, centers, or other activity.

Request for Responses

ASCR is specifically interested in receiving input pertaining to any of the following topics and questions. These categories of questions are arranged such that the questions near the beginning of the numbered list focus on requirements specific to individual respondents, and questions near the end of the list focus on requirements for the overall stewardship effort. Please be as specific as possible in your response.

(1) Software dependencies and requirements for scientific application development and/or research in computer science and applied mathematics relevant to DOE's mission priorities:

What software packages and standardized languages or Application Programming Interfaces (APIs) are current or likely future dependencies for your relevant research and development activities? What key capabilities are provided by these software packages? What key capabilities, which are not already present, do you anticipate requiring within the foreseeable future? Over what timeframe can you anticipate these requirements with high confidence? What are the most-significant foreseeable risks associated with these dependencies and what are your preferred mitigation strategies? When responding to these questions, please describe the scope of the relevant research and development activities motivating the response.

(2) Practices related to the security and integrity of software and data:

What strategies and technology do you employ, or intend to employ in the foreseeable future, to ensure the security and integrity of your software and its associated provenance metadata? What capabilities do you provide, or intend to provide in the foreseeable future, to assist users of your software with ensuring scientific reproducibility, recording the provenance of their work products, securing their information, protecting the privacy of others, and maintaining the integrity of their results?

(3) Infrastructure requirements for software development for scientific and high-performance computing:

What infrastructure requirements do you have in order to productively develop state-of-the-art software for scientific and high-performance computing? These requirements might include access to testbed hardware, testing allocations on larger-scale resources, hosting for source-code repositories, documentation, and other collaboration tools. What are the key capabilities provided by this infrastructure that enables it to meet your needs? What key capabilities, which are not already present, do you anticipate requiring within the foreseeable future? Over what timeframe can you anticipate these requirements with high confidence? What are the most-significant foreseeable risks associated with this infrastructure and what are your preferred mitigation strategies? When responding to these questions, please describe the scope of the relevant research and development activities motivating the response.

(4) Developing and maintaining community software:

How much additional effort is needed to develop and maintain software packages for use by the wider community above the effort needed to develop and maintain software packages solely for use in specific research projects or for internal use? What tasks are the largest contributors to that additional effort? What are the largest non-monetary impediments to performing this additional work? How is any such additional effort currently funded? How does that funding compare to a level of funding needed to maximize impact?

(5) Challenges in building a diverse workforce and maintaining an inclusive professional environment:

What challenges do you face in recruiting and retaining talented professionals to develop software for scientific and high-performance computing? What additional challenges exist in recruiting and retaining talented professionals from groups historically underrepresented in STEM and/or individuals from underserved communities? What challenges exist in maintaining inclusivity and equity [8] in the development community for scientific and high-performance-computing software? What successful strategies have you employed to help overcome these challenges? What opportunities for professional recognition and career advancement exist for those engaged in developing scientific and high-performance-computing software?

(6) Requirements, barriers, and challenges to technology transfer, and building communities around software projects, including forming consortia and other non-profit organizations:

ASCR recognizes that successful software for scientific and high-performance computing often has many stakeholders, including academic research activities, research laboratories, and industry. Moreover, while DOE has provided funding for the development of a significant number of foundational software packages within the modern software ecosystem for scientific and high-performance computing, as the complexity of the software ecosystem continues to increase, and number of stakeholders has grown, ASCR seeks to understand how it might encourage sustainable, resilient, and diversified funding and development models for the already-successful software within the ecosystem. Such models include, depending on circumstances that ASCR seeks to better understand, both the private sector and non-profit organizations. Non-profit organizations include both charitable organizations (*e.g.,* those with 501(c)(3) status) and R&D consortia (*e.g.,* those with 501(c)(6) status). What are the important characteristics and components of sustainable models for software for scientific and high-performance computing? What are key obstacles, impediments, or bottlenecks to the establishment and success of these models? What development practices and other factors tend to facilitate successful establishment of these models?

(7) Overall scope of the stewardship effort:

The section labeled *Potential Scope,* mentioned earlier in the RFI, outlines activities that ASCR currently anticipates potentially including in future programs stewarding the software ecosystem for scientific and high-

[8] The term ''equity'' means the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. Executive Order 13985, ''Advancing Racial Equity and Support for Underserved Communities Through the Federal Government'' (January 20, 2021).

performance computing. Are there activities that should be added to, or removed from, this list? Are there specific requirements that should be associated with any of these activities to ensure their success and maximize their impact?

(8) Management and oversight structure of the stewardship effort:

What do you anticipate will be effective models for management and oversight of the scientific and high-performance-computing software ecosystem, and how would that management structure most-effectively interact with DOE and other stakeholders? In addition to DOE, who are the key stakeholders? How can the management structure coordinate with DOE user facilities and others to provide access to relevant testbed systems and other necessary infrastructure?

(9) Assessment and criteria for success for the stewardship effort:

What kinds of metrics or criteria would be useful in measuring the success of software stewardship efforts in scientific and high-performance computing and its impact on your scientific fields or industries?

(10) Other:

What are key obstacles, impediments, or bottlenecks to progress by, and success of, future development of software for scientific and high-performance computing? Are there other factors, issues, or opportunities, not addressed by the questions above, which should be considered in the context of stewardship of the ecosystem of software for scientific and high-performance computing?

Comments containing references, studies, research, and other empirical data that are not widely published should include copies of the referenced materials. Note that comments will be made publicly available as submitted. Any information that may be confidential and exempt by law from public disclosure should be submitted as described below.

Confidential Business Information: Pursuant to 10 CFR 1004.11, any person submitting information he or she believes to be confidential and exempt by law from public disclosure should submit via email: 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. Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items, (2) whether and why such items are customarily treated as confidential within the industry, (3) whether the information is generally known by or available from other sources, (4) whether the information has previously been made available to others without obligation concerning confidentiality, (5) an explanation of the competitive injury to the submitting person which would result from public disclosure, (6) when such information might lose its confidential character due to the passage of time, and (7) why disclosure of the information would be contrary to the public interest.

Signing Authority

This document of the Department of Energy was signed on October 22, 2021, by Dr. J. Stephen Binkley, Acting Director, Office of Science, 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 October 26, 2021.

Treena V. Garrett,

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

[FR Doc. 2021–23582 Filed 10–28–21; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Proposed Agency Information Collection Extension

AGENCY: U.S. Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE), pursuant to the Paperwork Reduction Act of 1995, intends to extend for three years an information collection request with the Office of Management and Budget (OMB).

DATES: Comments regarding this proposed information collection must be received on or before December 28, 2021. If you anticipate difficulty in submitting comments within that period, contact the person listed in **ADDRESSES** as soon as possible.

ADDRESSES: Written comments may be sent: (1) By email to *LPO.PaperworkReductionAct.Comments@hq.doe.gov;* or (2) to Knight Elsberry, U.S. Department of Energy, LPO–70, Room 4B–122, 1000 Independence Avenue SW, Washington, DC 20585 with a mandatory copy by email to *LPO.PaperworkReductionAct.Comments@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Knight Elsberry, *LPO.PaperworkReductionAct.Comments@hq.doe.gov,* (202) 287–6646.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the extended collection of information is necessary for the proper performance of the functions of the agency; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

This information collection request contains: (1) *OMB No.:* 1910–5137; (2) *Information Collection Request Title:* Application for Loans under the Advanced Technology Vehicles Manufacturing Incentive Program; (3) *Type of Request:* Extension; (4) *Purpose:* This information collection package covers collection of information necessary to evaluate applications for loans submitted under Section 136 of the Energy Independence and Security Act of 2007, as amended (''EISA'') (42 U.S.C. 17013). Applications for loans submitted to DOE under Section 136 of EISA must contain certain information. This information will be used to analyze whether a project is eligible for a loan and to evaluate the application under criteria specified in the interim final regulations implementing Section 136 of EISA, located at 10 CFR part 611. The collection of this information is critical to ensure that the government has sufficient information to determine whether applicants meet the eligibility requirements to qualify for a DOE loan and to provide DOE with sufficient information to evaluate an applicant's project using the criteria specified in 10 CFR part 611; (5) *Annual Estimated*

Number of Respondents: 40; (6) *Annual Estimated Number of Total Responses:* 40; (7) *Annual Estimated Number of Burden Hours:* 5,300; (8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $1,083,000.

Authority: Section 136 of the EISA authorizes the collection of information.

Signing Authority: This document of the Department of Energy was signed on October 25, 2021, by Jigar Shah, Executive Director, Loan Programs Office, 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 October 25, 2021.

Treena V. Garrett,

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

[FR Doc. 2021–23534 Filed 10–28–21; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER22–188–000]

Indra Power Business CT, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Indra Power Business CT, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 15, 2021.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: October 25, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–23622 Filed 10–28–21; 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:

Filings Instituting Proceedings

Docket Numbers: CP22–7–000.
Applicants: Southern Natural Gas Company.
Description: Application for Authorization of Abandonment for Rate Schedule X–54 of Southern Natural Gas Company, L.L.C. under CP22–7. Application/Petition/Request | Abandonment of Service or Facility.
Filed Date: 10/12/21.
Accession Number: 20211012–5650.
Comment Date: 5 p.m. ET 11/2/21.

Docket Numbers: CP22–8–000.
Applicants: Southern Natural Gas.
Description: Application for Authorization to Abandon Services of Southern Natural Gas Company, L.L.C. under CP22–8. Application/Petition/Request | Abandonment of Service or Facility.
Filed Date: 10/19/2021.
Accession Number: 20211019–5038.
Comment Date: 5 p.m. ET 11/9/21.

Docket Numbers: RP22–78–000.
Applicants: Shell Energy North America (US), L.P., ConocoPhillips Company.
Description: Joint Petition for Limited Waiver of Capacity Release Regulations, et al. of Shell Energy North America (US), L.P., et al.
Filed Date: 10/22/21.
Accession Number: 20211022–5091.
Comment Date: 5 p.m. ET 11/3/21.

Docket Numbers: RP22–79–000.
Applicants: Questar Southern Trails Pipeline Company.
Description: Tariff Amendment: Cancellation of FERC Gas Tariff First Revised Volume No. 1 to be effective 11/1/2021.
Filed Date: 10/25/21.
Accession Number: 20211025–5035.
Comment Date: 5 p.m. ET 11/1/21.

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.

Filings in Existing Proceedings

Docket Numbers: RP20–1060–004.
Applicants: Columbia Gas Transmission, LLC.
Description: Compliance filing: Implement Partial Settlement in RP20–1060–000 to be effective 10/8/2021.
Filed Date: 10/22/21.
Accession Number: 20211022–5087.
Comment Date: 5 p.m. ET 11/3/21.

Any person desiring to protest in any the above proceedings must file in

accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

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: October 25, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–23625 Filed 10–28–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER22–191–000]

Tidal Energy Marketing (U.S.) LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Tidal Energy Marketing (U.S.) L.L.C.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 15, 2021.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: October 25, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–23624 Filed 10–28–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER22–192–000]

Evolugen Trading and Marketing LP; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Evolugen Trading and Marketing LP's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 15, 2021.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: October 25, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–23623 Filed 10–28–21; 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: EC22–8–000.

Applicants: Gibson City Energy Center, LLC, Shelby County Energy Center, LLC, Southern Illinois Generation Company, LLC, Tilton Energy LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act of Gibson City Energy Center, LLC, et al. and request for Expedited Action by December 23, 2021.

Filed Date: 10/22/21.

Accession Number: 20211022–5192.

Comment Date: 5 p.m. ET 11/12/21.

Docket Numbers: EC22–9–000.

Applicants: Borderlands Wind, LLC, Cool Springs Solar, LLC, Dodge Flat Solar, LLC, Elora Solar, LLC, Ensign Wind Energy, LLC, Fish Springs Ranch Solar, LLC, Irish Creek Wind, LLC, Minco Wind Energy III, LLC, Minco IV & V Interconnection, LLC, Quinebaug Solar, LLC, Quitman II Solar, LLC, NEP US SellCo II, LLC, NextEra Energy Partners Acquisitions, LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act of Borderlands Wind, LLC, et al.

Filed Date: 10/22/21.

Accession Number: 20211022–5196.

Comment Date: 5 p.m. ET 11/12/21.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–3297–016.

Applicants: Powerex Corporation.

Description: Notice of Non-Material Change in Status of Powerex Corp.

Filed Date: 10/22/21.

Accession Number: 20211022–5202.

Comment Date: 5 p.m. ET 11/12/21.

Docket Numbers: ER20–116–000; ER20–67–000; ER20–113–000.

Applicants: Evergy Missouri West, Inc., Evergy Kansas Central, Inc., Evergy Metro, Inc.

Description: Response to September 22, 2021 Deficiency Letter of Evergy Kansas Central, Inc., et al.

Filed Date: 10/22/21.

Accession Number: 20211022–5203.

Comment Date: 5 p.m. ET 11/12/21.

Docket Numbers: ER21–2562–001.

Applicants: Southwest Power Pool, Inc.

Description: Tariff Amendment: Deficiency Response in ER21–2562—Revisions to DISIS Process to be effective 10/1/2021.

Filed Date: 10/25/21.

Accession Number: 20211025–5036.

Comment Date: 5 p.m. ET 11/15/21.

Docket Numbers: ER22–193–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 3866 City of Garden City KS & Sunflower Interconnection Agreement to be effective 12/31/9998.

Filed Date: 10/22/21.

Accession Number: 20211022–5184.

Comment Date: 5 p.m. ET 11/12/21.

Docket Numbers: ER22–194–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: § 205(d) Rate Filing: Initial Filing of Rate Schedule No. 336 to be effective 10/26/2021.

Filed Date: 10/25/21.

Accession Number: 20211025–5050.

Comment Date: 5 p.m. ET 11/15/21.

Docket Numbers: ER22–195–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: § 205(d) Rate Filing: Amendment to Service Agreement No. 894 to be effective 10/21/2021.

Filed Date: 10/25/21.

Accession Number: 20211025–5055.

Comment Date: 5 p.m. ET 11/15/21.

Docket Numbers: ER22–196–000.

Applicants: Portland General Electric Company.

Description: § 205(d) Rate Filing: Att K Revision Filing to be effective 1/1/2022.

Filed Date: 10/25/21.

Accession Number: 20211025–5056.

Comment Date: 5 p.m. ET 11/15/21.

Docket Numbers: ER22–197–000.

Applicants: Basin Electric Power Cooperative.

Description: Tariff Amendment: Basin Electric Notice of Cancellation of Service Agreements 3, 8, 10, 11, & 12 to be effective 12/25/2021.

Filed Date: 10/25/21.

Accession Number: 20211025–5057.

Comment Date: 5 p.m. ET 11/15/21.

Docket Numbers: ER22–198–000.

Applicants: Consolidated Edison Company of New York, Inc., New York Independent System Operator, Inc.

Description: § 205(d) Rate Filing: Consolidated Edison Company of New York, Inc. submits tariff filing per 35.13(a)(2)(iii: Joint 205: LGIA among NYISO, Con Edison, NRG. 2nd Amended Restated SA2535 to be effective 10/8/2021.

Filed Date: 10/25/21.

Accession Number: 20211025–5075.

Comment Date: 5 p.m. ET 11/15/21.

Docket Numbers: ER22–199–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2021–10–25_SA 3528 UE-Evergy MO 1st Rev IA Certificate of Concurrence to be effective 12/21/2021.

Filed Date: 10/25/21.

Accession Number: 20211025–5082.

Comment Date: 5 p.m. ET 11/15/21.

Docket Numbers: ER22–202–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA, Service Agreement No. 6206; Queue No. AE1–196 to be effective 9/23/2021.

Filed Date: 10/25/21.

Accession Number: 20211025–5100.

Comment Date: 5 p.m. ET 11/15/21.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES22–15–000.

Applicants: Kingsport Power Company.

Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of Kingsport Power Company.

Filed Date: 10/22/21.

Accession Number: 20211022–5190.

Comment Date: 5 p.m. ET 11/12/21.

Docket Numbers: ES22–16–000.

Applicants: AEP Texas Inc.

Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of AEP Texas Inc.

Filed Date: 10/22/21.

Accession Number: 20211022–5191.

Comment Date: 5 p.m. ET 11/12/21.

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: October 25, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–23621 Filed 10–28–21; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2017–0720; FRL–9077–01–OCSPP]

Pesticide Registration Review; Pesticide Dockets Opened for Review and Comment; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of the EPA's preliminary work plans for *Pseudomonas fluorescens*. With this document, the EPA is opening the public comment period for registration review for this chemical.

DATES: Comments must be received on or before December 28, 2021.

ADDRESSES: Submit your comments to the docket identification (ID) number for the specific pesticide of interest provided in the Table in Unit IV. using the *Federal eRulemaking Portal* at *http://www.regulations.gov*. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, are available at *http://www.epa.gov/dockets*.

Due to the public health concerns related to COVID–19, the EPA/DC and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on the EPA/DC and docket access, visit *https://www.epa.gov/dockets*.

FOR FURTHER INFORMATION CONTACT:

For pesticide specific information, contact: The Chemical Review Manager for the pesticide of interest identified in the Table in Unit IV.

For general questions on the registration review program, contact: Melanie Biscoe, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 305–7106; email address: *biscoe.melanie@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the Chemical Review Manager identified in the Table in Unit IV.

B. What should I consider as I prepare my comments for the EPA?

1. *Submitting CBI.* Do not submit this information to the EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to the EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html*.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. Background

Registration review is the EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. Registration review dockets contain information that will assist the public in understanding the types of information and issues that the agency may consider during the course of registration reviews. As part of the registration review process, the Agency has completed preliminary workplans for all pesticides listed in the Table in Unit IV. Through this program, the EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

III. Authority

The EPA is conducting its registration review of the chemicals listed in the Table in Unit IV pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5) (7 U.S.C. 136a(c)(5)). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

IV. Registration Reviews

A. What action is the Agency taking?

A pesticide's registration review begins when the agency establishes a docket for the pesticide's registration review case and opens the docket for public review and comment. Pursuant to 40 CFR 155.50, this notice announces the availability of the EPA's preliminary work plan for the pesticide shown in the following table and opens a 60-day public comment period on the work plan.

Registration review case name and No.	Docket ID No.	Chemical review manager and contact information
Pseudomonas fluorescens, Case Number 6006	EPA–HQ–OPP–2021–0131	Bibiana Oe, *oe.bibiana@epa.gov*, (703) 347–8162.

B. Docket Content

The registration review docket contains information that the agency may consider in the course of the registration review. The agency may include information from its files including, but not limited to, the following information:

- An overview of the registration review case status.
- A list of current product registrations and registrants.
- **Federal Register** notices regarding any pending registration actions.
- **Federal Register** notices regarding current or pending tolerances.
- Risk assessments.
- Bibliographies concerning current registrations.
- Summaries of incident data.
- Any other pertinent data or information.

Each docket contains a document summarizing what the agency currently knows about the pesticide case and a preliminary work plan for anticipated data and assessment needs. Additional documents provide more detailed information. During this public comment period, the agency is asking that interested persons identify any additional information they believe the agency should consider during the registration reviews of these pesticides. The agency identifies in each docket the areas where public comment is specifically requested, though comment in any area is welcome.

The registration review final rule at 40 CFR 155.50(b) provides for a minimum 60-day public comment period on all preliminary registration review work plans. This comment period is intended to provide an opportunity for public input and a mechanism for initiating any necessary changes to a pesticide's workplan. All comments should be submitted using the methods in **ADDRESSES** and must be received by the EPA on or before the closing date. These comments will become part of the docket for the pesticides included in the Table in Unit IV. Comments received after the close of the comment period will be marked ''late.'' The EPA is not required to consider these late comments.

The agency will carefully consider all comments received by the closing date and may provide a ''Response to Comments Memorandum'' in the docket. The final registration review work plan will explain the effect that any comments had on the final work plan and provide the agency's response to significant comments.

Background on the registration review program is provided at: *http://www.epa.gov/pesticide-reevaluation.*

Authority: 7 U.S.C. 136 *et seq.*

Dated: October 25, 2021.

Mary Elissa Reaves,

Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2021–23535 Filed 10–28–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9059–1]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EIS)

Filed October 18, 2021 10 a.m. EST Through October 25, 2021 10 a.m. EST

Pursuant to 40 CFR 1506.9.

Notice: Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

EIS No. 20210157, Final, FERC, AZ, North Baja Xpress Project, Review Period Ends: 11/29/2021, Contact: Office External Affairs 866–208–3372.

EIS No. 20210158, Final, USFS, MT, Helena—Lewis and Clark National Forest 2021 Land Management Plan, Review Period Ends: 11/29/2021, Contact: Deborah Entwistle 406–449–5201.

EIS No. 20210159, Draft Supplement, USFWS, AZ, Proposed Revision to the Regulations for the Nonessential Experimental Population of the Mexican Wolf, Comment Period Ends: 01/27/2022, Contact: Brady McGee 505–761–4748.

EIS No. 20210160, Draft, BOEM, AK, Cook Inlet Planning Area Oil and Gas Lease Sale 258, Comment Period Ends: 12/13/2021, Contact: Tyler Moore 907–334–5200.

EIS No. 20210161, Draft Supplement, USCG, MARAD, TX, SPOT Deepwater Port, Comment Period Ends: 12/13/2021, Contact: Matthew Layman 202–372–1421.

EIS No. 20210162, Draft, USCG, MARAD, TX, Blue Water Offshore Port Deepwater Port Application, Comment Period Ends: 12/13/2021, Contact: Ken Smith 202–372–1413.

EIS No. 20210163, Draft, BIA, NM, Navajo Nation Integrated Weed Management Plan, Comment Period Ends: 12/13/2021, Contact: Leonard Notah 505–863–8287.

Dated: October 25, 2021.

Cindy S. Barger,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2021–23594 Filed 10–28–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2021–0083; FRL–8793–04–OCSPP]

Pesticide Product Registration; Receipt of Applications for New Active Ingredients (October 2021)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before November 29, 2021.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the File Symbol of interest as shown in the body of this document, online at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets/about-epa-dockets.*

Due to the public health concerns related to COVID–19, the EPA/DC and

Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on the EPA/DC and docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Charles Smith, Biopesticides and Pollution Prevention Division (7511P), main telephone number: (703) 305–7090, email address: *BPPDFRNotices@epa.gov;* The mailing address for each contact person is: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each pesticide petition summary.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets.*

II. Registration Applications

EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications. For actions being evaluated under EPA's public participation process for registration actions, there will be an additional opportunity for public comment on the proposed decisions. Please see EPA's public participation website for additional information on this process (*http://www2.epa.gov/pesticide-registration/public-participation-process-registration-actions*).

Notice of Receipt—New Active Ingredients

File Symbol: 93257–E. *Docket ID number:* EPA–HQ–OPP–2021–0586. *Applicant:* Symborg, Inc., P.O. Box 12810, San Luis Obispo, CA 93406. *Product name:* Phoemyc+. *Active ingredient:* Insecticide—*Beauveria bassiana* strain 203 at 1%. *Proposed use:* For control of red palm weevil in ornamental palm trees in nurseries and amenity plantings. *Contact:* BPPD.

Authority: 7 U.S.C. 136 *et seq.*

Dated: October 25, 2021.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Program Support.

[FR Doc. 2021–23529 Filed 10–28–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2016–0141; FRL–9186–01–OCSPP]

Dicloran (DCNA); Amendments To Terminate Uses for Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's final order for the amendments to terminate uses on geraniums and hydrangeas, voluntarily requested by the registrant, and accepted by the Agency, of products containing dicloran (DCNA), pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This cancellation order follows a May 5, 2021 **Federal Register** Notice of Receipt of Requests from the registrant listed in Table 2 of Unit II. to voluntarily cancel product use on geraniums and hydrangeas for these product registrations. These are not the only products containing this pesticide registered for use in the United States. In the May 5, 2021 notice, EPA indicated that it would issue an order implementing the amendment to terminate use, unless the Agency received substantive comments within the 30-day comment period that would merit its further review of these requests, or unless the registrant withdrew their request. The Agency did not receive any comments on the notice. Further, the registrant did not withdraw their request. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested amendment to terminate DCNA use on geranium and hydrangeas. Any distribution, sale, or use of the products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: The amendment is effective October 29, 2021.

FOR FURTHER INFORMATION CONTACT: Melanie Biscoe, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; email address: *biscoe.melanie@epa.gov,* telephone number: 703–305–7106.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2016–0141, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency

Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

II. What action is the agency taking?

This notice announces the amendment to delete from the registration of DCNA use on geraniums and hydrangeas, as requested by registrant, under section 3 of FIFRA. These registrations are listed in sequence by registration number in Table 1 of this unit.

TABLE 1—DCNA PRODUCT REGISTRATION AMENDMENTS TO DELETE USES

EPA registration No.	Product name	Uses deleted
10163–189	Botran 75–W Fungicide	Geraniums and hydrangeas.
10163–195	Botran Technical.	
10163–226	Botran 5F Fungicide.	
10163–329	Botran P 5F Fungicide.	

Table 2 of this unit includes the name and address of record for the registrant of the products in Table 1 of this unit. This number corresponds to the first part of the EPA registration numbers of the products listed above.

TABLE 2—REGISTRANT OF AMENDED PRODUCTS

EPA company No.	Company name and address
10163	Gowan Company, P.O. Box 5569, Yuma, AZ 85366–5569.

III. Summary of Public Comments Received and Agency Response to Comments

During the public comment period provided, EPA received no comments in response to the May 5, 2021 **Federal Register** notice (86 FR 85) (FRL–10023–39) announcing the Agency's receipt of the request to voluntary amend to delete DCNA use on geraniums and hydrangeas for products listed in Table 1 of Unit II.

IV. Cancellation Order

Pursuant to FIFRA section 6(f), EPA hereby approves the requested amendment to terminate use of DCNA on geraniums and hydrangeas for registrations identified in Table 1 of Unit II. Accordingly, the Agency hereby orders that the product registrations identified in Table 1 of Unit II. are amended to terminate use on geraniums and hydrangeas. The effective date of the cancellations that are subject of this notice is October 29, 2021. Any distribution, sale, or use of existing stocks of the products identified in Table 1 of Unit II. in a manner inconsistent with any of the provisions for disposition of existing stocks set forth in Unit VI. will be a violation of FIFRA.

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

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the EPA Administrator may approve such a request. The notice of receipt for this action was published for comment on May 5, 2021. The comment period closed on June 4, 2021.

VI. Provisions for Disposition of Existing Stocks

For the products 10163–189, 10163–226, and 10163–329, once EPA has approved the product label reflecting the requested amendments to delete specific uses, the registrants will be permitted to sell or distribute the product under the previously approved labeling for a period of 18 months after the date of **Federal Register** publication of the cancellation order, unless other restrictions have been imposed. Thereafter, the registrant will be prohibited from selling or distributing the product whose label includes the deleted uses identified in Table 2 of Unit II., except for export consistent with FIFRA section 17 or for proper disposal.

Authority: 7 U.S.C. 136 *et seq.*

Dated: October 22, 2021.

Mary Reaves,

Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2021–23589 Filed 10–28–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2021–0072; FRL–9150–01–OCSPP]

Issuance of an Experimental Use Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA issued an experimental use permit (EUP) to the pesticide applicant described in Unit II. of the **SUPPLEMENTARY INFORMATION**. An EUP permits use of a pesticide for experimental or research purposes only in accordance with the limitations in the permit.

FOR FURTHER INFORMATION CONTACT: Charles Smith, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *BPPDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, EPA has not attempted to

describe all the specific entities that may be affected by this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2021–0072, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805.

Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Reading Room are closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

II. EUP

EPA issued the following EUP:

69553–EUP–2. Issuance. Andermatt Group AG, Stahlermatten 6, CH–6146 Grossdietwil, Switzerland (c/o Andermatt USA Corp., 107 Gilbreth Parkway, Mullica Hill, NJ 08062). This EUP allows the use of 431 pounds of the pesticide product CX–6485 (containing 0.29 pound of the insecticide *Cydia pomonella* granulovirus isolate V45) on 400 acres of pome fruit trees (apple and pear), stone fruit trees (peach, nectarine, apricot, and hybrids of these), and walnut trees to evaluate the control of codling moth and Oriental fruit moth. The program is authorized only in the States of California, Colorado, Michigan, New Jersey, New York, Oregon, Pennsylvania, and Washington. The EUP is effective from October 6, 2021 to August 31, 2023. The United States Department of Agriculture submitted a comment in response to the notice of receipt published in the **Federal Register** of March 19, 2021 (86 FR 14906) (FRL–10021–43), and it conveyed support of issuance of this EUP to allow testing of *Cydia pomonella* granulovirus isolate V45 at a larger field-level scale in the United States.

Authority: 7 U.S.C. 136 *et seq.*

Dated: October 18, 2021.

Charles Smith,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 2021–23586 Filed 10–28–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

EPA–HQ–OAR–2009–0022; FRL–9209–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Acid Rain Program (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Acid Rain Program (EPA ICR Number 1633.18, OMB Control Number 2060–0258) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through December 31, 2021. Public comments were previously requested via the **Federal Register** on April 2, 2021 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before November 29, 2021.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2009–0022, to (1) EPA online using *www.regulations.gov* (our preferred method), *a-and-r-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Karen Vansickle, Clean Air Markets Division, Office of Air and Radiation, (6204M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–343–9220; fax number: 202–343–2361; email address: *Vansickle.karen@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: The Acid Rain Program was established under Title IV of the 1990 Clean Air Act Amendments to address acid deposition by reducing emissions of sulfur dioxide (SO_2) and nitrogen oxides (NO_X). This information collection extension is necessary to continue implementation of the Acid Rain Program. It includes burden and costs associated with developing and modifying permits, complying with NO_X permitting requirements, monitoring emissions, transferring allowances, participating in the annual allowance auctions, and participating in the program as an opt-in source.

Form Numbers: Agent Notice of Delegation #5900–172, Certificate of Representation #7610–1, General Account Form #7610–5, Allowance Transfer Form #7610–6, Retired Unit Exemption #7610–20, Allowance Deduction #7620–4, Acid Rain Permit Application #7610–16, Acid Rain NO_X Compliance Plan #7610–28, Acid Rain NO_X Averaging Plan #7610–29, New Unit Exemption #7610–19, Opt-In Permit Application #7610–26, Opt-In Utilization Report #7620–9, Letter of Credit #7610–7A, EPA Allowance Auctions—Additional Information for Certified Checks or Wire Transfers #7610–7, SO_2 Allowance Offer Form #7610–8, Thermal Energy Plan #7610–27, Notification For Distribution of Proceeds From EPA Auctions #7610–11, Opt-In Reduction from Improved Efficiency Confirmation Report #7620–8, Thermal Energy Compliance Report #7620–10.

Respondents/affected entities: Electricity generating plants, industrial sources, and other persons.

Respondent's obligation to respond: Voluntary and mandatory (Clean Air Act sections 403, 407, 408, 410, 412, and 416).

Estimated number of respondents: 1,219 (total); includes 1,169 sources and 50 non-source entities participating in allowance trading activities.

Frequency of response: On occasion, quarterly, and annually.

Total estimated burden: 1,826,133 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $276,811,849 (per year), includes $129,450,755 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is decrease of 47,747 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease is principally due to source retirements, which have both reduced the estimated overall number of affected sources and shifted the estimated mix of monitoring methodologies used. The other factors contributing to the decrease in burden are reductions in the estimated numbers of allowance transfer and deduction submissions, expected opt-in sources, and allowance auction bids.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2021–23539 Filed 10–28–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8948–03–OMS]

Privacy Act of 1974; System of Records

AGENCY: National Enforcement Investigations Center (NEIC), Office of Criminal Enforcement Forensics and Training (OCEFT), Office of Enforcement Compliance and Assurance (OECA), Environmental Protection Agency (EPA).

ACTION: Notice of a new system of records.

SUMMARY: The U.S. Environmental Protection Agency's (EPA), National Enforcement Investigations Center (NEIC) is giving notice that it proposes to create a new system of records pursuant to the provisions of the Privacy Act of 1974. The National Enforcement Investigations Center Master Tracking System (MTS) will contain information related to investigations of persons or organizations alleged to have violated any federal environmental statute or regulation or, pursuant to a cooperative agreement with a state, local, or tribal authority, an environmental statute or regulation of such authority. The U.S. Environmental Protection Agency will separately add exemptions for this system of records to the Agency's Privacy Act regulations at 40 CFR part 16.

DATES: Persons wishing to comment on this system of records notice must do so by November 29, 2021. Routine uses for this new system of records will be effective November 29, 2021.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OECA–2021–0552, by one of the following methods:

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

Email: docket_oms@epa.gov. Include the Docket ID number in the subject line of the message.

Fax: (202) 566–1752.

Mail: OMS Docket, Environmental Protection Agency, Mail Code: 2822T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

Hand Delivery: OMS Docket, EPA/DC, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OECA–2021–0552. The EPA policy is that all comments received will be included in the public docket without change and may be made available online at *https://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Controlled Unclassified Information (CUI) or other information for which disclosure is restricted by statute. Do not submit information that you consider to be CUI or otherwise protected through *https://www.regulations.gov.* The *https://www.regulations.gov* website is an ''anonymous access'' system for EPA, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. Each agency determines submission requirements within their own internal processes and standards. If you send an email comment directly to the EPA without going through *https://www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA public docket, visit the EPA Docket Center homepage at *https://www.epa.gov/dockets.*

Docket: All documents in the docket are listed in the *https://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CUI or other information for which disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *https://www.regulations.gov* or in hard copy at the OMS Docket, EPA/DC, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20460.

EPA Docket Center and Reading Room Temporary Hours During COVID–19

Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID–19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via *https://www.regulations.gov/* or email, as there may be a delay in processing mail and faxes. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.* The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OMS Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: Michael Roach, EPA National Enforcement Investigations Center, Denver Federal Center, 6th and Kipling, Building 25, Denver CO 80225; email address: *Roach.Michael@epa.gov;* telephone: (303) 462–9080.

SUPPLEMENTARY INFORMATION: The EPA National Enforcement Investigations Center (NEIC), established in 1970, provides expertise in field investigations, technical and regulatory

analyses, forensic laboratory analysis, information management, and litigation support for civil and criminal environmental enforcement actions brought by federal, state, tribal, and local authorities. The NEIC Master Tracking System (MTS) consists of a central data directory linked with other computerized subsystems. EPA will use NEIC MTS to manage and track field, laboratory, and operational support activities.

SYSTEM NAME AND NUMBER:

NEIC Master Tracking System (MTS), EPA–79.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

National Enforcement Investigations Center, Office of Criminal Enforcement, Forensics & Training, Environmental Protection Agency, Denver Federal Center, 6th and Kipling, Building 25, Denver, Colorado 80225.

SYSTEM MANAGER(S):

Michael Roach, EPA National Enforcement Investigations Center, Denver Federal Center, 6th and Kipling, Building 25, Denver CO 80225; *Roach.Michael@epa.gov;* (303) 462–9080

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Powers of Environmental Protection Agency, 18 U.S.C. 3063; Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. 9603; Resource Conservation and Recovery Act, 42 U.S.C. 6928; Clean Water Act, 33 U.S.C. 1319, 1321; Toxic Substances Control Act, 15 U.S.C. 2614, 2615; Clean Air Act, 42 U.S.C. 7413; Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136j, 136*l;* Safe Drinking Water Act, 42 U.S.C. 300h-2, 300i-1; Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. 11045; and the Marine Protection, Research, and Sanctuaries Act of 1972, 33 U.S.C. 1415.

PURPOSE OF THE SYSTEM:

To support, further, and document criminal and civil investigations of persons or organizations alleged to have violated any federal environmental statute or regulation or, pursuant to a cooperative agreement with a state, local, or tribal authority, an environmental statute or regulation of such authority. NEIC MTS is used to maintain information related to such investigative efforts, including the nature of work, investigation outcomes, required resources, and information about the supporting staff. NEIC MTS is used to record, monitor, and manage enforcement case-related activities performed in the office, field, and laboratory. NEIC MTS is also used to manage project files.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any person who is the subject of a criminal or civil investigation concerning violations of federal environmental statutes and regulations (or state, tribal or local environmental statutes and regulations, pursuant to a cooperative agreement with a state, tribal or local authority); any person who provides information and evidence that is used to substantiate criminal or civil environmental violations; any third parties identified by persons providing information or evidence that is used to substantiate criminal or civil environmental violations; and EPA or other federal, state or local government personnel, or government contractors that perform field and analytical work or otherwise assist in an investigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

A. Computer Indexes. NEIC MTS includes systems for internal tracking and management of NEIC environmental enforcement technical support projects, including: a description of the project; a schedule of project milestones; the current project status; a listing of personnel working on the project; and the environmental statutes at issue. These indexes include: enforcement data such as planned dates for search warrants or facility inspections; types of sampling or analyses to be conducted; and any other work done to support a project. The indexes also serve as the computerized management information system for NEIC and contain information on the activity and productivity of individual employees as well as the organization. NEIC MTS's indexes are organized according to project number and project name. NEIC assigns project numbers sequentially by project type (*i.e.,* civil, criminal). NEIC assigns project names by either the name of an entity or an individual, the choice of which depends upon the nature of the violation(s) or type of NEIC support activity. NEIC MTS's indexes can include the following EPA employee/contractor information: first name, last name, local area network (LAN) identification (ID), personal phone number(s), and personal email address(es). The indexes can include the following investigatory subject information: first name, last name, and location (city and state).

B. Project Files. Documentary information relating to a given enforcement matter, including: correspondence (case coordination reports, memos of conversation, and other records of communication relating to the matter); witness interviews (on-site statements of interviews generated either by an NEIC investigator or another agency or person); regulatory history (permits and reports generated as a result of normal program activity); technical support (project reports generated as a result of the investigation); inspection notes; financial information; sampling and laboratory notes; and other related investigative information. Project files can include first name and/or last name of the EPA employee/contractor, federal, state, local, and/or tribal investigator. Project files can include the following categories of information on the investigatory subject: first name, last name, home address, personal telephone number(s), and personal email address(es).

RECORD SOURCE CATEGORIES:

EPA employees and officials; employees of federal contractors; employees of other federal, state, local, tribal, or foreign agencies; personnel of companies/corporations under investigation; databases maintained by EPA; databases maintained by other federal, state, local, tribal, or foreign agencies; databases maintained by companies/corporations under investigation; witnesses; informants; public source materials; and other persons who may have information relevant to OCEFT/NEIC investigations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The routine uses below are both related to and compatible with the original purpose for which the information was collected. The following general routine uses apply to this system (73 FR 2245):

A. Disclosure for Law Enforcement Purposes. Information may be disclosed to the appropriate federal, state, local, tribal, or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, if the information is relevant to a violation or potential violation of civil or criminal law or regulation within the jurisdiction of the receiving entity.

C. Disclosure to Requesting Agency. Disclosure may be made to a federal, state, local, foreign, or tribal or other public authority of the fact that this system of records contains information relevant to the retention of an employee; the retention of a security clearance; the

letting of a contract; or the issuance or retention of a license, grant, or other benefit. The other agency or licensing organization may then make a request supported by the written consent of the individual for the entire record if it so chooses. No disclosure will be made unless the information has been determined to be sufficiently reliable to support a referral to another office within the agency or to another federal agency for criminal, civil, administrative, personnel, or regulatory action.

D. Disclosure to Office of Management and Budget. Information may be disclosed to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

E. Disclosure to Congressional Offices. Information may be disclosed to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

F. Disclosure to Department of Justice. Information may be disclosed to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the Agency is authorized to appear, when:

1. The Agency, or any component thereof,
2. Any employee of the Agency in his or her official capacity,
3. Any employee of the Agency in his or her individual capacity where the Department of Justice or the Agency have agreed to represent the employee; or
4. The United States, if the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the Agency is deemed by the Agency to be relevant and necessary to the litigation provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

G. Disclosure to the National Archives. Information may be disclosed to the National Archives and Records Administration in records management inspections.

H. Disclosure to Contractors, Grantees, and Others. Information may be disclosed to contractors, grantees, consultants, or volunteers performing or working on a contract, service, grant, cooperative agreement, job, or other activity for the Agency and who have a need to have access to the information in the performance of their duties or activities for the Agency. When appropriate, recipients will be required to comply with the requirements of the Privacy Act of 1974 as provided in 5 U.S.C. 552a(m).

I. Disclosures for Administrative Claims, Complaints and Appeals. Information from this system of records may be disclosed to an authorized appeal grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator or other person properly engaged in investigation or settlement of an administrative grievance, complaint, claim, or appeal filed by an employee, but only to the extent that the information is relevant and necessary to the proceeding. Agencies that may obtain information under this routine use include, but are not limited to, the Office of Personnel Management, Office of Special Counsel, Merit Systems Protection Board, Federal Labor Relations Authority, Equal Employment Opportunity Commission, and Office of Government Ethics.

J. Disclosure to the Office of Personnel Management. Information from this system of records may be disclosed to the Office of Personnel Management pursuant to that agency's responsibility for evaluation and oversight of federal personnel management.

K. Disclosure in Connection with Litigation. Information from this system of records may be disclosed in connection with litigation or settlement discussions regarding claims by or against the Agency, including public filing with a court, to the extent that disclosure of the information is relevant and necessary to the litigation or discussions and except where court orders are otherwise required under section (b)(11) of the Privacy Act of 1974, 5 U.S.C. 552a(b)(11).

The two routine uses below (L and M) are required by OMB Memorandum M–17–12.

L. Disclosure to Persons or Entities in Response to an actual or Suspected Breach of Personally Identifiable Information. Information from this system of records may be disclosed to appropriate agencies, entities, and persons when (1) the Agency suspects or has confirmed that there has been a breach of the system of records, (2) the Agency has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Agency (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 Agency's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

M. Disclosure to Assist Another Agency in its Efforts to Respond to a Breach. To another Federal agency or Federal entity, when the Agency 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.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Hard copy records are stored in file folders labeled with the NEIC project number and project name. The project name can be an entity or an individual. Computer indexes and electronic files are stored on secure, password-protected network drives. They are labeled with the NEIC project number and project name.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Project files are assigned a project number and project name, and records are maintained in numerical order. Records are primarily retrieved by project name; the project number is the secondary retrieval method. Electronic records also may be retrieved by using key words or phrases, which can include an entity's name, individual person's name, and/or location (city and state).

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Administrative data from the system are retained according to EPA Records Schedule 1006. Project files are closed when discontinued, superseded, or canceled, or when no longer needed for current agency business, and destroyed 6 years after closure. Project files relating to investigations are retained according to EPA Records Schedule 1044, Compliance and Enforcement. Closed project files are retained no less than 2 years and no more than 5 years on site. Project files are destroyed by the Federal Records Center no less than 5 years and no more than 20 years after the closing date, depending on case status. Project files classified as permanent records are transferred from the Federal Records Center to the National Archives from 15–18 years

after the closing date, depending on the media.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Security controls used to protect personal sensitive data in NEIC MTS are commensurate with those required for an information system rated MODERATE for confidentiality, integrity, and availability, as prescribed in National Institute of Standards and Technology (NIST) Special Publication, 800–53, ''Security and Privacy Controls for Information Systems and Organizations,'' Revision 5.

1. Administrative Safeguards: EPA personnel are required to complete annual agency Information Security and Privacy training. EPA personnel are instructed to lock their computers when they leave their desks.

2. Technical Safeguards: Computer records are maintained in a secure, password-protected computer system. NEIC MTS access is limited to authorized, authenticated users. Access is restricted to those individuals and managers with an official need for information on a project. Security measures control user access and privileges to the computer databases at the server, file system, and database level.

3. Physical Safeguards: Paper records are maintained in lockable offices, file cabinets or in a staffed and/or access-controlled central records repository. All records are maintained in secure, access-controlled areas or buildings.

RECORDS ACCESS PROCEDURES:

Pursuant to 5 U.S.C. 552a(j)(2) and (k)(2), certain records maintained in NEIC MTS are exempt from specific access and accounting provisions of the Privacy Act. See 40 CFR 16.11 and 16.12. However, EPA may, in its discretion, grant individual requests for access if it determines that the exercise of these rights will not interfere with an interest that the exemption is intended to protect. Requests for access must be made in accordance with the procedures described in EPA's Privacy Act regulations at 40 CFR part 16.

CONTESTING RECORDS PROCEDURES:

Pursuant to 5 U.S.C. 552a(j)(2) and (k)(2), certain records maintained in NEIC MTS are exempt from specific correction and amendment provisions of the Privacy Act. However, EPA may, in its discretion, grant individual requests for correction or amendment if it determines that the exercise of these rights will not interfere with an interest that the exemption is intended to protect. Requests for correction or amendment must identify the record to be changed and the corrective action sought, and must be made in accordance with the procedures described in EPA's Privacy Act regulations at 40 CFR part 16.

NOTIFICATION PROCEDURE:

Individuals who wish to be informed whether a Privacy Act system of records maintained by EPA contains any record pertaining to them, should make a written request to the EPA Attn: Agency Privacy Officer, MC 2831T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, or by email at *privacy@epa.gov.*

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

For those records within the system collected and maintained pursuant to the Federal Rules of Civil Procedure (FRCP) and/or for the purpose of civil discovery, action or proceeding, 5 U.S.C. 552a(d)(5) will apply, stating that ''nothing in this [Act] shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.'' In addition, pursuant to 5 U.S.C. 552a(k)(2), this system is exempt from the following provisions of the Privacy Act, subject to the limitations set forth in that subsection: 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (f)(2) through (5). Finally, pursuant to 5 U.S.C. 552a(j)(2), when records are contained in this system related to criminal enforcement, those records are exempt from the following provisions of the Privacy Act, subject to the limitations set forth in that subsection: 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5) and (e)(8); (f)(2) through (5); and (g). See 40 CFR 16.11 and 16.12.

HISTORY:

66 FR 49947—October 1, 2001—Creation of the OCEFT/NEIC Master Tracking System of Records (EPA–46).

78 FR 40737—July 8, 2013—Notification of Deletion of System of Records; Office of Criminal Enforcement, Forensics & Training, National Enforcement Investigations Center, Master Tracking System (EPA–46).

Vaughn Noga,

Senior Agency Official for Privacy.

[FR Doc. 2021–23633 Filed 10–28–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

EPA–HQ–OPP–2017–0720; FRL–9078–01–OCSPP]

Pesticide Registration Review; Draft Human Health and/or Ecological Risk Assessments for Several Pesticides; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's draft human health and/or ecological risk assessments for the registration review of 2-(Thiocyanomethylthio)-benzothiazole (TCMTB); chlorflurenol methyl ester (CME); dodine/dodecylguanidine hydrochloride (DGH); pentachloronitrobenzene (PCNB); permethrin; pyridalyl and spirodiclofen.

DATES: Comments must be received on or before December 28, 2021.

ADDRESSES: Submit your comments, to the docket identification (ID) number for the specific pesticide of interest provided in the Table in Unit IV., using the *Federal eRulemaking Portal* at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, are available at *http://www.epa.gov/dockets.*

Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For pesticide specific information contact: The Chemical Review Manager for the pesticide of interest identified in the Table in Unit IV.

For general questions on the registration review program, contact: Melanie Biscoe, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 305–7106; email address: *biscoe.melanie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the Chemical Review Manager identified in the Table in Unit IV.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. Background

Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. As part of the registration review process, the Agency has completed comprehensive draft human health and/or ecological risk assessments for all pesticides listed in the Table in Unit IV. After reviewing comments received during the public comment period, EPA may issue a revised risk assessment, explain any changes to the draft risk assessment, and respond to comments and may request public input on risk mitigation before completing a proposed registration review decision for the pesticides listed in the Table in Unit IV. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

III. Authority

EPA is conducting its registration review of the chemicals listed in the Table in Unit IV pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5) (7 U.S.C. 136a(c)(5)). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

IV. What action is the Agency taking?

Pursuant to 40 CFR 155.58, this notice announces the availability of EPA's human health and/or ecological risk assessments for the pesticides shown in the following table and opens a 60-day public comment period on the risk assessments.

TABLE—DRAFT RISK ASSESSMENTS BEING MADE AVAILABLE FOR PUBLIC COMMENT

Registration review case name and No.	Docket ID No.	Chemical review manager and contact information
2-(Thiocyanomethylthio)-benzothiazole (TCMTB), Case 2625.	EPA–HQ–OPP–2014–0405	Kimberly Wilson, *wilson.kimberly@epa.gov*, (703) 347–0495.
Chlorflurenol methyl ester (CME), Case 2095	EPA–HQ–OPP–2016–0037	Quinn Gavin, *gavin.quinn@epa.gov*, (703) 347–0325.
Dodine/dodecylguanidine hydrochloride (DGH), Case 0161.	EPA–HQ–OPP–2015–0477	Susan Bartow, *bartow.susan@epa.gov*, (703) 603–0065.
Pentachloronitrobenzene (PCNB), Case 0128	EPA–HQ–OPP–2015–0348	Rachel Stephenson, *stephenson.rachel@epa.gov*, (703) 347–8904.
Permethrin, Case 2510	EPA–HQ–OPP–2011–0039	Megan Snyderman, *snyderman.megan@epa.gov*, (703) 347–0671.
Pyridalyl, Case 7451	EPA–HQ–OPP–2019–0378	Rachel Eberius, *eberius.rachel@epa.gov*, (703) 347–0492.
Spirodiclofen, Case 7443	EPA–HQ–OPP–2014–0262	Veronica Dutch, *dutch.veronica@epa.gov*, (703) 308–8585.

Pursuant to 40 CFR 155.53(c), EPA is providing an opportunity, through this notice of availability, for interested parties to provide comments and input concerning the Agency's draft human health and/or ecological risk assessments for the pesticides listed in the Table in Unit IV. The Agency will consider all comments received during the public comment period and make changes, as appropriate, to a draft human health and/or ecological risk assessment. EPA may then issue a revised risk assessment, explain any changes to the draft risk assessment, and respond to comments.

Information submission requirements. Anyone may submit data or information

in response to this document. To be considered during a pesticide's registration review, the submitted data or information must meet the following requirements:

- To ensure that EPA will consider data or information submitted, interested persons must submit the data or information during the comment period. The Agency may, at its discretion, consider data or information submitted at a later date.
- The data or information submitted must be presented in a legible and useable form. For example, an English translation must accompany any material that is not in English and a written transcript must accompany any information submitted as an audio-graphic or video-graphic record. Written material may be submitted in paper or electronic form.
- Submitters must clearly identify the source of any submitted data or information.
- Submitters may request the Agency to reconsider data or information that the Agency rejected in a previous review. However, submitters must explain why they believe the Agency should reconsider the data or information in the pesticide's registration review.

As provided in 40 CFR 155.58, the registration review docket for each pesticide case will remain publicly accessible through the duration of the registration review process; that is, until all actions required in the final decision on the registration review case have been completed.

(Authority: 7 U.S.C. 136 *et seq.*)

Dated: October 25, 2021.

Mary Elissa Reaves,

Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2021–23531 Filed 10–28–21; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[MB Docket No. 21–401; FCC 21–1305; FR ID 55481]

Roger Wahl, Radio Station WQZS(FM), Meyersdale, PA

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document commences a hearing to determine whether, in light of recent criminal convictions, Roger Wahl is qualified to hold FCC authorizations, and as a consequence, whether his license for FM radio station WQZS, Meyersdale, PA should be revoked.

DATES: Persons desiring to participate as parties in the hearing shall file a petition for leave to intervene not later than November 29, 2021.

ADDRESSES: File documents with the Office of the Secretary, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, with a copy mailed to each party to the proceeding. Each document that is filed in this proceeding must display on the front page the docket number of this hearing, ''MB Docket No. 21–401.''

FOR FURTHER INFORMATION CONTACT: Albert Shuldiner, Media Bureau, (202) 418–2721.

SUPPLEMENTARY INFORMATION: This is a summary of the Hearing Designation Order and Order to Show Cause (Order), MB Docket No. 21–401, FCC DA 21–1305, adopted and released October 19, 2021. The full text of the Order is available online by using the search function for MB Docket No. 21–401 on the Commission's ECFS web page at *http://apps.fcc.gov/ecfs/.*

Summary of the Hearing Designation Order

1. The Order commences a hearing proceeding before the Commission to determine whether certain criminal convictions render licensee, Roger Wahl (Wahl), unqualified to hold FCC authorizations, and consequently, whether the license for WQZS(FM), Meyersdale, PA should be revoked under section 312(a)(2) and 312(c) of the Communications Act of 1934 (Act), 47 U.S.C. 312(a)(2) and 312(c). This revocation proceeding stems from Wahl's felony conviction and related misdemeanor convictions in 2020 under the Pennsylvania Crimes Code.

2. In determining whether a party is qualified to be a broadcast station licensee, the Commission considers factors specified in the Act, including character qualifications. Section 312(a)(2) of the Act, 47 U.S.C. 312(a)(2), provides that the Commission may revoke any license if conditions present would warrant refusal to grant a license or permit. Because the Commission considers character qualify in its review of broadcast applications, a character defect that would warrant the Commission's refusal to grant a license or permit would likewise support a Commission determination to revoke a license or permit.

3. Non-FCC misconduct may raise substantial and material questions of fact concerning the licensee's character. The Commission considers evidence of felony convictions because felonies are serious crimes and conviction provides an indication regarding an applicant's propensity to obey laws and conform to provisions of the Act, Rules, and Commission policies. The Commission retains discretion to consider other types of non-FCC misconduct that may be relevant, including misdemeanors.

4. On July 8, 2020, Wahl pleaded guilty to criminal use of a communication facility, which is a third-degree felony, and four related misdemeanors. Specifically, Wahl pleaded guilty to second-degree misdemeanors of recklessly endangering another person, unlawful dissemination of an intimate image, and tampering with evidence. He also initially pleaded guilty to invasion of privacy.

5. The facts supporting Wahl's guilty plea were recited for the court at the time his plea was entered, and Wahl himself confirmed that the recitation was accurate. Wahl had secretly taken nude photos of a woman inside her home using a concealed camera installed in her bathroom; (b) impersonated the woman on an online dating site; (c) sent the nude photos of the woman to at least one man whom he connected with through that site; and (d) solicited that man to have sexual relationships with the woman without her consent. In addition, Wahl deleted the nude photos of the woman from his mobile phone, and deleted the communications he made via the online dating site upon learning of the Pennsylvania State Police investigation.

6. Subsequently, according to the record in the criminal proceeding, Wahl learned that a conviction on the invasion of privacy charge would require registration and notification as a sex offender. Thus, he withdrew his plea of guilty with respect to that charge, and on November 16, 2020, instead pleaded guilty to identity theft, a first-degree misdemeanor. At that time, Wahl was sentenced to concurrent sentences that effectively placed him on probation for three years, with four months of electronic monitoring, and required him to pay $600 in fines and the costs of his prosecution and supervision.

7. Wahl's guilty plea to criminal use of a communication facility, a third-degree felony, by itself, raises the question under the Commission's *Character Qualifications Policy Statement* whether he possesses the requisite character qualifications to remain a Commission licensee. Reliability is a key element of character necessary to operate a broadcast station in the public interest. The propensity to comply with the law generally is relevant to character qualifications, and

an applicant or licensee's willingness to violate other laws, and, in particular, to commit felonies, is indicative of whether the applicant or licensee will conform to the Commission's rules or policies. Evidence of any felony conviction is relevant to an applicant's or licensee's character.

8. Wahl's multiple misdemeanor convictions support the decision to designate this matter for hearing. While felony convictions, among all criminal convictions, are most relevant to our evaluation of an applicant's character, the Commission has the discretion to consider serious misdemeanor convictions in appropriate cases such as this. Although Wahl does not have a record of multiple criminal convictions over time, he pleaded guilty not only to a felony, but also to an array of misdemeanor criminal offenses (identity theft, unlawful dissemination of an intimate image, recklessly endangering another person, and tampering with evidence) based on misconduct involving multiple actions over a period of time designed to harm his victim seriously and then evade responsibility for those actions. Even though Wahl's attempt to inflict physical harm on the victim failed, he did inflict substantial emotional harm. Furthermore, the fundamental purpose of the Commission's character inquiry is to make predictive judgments about an applicant's truthfulness and propensity to comply with the Act and the Rules. Wahl's misdemeanor convictions directly implicate his character qualifications.

9. The Commission recently supplemented its formal hearing processes applicable to the revocation of Title III licenses by adopting Rules that, *inter alia,* expand the use of a hearing procedure that relies in appropriate cases on written submissions and documentary evidence. These hearing proceedings are resolved on a written record consisting of affirmative case, responsive case, and reply case submissions, along with all associated evidence in the record, including stipulations and agreements of the parties and official notice of material facts. Based on that record, the presiding officer will issue an Initial Decision pursuant to section 409(a) of the Act, 47 U.S.C. 409(a), and sections 1.267 and 1.274(c) of the Rules, 47 CFR 1.267, 1.274(c). This is an appropriate case for use of those procedures because the criminal proceeding is a final adjudication and the court record from the proceeding contains an explanation of the factual underpinnings for Wahl's guilty pleas.

10. Should Wahl wish to avail himself of the opportunity to be heard, he (or his attorney) must file a written appearance pursuant to section 1.91(c) of the Rules, 47 CFR 1.91(c). The written appearance must be filed within 20 days of the mailing of this Order, and must state, among other things, that Wahl will present evidence on the matters specified in this Order.

11. After release of this Order, the presiding officer shall promptly release an Initial Case Order. The Initial Case Order shall put all parties on notice that they are expected to be fully cognizant of Part I of the Rules concerning Practice and Procedure, 47 CFR part 1, subparts A and B. The Initial Case Order shall also set a date for the initial status conference and a date by which each party should file a pre-conference submission that would include (a) whether discovery is expected in this case, and if so, a proposed discovery schedule; (b) any preliminary motions they are intending to file; and (c) a proposed case schedule. The parties' pre-conference submissions should also indicate whether they request that a Protective Order be entered in this case.

12. The presiding officer shall set the case schedule, including any deadlines by which the parties should submit the motions they identified in their pre-conference submissions. The presiding officer shall also set the deadlines for the parties' affirmative case, responsive case, and reply case submissions in accordance with sections 1.371–1.375 of the Rules, 47 CFR 1.1371–1375. If the parties have requested the entrance of a Protective Order, the presiding officer shall also set a deadline by which a joint proposed Protective Order shall be submitted for consideration. In accordance with section 1.248(b) of the Rules, 47 CFR 1.248(b), the presiding officer may adopt the case schedule during the status conference or in an order following the conference.

13. In accordance with section 1.248 of the Rules, 47 CFR 1.248, and unless the parties agree otherwise, an official transcript of all case conferences will be made.

14. In accordance with section 1.246 of the Rules, 47 CFR 1.246, any party may serve upon any other party written requests for the admission of the genuineness of any relevant documents or of the truth of any relevant matters of fact. Such requests shall be served within twenty (20) days after the deadline for filing a notice of appearance unless the presiding officer sets a different time frame.

15. Sections 1.311 through 1.325 of the Rules, 47 CFR 1.311–325, set forth procedures that may be used for the discovery of relevant facts and/or for the production and preservation of evidence for use in the hearing proceeding. These sections of the Rules provide, *inter alia,* for the taking of depositions, for interrogatories, and for the production of documents and things.

16. Section 1.351 of the Rules, 47 CFR 1.351, sets forth the evidentiary standard for the hearing: ''any oral or documentary evidence may be adduced, but the presiding officer shall exclude irrelevant, immaterial, or unduly repetitious evidence.'' The parties may make evidentiary arguments based on the Federal Rules of Evidence.

17. Any person or entity seeking status as a party in this proceeding must file a petition to intervene or petition for leave to intervene in accordance with section 1.223 of the Rules, 47 CFR 1.223.

18. Motions to enlarge, change, or delete issues to be considered in this proceeding shall be allowed, consistent with section 1.229 of the Rules, 47 CFR 1.229.

19. This hearing proceeding is a ''restricted'' proceeding pursuant to section 1.1208 of the Rules, 47 CFR 1.1208, and thus *ex parte* presentations to or from Commission decision-making personnel, including the presiding officer and her staff and staff of the Commission's Media Bureau, are prohibited, except as otherwise provided in the Rules.

20. All pleadings in this proceeding, including written submissions such as letters, discovery requests and objections and written responses thereto, excluding confidential and/or other protected material, must be filed in MB Docket No. 21–401 using ECFS. ECFS shall also act as the repository for records of actions taken in this proceeding, excluding confidential and/or other protected material, by the presiding officer and the Commission. Documents responsive to any party's requests for production of documents should not be filed on ECFS. Such responsive documents shall be served directly on counsel for the party requesting the documents and produced either in hard copy or in electronic form (*e.g.,* hard drive, thumb drive) with files named in such a way as it is clear how the documents are organized.

21. The caption of any pleading filed in this proceeding, as well as all letters, documents, or other written submissions including discovery requests and objections and responses thereto, shall indicate whether it is to be acted upon by the Commission or the presiding officer. The presiding officer shall be identified by name.

22. Electronic service on the Enforcement Bureau shall be made using the following email address: *EBHearings@fcc.gov.*

23. To the extent any party to this proceeding wishes to submit materials or information that it would like withheld from the public record, it may do so in accordance with the procedures set forth in section 1.314 of the Rules, 47 CFR 1.314. The parties may also enter into a Protective Order initiated as described above.

24. The presiding officer shall issue an Initial Decision on the issues set forth herein, as well as any other issues designated for hearing in the course of the proceeding. This Initial Decision shall contain, at a minimum, findings of fact and conclusions of law, as well as the reasons or basis therefor, and the appropriate rule or order or policy and the sanction, relief or denial thereof, as appropriate.

25. *Accordingly, it is ordered* that, pursuant to sections 312(a)(2) and 312(c) of the Communications Act of 1934, as amended, 47 U.S.C. 312(a)(2) and 312(c), and section 1.91(a) of the Commission's Rules, 47 CFR 1.91(a), and pursuant to authority delegated under section 0.283 of the Commission's Rules, 47 CFR 0.283, the captioned authorization *is designated for hearing* in a consolidated proceeding before the FCC Administrative Law Judge, at a time and place to be specified in a subsequent order, upon the following issues: (a) To determine the effects, if any, of Roger Wahl's felony conviction and related misdemeanor convictions on his qualifications to be a Commission licensee; (b) To determine whether Roger Wahl has the qualifications to be a Commission licensee; (c) To determine whether Roger Wahl's license for Station WQZS(FM) should be revoked.

26. *It is further ordered* that, pursuant to section 312(c) of the Communications Act of 1934, as amended, 47 U.S.C. 312(c), and section 1.91(c) of the Commission's Rules, 47 CFR 1.91(c), in order to avail himself of the opportunity to be heard and the right to present evidence at a hearing in these proceedings, Roger Wahl, in person or by his attorneys, *shall file* within 20 days of the mailing of this Hearing Designation Order, Order to Show Cause and Notice of Opportunity for Hearing, a written appearance stating his intention to appear at the hearing and present evidence on the issues specified above.

27. *It is further ordered,* pursuant to sections 1.91 and 1.92 of the Commission's Rules, 47 CFR 1.91–92, that if Roger Wahl fails to file a written appearance within the time specified above, or has not filed prior to the expiration of that time a petition to accept, for good cause shown, such written appearance beyond expiration of said 20 days, the right to a hearing shall be deemed waived. Where a hearing is waived, the Administrative Law Judge shall issue an order terminating the hearing proceeding and certifying the case to the Commission.

28. *It is further ordered* that the Chief, Enforcement Bureau, *is made a party* to this proceeding without the need to file a written appearance.

29. *It is further ordered* that, in accordance with section 312(d) of the Communications Act of 1934, as amended, 47 U.S.C. 312(d), and section 1.91(d) of the Commission's Rules, 47 CFR 1.91(d), the burden of proceeding with the introduction of evidence and the burden of proof with respect to the issues at paragraph 25 *shall be* upon the Commission's Enforcement Bureau.

30. *It is further ordered* that a copy of each document filed in this proceeding subsequent to the date of adoption of this Hearing Designation Order, Order to Show Cause and Notice of Opportunity for Hearing *shall be served* on the counsel of record appearing on behalf of the Chief, Enforcement Bureau. Parties may inquire as to the identity of such counsel by calling the Investigations & Hearings Division of the Enforcement Bureau at (202) 418–1420. Such service copy *shall be addressed* to the named counsel of record, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

31. *It is further ordered* that a copy of this Hearing Designation Order, Order to Show Cause and Notice of Opportunity for Hearing shall be sent via Certified Mail, Return Receipt Requested, and by regular first-class mail to Roger Wahl, 128 Hunsrick Road, Meyersdale, PA 57424.

32. *It is further ordered* that the Secretary of the Commission shall cause to have this Hearing Designation Order, Order to Show Cause and Notice of Opportunity for Hearing, or a summary thereof published in the **Federal Register**.

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

[FR Doc. 2021–23606 Filed 10–28–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID 54929]

Open Commission Meeting Tuesday, October 26, 2021

October 19, 2021.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Tuesday, October 26, 2021, which is scheduled to commence at 10:30 a.m. The Federal Advisory Committee Act requires that agencies publish notice of an advisory committee meeting in the **Federal Register**.

Disaster Communications Field Hearing

During the meeting, the Commission will also conduct a virtual field hearing on communications recovery and resiliency during disasters.

Due to the current COVID–19 pandemic and related agency telework and headquarters access policies, this meeting will be in a wholly electronic format and will be open to the public on the internet via live feed from the FCC's web page at *www.fcc.gov/live* and on the FCC's YouTube channel.

Item number	Bureau	Subject
1	INTERNATIONAL	TITLE: National Security Item. SUMMARY: The Commission will consider a national security matter.
2	MEDIA	TITLE: Updating Digital Television Table of Allotments. (GN Docket No. 12–268). SUMMARY: The Commission will consider an Order that will update the digital television Table of Allotments, and delete or revise rules rendered obsolete by the broadcast incentive auction and the digital television transition.
3	WIRELINE COMPETITION	TITLE: Selecting Third Round of Applicants for Connected Care Pilot Program. (WC Docket No. 18–213). SUMMARY: The Commission will consider a Public Notice announcing the third round of selections for the Commission's Connected Care Pilot Program to provide Universal Service Fund support for health care providers making connected care services available directly to patients.

Item number	Bureau	Subject
4		TITLE: Disaster Communications Field Hearing. SUMMARY: The Commission will hear testimony about communications issues during and following Hurricane Ida and other recent disasters.
2	MEDIA	TITLE: Updating Digital Television Table of Allotments. (GN Docket No. 12–268). SUMMARY: The Commission will consider an Order that will update the digital television Table of Allotments, and delete or revise rules rendered obsolete by the broadcast incentive auction and the digital television transition.

The meeting will be webcast with open captioning at: *www.fcc.gov/live.* Open captioning will be provided as well as a text only version on the FCC website. Other reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted but may be impossible to fill. Send an email to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530.

Additional information concerning this meeting may be obtained from the Office of Media Relations, (202) 418–0500. Audio/Video coverage of the meeting will be broadcast live with open captioning over the internet from the FCC Live web page at *www.fcc.gov/live.*

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

[FR Doc. 2021–23605 Filed 10–28–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID 55684]

Deletion of Item From October 26, 2021 Open Meeting

The following item has been adopted by the Commission and deleted from the list of items scheduled for consideration at the Tuesday, October 26, 2021, Open Meeting. This item was previously listed in the Commission's Notice of Tuesday, October 19, 2021.

* * * * *

The meeting will be webcast with open captioning at: *www.fcc.gov/live.* Open captioning will be provided as well as a text only version on the FCC website. Other reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted but may be impossible to fill. Send an email to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530.

Additional information concerning this meeting may be obtained from the Office of Media Relations, (202) 418–0500. Audio/Video coverage of the meeting will be broadcast live with open captioning over the internet from the FCC Live web page at *www.fcc.gov/live.*

Dated: October 25, 2021.

Katura Jackson,

Federal Register Liaison.

[FR Doc. 2021–23608 Filed 10–28–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION NOTICE OF PREVIOUS ANNOUNCEMENT: 86 FR 58278.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Tuesday, October 26, 2021 at 10:00 a.m. and its continuation at the conclusion of the open meeting on October 28, 2021.

CHANGES IN THE MEETING: This meeting also discussed:

Matters relating to internal personnel decisions, or internal rules and practices.

Information for which disclosure would constitute an unwarranted invasion of privacy.

Information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of a proposed Commission action.

* * * * *

CONTACT FOR MORE INFORMATION: Judith Ingram, Press Officer. Telephone: (202) 694–1220.

Vicktoria J. Allen,

Acting Deputy Secretary of the Commission.

[FR Doc. 2021–23685 Filed 10–27–21; 11:15 am]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than November 15, 2021.

A. Federal Reserve Bank of Kansas City (Jeffrey Imgarten, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Hailey Ruth Craighead Guadarrama and Franco M. Guadarrama, both of Ardmore, Oklahoma;* to join the Craighead Family Group, a group acting in concert, to acquire voting shares of Citizens Commerce Corporation, and thereby indirectly acquire voting shares

of Citizens Bank & Trust Company, both of Ardmore, Oklahoma.

Additionally, Steven Chase Martin and Holly Kaitlyn Solley Martin, both of Lone Grove, Oklahoma; Whitney Dell Martin Buck, Larry Dylan Buck, and Kyle Van Craighead, all of Ardmore, Oklahoma; Jeffrey Don Craighead, Amy K. Craighead, and Lindsay Fowler Martin, all of Norman, Oklahoma; and Megan Suzzanne Craighead Engels and Christopher Engels, both of Plano, Texas; to join the Craighead Family Group to retain voting shares of Citizens Commerce Corporation, and thereby indirectly retain voting shares of Citizens Bank & Trust Company.

2. *Kerstin Eckstrom, Lincoln, Nebraska; and Lynne Petro, Shoal Creek, Alabama;* to join the Olson Family Control Group, a group acting in concert, to retain voting shares of O & F Cattle Company, and thereby indirectly retain voting shares of Nebraska State Bank, both of Oshkosh, Nebraska; and retain voting shares of First National Financial Corporation, and thereby indirectly retain voting shares of Bank of Estes Park, both of Estes Park, Colorado.

Board of Governors of the Federal Reserve System, October 26, 2021.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2021–23612 Filed 10–28–21; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

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 the BHC Act (12 U.S.C. 1842(c)).

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 November 29, 2021.

A. Federal Reserve Bank of St. Louis (Holly A. Rieser, Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments.applications@stls.frb.org*:

1. Friendship Bancshares, Inc., Linn, Missouri; to acquire Bank of Saint Elizabeth, Saint Elizabeth, Missouri.

B. Federal Reserve Bank of Dallas (Karen Smith, Director, Applications) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Commerce Bancshares of Roswell, Inc. Employee Stock Ownership Plan, Roswell, New Mexico;* to become a bank holding company by acquiring up to 26 percent of the voting shares of Commerce Bancshares of Roswell, Inc., and thereby indirectly acquiring voting shares of Valley Bank of Commerce, both of Roswell, New Mexico.

Board of Governors of the Federal Reserve System, October 26, 2021.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2021–23613 Filed 10–28–21; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–22–21GB]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''Program Evaluation of CDC's Core State Injury Prevention Program'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on June 10, 2021 to obtain comments from the public and affected agencies. CDC received three anonymous comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Program Evaluation of CDC's Core State Injury Prevention Program—New—National Center for Injury Prevention and Comtrol (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

NCIPC is requesting approval to collect information from awardees funded under the Core State Injury Prevention Program cooperative agreement, hereafter known as Core SIPP. This program is a new initiative. As part of the annual program evaluation data collection, recipients will submit data on enhancements in

program implementation capacity, leveraged resources/funds through economic indicators, and challenges and successes, programmatic improvements, and impact through interviews. Finally, awardees will annually submit injury and violence prevention surveillance data using Excel-based Injury Indicator Spreadsheets and Special Emphasis Reports.

Information to be collected will provide crucial data for program evaluation and provide CDC with the ability to respond in a timely manner to requests for information about the program from the Department of Health and Human Services (HHS), the White House, Congress, and others. Data from the collection will also be used by CDC to increase capacity, understand how the cooperative agreement increases potential sustainability though improved capacity, provide data-driven technical assistance, and disseminate the most current surveillance data on unintentional and intentional injuries.

Authority for CDC's National Center for Injury Prevention and Control (NCIPC) to collect these data is granted by Section 301 of the Public Health Service Act (42 U.S.C. 241). This Act gives federal health agencies, such as CDC, broad authority to collect data and to participate in other public health activities, including program implementation evaluation. The Core SIPP evaluation will collect several types of information from recipients over the course of the funding cycle. This information will be used to:

(1) Evaluate and track outcomes at the recipient- and program-levels as they relate to injury prevention-focused infrastructure development, surveillance system development and use, and partnerships, to prevent Adverse Childhood Experiences (ACEs), Traumatic Brain Injury (TBI), and transportation-related injuries. Recipient-and program-level identification of disproportionately affected populations and subsequent public health actions taken to address injury-related health disparities will also be assessed.

(2) Identify technical assistance needs of individual recipients and this recipient cohort, so that the CDC team can appropriately deploy resources to support recipients.

(3) Identify practice-based evidence for injury prevention public health actions to advance the field through future partnerships, program design, and publications.

(4) Inform continuous quality improvement activities over the course of the funding period, to include quarterly and annual strategic planning for current and later iterations of this program under future funding.

CDC requests approval for 679 total estimated annualized burden hours. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Core SIPP Program Awardees	Implementation Capacity Development Rubric	23	1	2
	Economic Indicators	23	1	1
	Recipient-level Group Interviews	23	1	1.5
	Injury Indicators Spreadsheet	23	1	5
	Emergency Department Injury Indicators Spreadsheet	23	1	5
	Hospital Discharge Injury Indicators Spreadsheet	23	1	5
	Special Emphasis Reports	23	1	10

Jeffrey M. Zirger,

Lead,Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2021–23554 Filed 10–28–21; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–22–1355]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) submitted the information collection request titled Phased Approach to the Resumption of Cruise Ship Passenger Operations to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' on April 30, 2021, to obtain comments from the public and affected agencies. This collection accompanies a CDC Order entitled Temporary Extension and Modification of Framework for Conditional Sailing Order (CSO). CDC received twenty (20) comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th

Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Phased Approach to the Resumption of Cruise Ship Passenger Operations (OMB Control No. 0920–1335, Exp. 10/31/2021)—Extension—National Center for Emerging Zoonotic and Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Temporary Extension and Modification Framework for Conditional Sailing Order (here on referred to as the ''CSO Extension'') extends The Framework for Conditional Sailing Order published in the **Federal Register** on November 4, 2020, and continues to prohibit a cruise ship operator from commencing or continuing any regular passenger operations without a COVID–19 Conditional Sailing Certificate issued by HHS/CDC. This information collection request outlines the reporting and document retention requirements that are part of a phased approach to resuming passenger operations.

The CSO Extension builds upon the phased-in approach to resume cruise ship passenger operations introduced by the CSO. Cruise ship operators who have already completed the process under the CSO will not have to resubmit any information under the CSO Extension and can continue sailing with passengers without interruption. As many cruise ship operators are now familiar with the CSO and its requirements, many aspects of the phased-in approach can be completed concurrently under the CSO Extension.

Phase 1

Per CDC's CSO Extension, cruise ships operating or intending to operate in U.S. waters must acknowledge that a complete and accurate COVID–19 response plan (formerly referred to as ''No Sail Order (NSO) response plan'') is observed. The COVID–19 response plan, which can be submitted by a cruise ship holding company and apply to all cruise ships operated by the holding company's brands, must include: (1) Terminology and use of definitions that align with how CDC uses and defines the following terms: ''confirmed COVID–19,'' ''COVID–19-like illness,'' ''close contact,'' ''fully vaccinated for COVID–19,'' and ''isolation'' and ''quarantine'' (including timeframes for isolation and quarantine); (2) protocols for on board surveillance of passengers and crew with COVID–19 and COVID–19-like illness; (3) protocols for training all crew on COVID–19 prevention, mitigation, and response activities; (4) protocols for on board isolation and quarantine, including how to increase capacity in case of an outbreak; (5) protocols for COVID–19 testing that aligns with CDC technical instructions; (6) protocols for onboard medical staffing—including number and type of staff—and equipment in sufficient quantity to provide a hospital level of care (*e.g.,* ventilators, face masks, personal protective equipment) for the infected without the immediate need to rely on shoreside hospitalization; and (7) procedures for disembarkation of passengers who test positive for COVID–19.

Phase 1 also includes requirements for COVID–19 testing capabilities and reporting for cruise ship operators operating or intending to operate cruise ships in U.S. waters. Cruise ship operators must have onboard testing capabilities to test all symptomatic crew and passengers for COVID–19 and their close contacts. This includes having onboard rapid nucleic acid amplification test (NAAT) point-of-care equipment that meets the requirements specified by CDC in technical instructions or orders and have received CDC approval. For the Phase 1 mass crew testing requirement, cruise ship operators may use an onboard viral test (NAAT or antigen test) or arrange shoreside testing at a Clinical Laboratory Improvement Amendments (CLIA)-certified laboratory so long as it meets the requirements specified by CDC in technical instructions or orders and have received CDC approval.

Finally, Phase 1 also includes reporting requirements using the CDC Enhanced Data Collection during COVID–19 Pandemic (EDC) form. In lieu of submitting the Maritime Conveyance Cumulative Influenza/Influenza-Like Illness (ILI) Form for COVID–19-like illness and the Maritime Conveyance Illness or the Death Investigation Form for individual specific cases of COVID–19, the CDC will require daily submission of the EDC form during the period of the CSO Extension. Data points for this form include number of travelers (crew and passengers) currently onboard; case counts and diagnostic testing data for COVID–19 and COVID–19-like Illness (CLI); screening and testing of asymptomatic travelers, isolation practices, and the percentage of travelers who are fully vaccinated. The data collected in the EDC form are used to inform CDC's COVID–19 Color-Coding System for Cruise Ships. This data will greatly increase the transparency of the overall health of the crew members and passengers, and better allow the CDC to manage potential outbreaks and offer recommendations to the ship and port partners. The color-coding system is only applicable to cruise ships operating or planning to operate in U.S. waters. Status of ships is contingent upon daily submission of the EDC form. When a cruise ship notifies CDC of suspected or confirmed cases of COVID–19 on board, CDC determines whether an investigation is needed based on a predetermined threshold. If an investigation is deemed necessary, CDC will solicit extra information from the cruise ship operator. This investigation gives CDC and the cruise industry the ability to work closely together to protect the health and safety of those on board and in communities.

Phase 2A

The next phase, Phase 2A, focuses on preparation for simulated and restricted voyages. As required under the CSO Extension, a cruise ship operator's agreement with U.S. port authorities and local health authorities must include the following elements: (1) A port agreement between the cruise ship operator and port authority that takes into consideration the public health response resources of the jurisdiction in the event of a COVID–19 outbreak, a plan and timeline for vaccination of cruise ship crew prior to resuming passenger operations, and vaccination strategies to maximally protect passengers and crew from introduction, amplification, and spread of COVID–19 in the maritime environment and in land-based communities; (2) medical care agreements between the cruise ship operator and health care entities, addressing evacuation and medical transport to onshore hospitals for passengers and crew in need of medical care, in accordance with CDC technical instructions and orders; and (3) housing agreements between the cruise ship operator and one or more shoreside facilities for isolation and quarantine of passengers or crew members with COVID–19 and their close contacts, identified from the day of embarkation through disembarkation for each voyage. Cruise lines/brands may submit these agreements for all the ships in their fleet. Note, these agreements can remain in place for restricted voyages, as long as the agreements remain valid.

In lieu of documenting the approval of all local health authorities of jurisdiction, the cruise ship operator may instead submit to CDC a signed statement from a local health authority, on the health authority's official letterhead, indicating that the health

authority has declined to participate in deliberations and/or sign the port agreement (*i.e.,* a ''Statement of Non-Participation''). Additionally, the cruise ship operator may enter into a multi-port agreement (as opposed to a single port agreement) provided that all relevant port and local health authorities (including the state health authorities) are signatories to the agreement.

During discussions with cruise ship operators, port authorities, and state and local health authorities, all parties requested CDC assistance with the required agreements. In response to these requests, CDC has posted specific guidance online and has provided a checklist for additional reference.

Phase 2B

Phase 2B of the CSO Extension establishes the requirements for simulated voyages where volunteers play the role of passengers to test cruise ship operators' ability to mitigate COVID–19 onboard. Passengers on simulated voyages must be at least 12 years old, provide their informed consent, and submit a medical certification to the cruise ship operator prior to embarkation.

Before conducting a simulated voyage, a cruise ship operator must submit a Request for Approval to Conduct a Simulated Voyage Prior to Issuance of COVID–19 Conditional Sailing Certificate at least five business days prior to the voyage. A cruise ship operator shall not apply for approval to conduct a simulated voyage until all of CDC's requirements relating to onboard laboratory capacity and screening testing of crew in U.S. waters have been satisfied.

A simulated voyage must include the following simulated activities: (1) Embarkation and disembarkation procedures, including terminal check-in, (2) on board activities, including at dining and entertainment venues, (3) private island shore excursions, if any are planned during restricted passenger voyages, (4) evacuation procedures, (5) transfer of symptomatic passengers or crew, or those who test positive for SARS-CoV–2, from cabins to isolation rooms, (6) quarantine of all remaining passengers and non-essential crew, and (7) other activities as may be listed in CDC technical instructions and orders.

Additionally, the cruise ship operator must: (1) Meet standards for hand hygiene, facemasks, and physical distancing for passengers and crew, as well as ship sanitation, as may be required by CDC technical instructions or orders, (2) conduct laboratory testing of all passengers and crew on the day of embarkation and the day of disembarkation as required by CDC technical instructions or orders, and (3) immediately conduct laboratory testing of any passengers and crew who report illness consistent with COVID–19 during the simulated voyage with rapid point-of-care results as required by CDC technical instructions or orders. Note, CDC may require the cruise ship operator to immediately end the simulated voyage and take other action to protect the health and safety of volunteer passengers and crew if during the simulation a threshold of COVID–19 cases, as determined by CDC in technical instructions, is met or exceeded.

During simulated voyages, the cruise ships are subject to virtual and in-person inspections by CDC. The cruise ship operator's properties and records must be made available for inspection to allow CDC to ascertain compliance with its requirements. Such properties and records include but are not limited to vessels, facilities, vehicles, equipment, communications, manifests, list of passengers, laboratory test results, and employee and passenger health records. CDC has issued additional technical guidance outlining the specific areas that may be inspected and corresponding recommendations. Following each simulated voyage, the cruise ship operator must document any deficiencies in its health and safety protocols through a Simulated Voyage After-Action Report and address how the cruise ship operator intends to address those deficiencies. This After-Action Report must also include COVID–19 test results for any volunteer passengers or crew on the simulated voyage. The After-Action Report must be submitted to the CDC as soon as practicable at the end of the simulation and as part of the cruise ship operator's application for a COVID–19 Conditional Sailing Certificate.

In lieu of conducting a simulated voyage, a cruise ship operator's responsible officials, at their discretion, may sign and submit to CDC an acknowledgement that 95% of crew (excluding any newly embarking crew in quarantine) are fully vaccinated and submit to CDC a clear and specific vaccination plan and timeline to limit cruise ship sailings to 95% of passengers who have been verified by the cruise ship operator as fully vaccinated prior to sailing.

Furthermore, cruise ships that have been operating restricted passenger voyages under an Acknowledgement by a Cruise Ship Operator In Lieu of a Simulated Voyage may, at their discretion, transition to operating restricted passenger voyages with less than 95% of passengers fully vaccinated without first conducting a simulated voyage if the following are met: (1) The ship must maintain a percentage of fully vaccinated crew that is greater than or equal to 95%. (2) The ship must have operated on restricted passenger voyages under an acknowledgement by the cruise ship operator's responsible officials that they will only operate with 95% of crew (excluding any newly embarking crew in quarantine) and 95% of passengers who are fully vaccinated for at least 60 days. (3) At least 14 days prior to the transition to voyages with less than 95% of passengers fully vaccinated, the cruise ship operator must submit the following to CDC: (1) Protocols for how dining and entertainment venues, and recreational activities including buffets, seated dining, bars (including between bartenders and patrons), theaters, other performance venues, casinos, arcade room, spa services, fitness classes/gymnasiums, muster drills, and other areas where passengers congregate will be modified to incorporate mask use, physical distancing, and other public health measures as outlined in CDC technical instructions. (2) Plans for training crew on new procedures for mask use, physical distancing, and other public health measures as outlined in CDC technical instructions. (3) Protocols for increasing the number of isolation and quarantine cabins and on-board support staff (*e.g.,* administrative personnel, testing personnel, contact tracers, medical personnel) as determined by the cruise ship operator and as needed in the event of an outbreak. (4) Procedures for how crew will identify and distinguish between passengers who are fully vaccinated and passengers who are not fully vaccinated. (5) Procedures for notifying passengers who booked a 95% passenger vaccinated cruise that their cruise will no longer operate as a 95% passenger vaccinated cruise. (6) The cruise ship operator must submit photographs or videos, no later than seven days after commencing the first voyage with less than 95% of passengers fully vaccinated, showing compliance with indoor mask use and physical distancing, such as signage in elevators, dining table arrangements, and blocking out seats/bar stools.

Similarly, cruise ship operators that have been conducting passenger operations outside of U.S. waters and intend to operate cruise ships with less than 95% of passengers fully vaccinated after repositioning to U.S. waters may, at their discretion, follow the

procedures in this paragraph for conducting a modified simulated voyage instead of conducting a full simulated voyage if the following are met: (1) The ship must maintain a percentage of fully vaccinated crew that is greater than or equal to 95%. (2) The ship must have operated with passengers outside of U.S. waters for at least 60 days before entering U.S. waters. (3) The cruise ship operator must conduct at least one simulation of embarkation screening and testing at the port terminal it intends to use in the U.S.—to include the number of passengers not fully vaccinated expected on the first voyage—unless the ship will be operating at the terminal already in use by the same cruise line/brand for passenger operations. (4) At least 14 days prior to entering U.S. waters, the cruise ship operator must submit the following to CDC: (i) Protocols for how dining and entertainment venues, and recreational activities, including buffets, seated dining, bars (including between bartenders and patrons), theaters, other performance venues, casinos, arcade room, spa services, fitness classes/gymnasiums, muster drills, and other areas where passengers congregate will incorporate mask use, physical distancing, and other public health measures as outlined in technical instructions. (ii) Plans for training crew on procedures for mask use, physical distancing, and other public health measures as outlined in CDC technical instructions. (iii) Protocols for increasing the number of isolation and quarantine cabins and on-board support staff (*e.g.,* administrative personnel, testing personnel, contact tracers, medical personnel) as determined by the cruise ship operator and as needed in the event an outbreak. (iv) Procedures for how crew will identify and distinguish between passengers who are fully vaccinated and passengers who are not fully vaccinated. (v) Procedures for notifying passengers who booked a 95% vaccinated cruise that their cruise will no longer operate as a 95% vaccinated cruise, if applicable. (vi) An after-action report explaining lessons learned from sailing outside of U.S. waters and from the simulated embarkation screening and testing (if such a simulation was conducted). (vii) The cruise ship operator must submit photographs or videos, no later than seven days after commencing the first voyage with less than 95% of passengers fully vaccinated, showing compliance with indoor mask use and physical distancing, such as signage in elevators, dining table arrangements, and blocking out seats/bar stools.

Phase 3

As a condition of applying for a COVID–19 Conditional Sailing Certificate (Phase 3), a cruise ship operator must have successfully conducted a simulated voyage, submitted an Acknowledgement by a Cruise Ship Operator In Lieu of a Simulated Voyage, or—if applicable—completed the specific modified simulated voyage procedures described above. The CDC COVID–19 Conditional Sailing Certificate Application must include: (1) A completed CDC registration/application form that includes the signatures of the cruise ship operator's responsible officials; (2) The name, titles, and contact information for the cruise ship operator's responsible officials; (3) A completed statement of intent stating the name, carrying capacity for passengers and crew, itinerary, ports of call, length of voyage, and expected onboard or shoreside activities, for the cruise ship that the cruise ship operator intends to have certified for restricted passenger operations; (4) a certification statement signed by the responsible officials attesting that the cruise ship operator has complied and remains in compliance with CDC's requirements for a COVID–19 Response Plan and EDC reporting prior to applying for a COVID–19 Conditional Sailing Certificate; (5) a certification statement signed by the responsible officials attesting that the cruise ship operator has adopted health and safety protocols that meet CDC's standards for mitigating the risk of COVID–19 among passengers and crew onboard the cruise ship that will be commencing restricted passenger operations, and will modify these protocols as needed to protect the public's health as required by CDC technical instructions or orders; (6) a certification statement signed by the responsible officials attesting that the cruise ship operator has sufficient medical and point of care laboratory capabilities and staff on board the cruise ship that will be commencing restricted passenger operations to manage severe COVID–19 cases and outbreaks in exigent circumstances as required by CDC technical instructions or orders; and (7) a certification statement signed by the responsible officials attesting that the cruise ship operator is in compliance with the other requirements contained in this framework for mitigating the risk of COVID–19 on board cruise ships and agrees to continue to comply with these requirements.

These documents must be submitted at least five business days prior to any proposed restricted voyage. If the Certificate is denied, revoked or suspended, a cruise ship operator may submit a written appeal of a denial of its application for a COVID–19 Conditional Sailing Certificate or a revocation or suspension of its COVID–19 Conditional Sailing Certificate.

During restricted voyages, the cruise ships are subject to virtual and in-person inspections by CDC. The cruise ship operator's properties and records must be made available for inspection to allow CDC to ascertain compliance with its requirements. Such properties and records include but are not limited to vessels, facilities, vehicles, equipment, communications, manifests, list of passengers, laboratory test results, and employee and passenger health records. CDC has issued additional technical guidance outlining the specific areas that may be inspected and corresponding recommendations. CDC has provided, and will continue to provide, the technical instructions for each phase as they are released through a non-substantive change request.

CDC requests OMB approval for an estimated 24,146 annual burden hours to respondents and record keepers.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number responses per respondent	Average burden per response (in hrs.)
Cruise ship holding company	COVID–19 Response Plan	3	1	2400/60
Cruise ship physician	Enhanced Data Collection (EDC) During COVID–19 Pandemic Form (Daily).	130	365	20/60
Cruise ship physician	Cruise COVID–19 Case Investigation Worksheet (if necessary).	104	1	30/60

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondent	Form name	Number of respondents	Number responses per respondent	Average burden per response (in hrs.)
Cruise ship physician	Cruise COVID–19 Contact Investigation Worksheet (if necessary).	24	1	30/60
Cruise ship brand/operator	Approval of Onboard COVID–19 Testing Instrument	60	1	60/60
Cruise ship brand/operator	Mass Crew Testing Requirement	60	1	5/60
Cruise ship brand/operator	Agreement with Health Care Organization with signoff from Local Health Authorities.	60	1	600/60
Cruise ship brand/operator	Agreement with Port of Entry with signoff from Local Health Authority.	60	1	600/60
Cruise ship brand/operator	Agreement with Housing Facility with signoff from Local Health Authority.	60	1	600/60
Cruise ship operator	Request for Approval to Conduct a Simulated Voyage Prior to Issuance of COVID–19 Conditional Sailing Certificate.	30	1	600/60
Passenger (3rd party disclosure)	Informed Consent and Medical Certification with no pre-existing conditions for Simulated Voyage.	18,000	1	15/60
Cruise ship operator	Remote and In-person Inspections	30	1	120/60
Cruise ship operator	After Action Report, Simulated Voyage	30	1	600/60
Cruise ship operator	COVID–19 Conditional Sailing Certificate Application	60	1	600/60
Cruise ship operator	Remote and In-person Inspections	130	2	120/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2021–23555 Filed 10–28–21; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–22–0017; Docket No. CDC–2021–0116]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Application for Training, which supports the management and evaluation of online training and professional development opportunities for public health and health care professionals.

DATES: CDC must receive written comments on or before December 28, 2021.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2021–0116 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

Please note: Submit all comments through the Federal eRulemaking portal (*regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected;
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses; and
5. Assess information collection costs.

Proposed Project

Application for Training—(OMB Control No. 0920–0017, Exp. 04/30/2022)—Revision—Center for Surveillance, Epidemiology, and

Laboratory Services (CSELS), Division of Scientific Education and Professional Development (DSEPD), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC requests OMB approval for the Revision of a currently approved Information Collection Request (ICR) titled Application for Training (OMB Control No. 0920–0017). The mission of CDC's Division of Scientific Education and Professional Development (DSEPD) is to support the development of a competent, sustainable, and empowered public health workforce. Professionals in public health, epidemiology, medicine, economics, information science, veterinary medicine, nursing, public policy, and other related professions, seek professional development opportunities (both accredited and nonaccredited) through two CDC learning management systems. These two learning management systems are Training and Continuing Education Online (TCEO) (for accredited courses) and CDC TRAIN (for nonaccredited courses developed by CDC programs, grantees, and other funded partners). Access to quality and accredited learning programs and products through these two systems allow for the public health workforce to broaden their knowledge and skills to improve the science and practice of public health for domestic and international impact.

The overarching purpose of this ICR is to continually improve CDC training activities and maintain CDC compliance with mandatory accreditation organization standards by efficiently collecting information through CDC's Training and Continuing Education Online (TCEO) and CDC TRAIN systems, while navigating a future merger that moves to using only one system (CDC TRAIN). This revision requests to extend current approval of the TCEO forms, with one minor change, namely to add two new response options for one question on the TCEO New Participant Registration. This revision also requests to add CDC TRAIN as a data collection system and add two CDC TRAIN standard training evaluation tools (one immediately after the course is taken, and one 3–6 months after the course is taken) that will be employed on the learning management system. This proposed change will provide CDC with an efficient, effective, and secure electronic mechanism for collecting, processing, and monitoring training-related information.

CDC will use information collected in both systems to evaluate and improve courses based on learner feedback. At this time, TCEO is also used to generate certificates of attendance and verify training completion, review and approve proposals for educational activities to receive continuing education accreditation, and ensure compliance with mandatory accreditation standards.

All data will be collected online, using secure electronic web-based password protected platforms. Respondents will include educational developers requesting accreditation for their trainings and public health and healthcare professionals who seek training. No statistical methods will be used to analyze the information collected. CDC will use identifiable information in TCEO to track participant completion of educational activities to facilitate required reporting to earn continuing education credits, hours, or units. Aggregate and non-aggregate data from the evaluations in TCEO and CDC TRAIN will be used to improve educational activities and assess learning outcomes.

CDC requests OMB approval for an estimated 412,600 annual burden hours. There are no costs to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden time per response (in hours)	Total response burden (in hours)
Educational Developers (Health Educators)	TCEO Proposal	120	1	5	600
Public Health and Health Care Professionals (Learners).	TCEO New Participant Registration.	300,000	1	5/60	25,000
Public Health and Health Care Professionals (Learners).	TCEO Post-Course Evaluation.	300,000	3	10/60	150,000
Public Health and Health Care Professionals (Learners).	TCEO Follow-up Evaluation	30,000	3	3/60	4,500
TCEO Sub-Total					180,100
Public Health and Health Care Professionals (Learners).	CDC TRAIN Immediate Post-Course Evaluation Tool.	300,000	3	15/60	225,000
Public Health and Health Care Professionals (Learners).	CDC TRAIN Delayed Follow-Up Evaluation Tool.	30,000	3	5/60	7,500
0.33TRAIN Sub-Total					232,500
Total					412,600

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2021–23556 Filed 10–28–21; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Office of Child Care Data Collection for ACF–218: FFY 2021 Quality Progress Report (QPR) (OMB #0970–0517)

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 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. You can also obtain copies of the proposed collection of information by emailing *infocollection@acf.hhs.gov.* Identify all emailed requests 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

Authority: 42 U.S.C. 9858.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2021–23644 Filed 10–28–21; 8:45 am]

BILLING CODE 4184–43–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–1459]

Generic Drug User Fee Amendments; Public Meeting; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a virtual public meeting to discuss proposed recommendations for the reauthorization of the Generic Drug User Fee Amendments (GDUFA) for fiscal years (FYs) 2023 through 2027. GDUFA amended the Federal Food, Drug, and Cosmetic Act (FD&C Act) to authorize FDA to assess and collect fees to support human generic drug activities. The current legislative authority for GDUFA expires at the end of September 2022. At that time, new legislation will be required for FDA to continue to assess and collect generic drug user fees for future fiscal years. The FD&C Act directs FDA, following negotiations with the regulated industry and periodic consultations with other stakeholders, to present recommendations for reauthorization of the GDUFA program to the relevant Congressional committees, publish the recommendations in the **Federal Register**, provide for a period of 30 days for the public to provide written comments on such recommendations, and hold a meeting at which the public may present its views on such recommendations. FDA will then consider such public views and comments and revise such recommendations as necessary.

DATES: The public meeting will be held on November 16, 2021, from 9 a.m. to 2 p.m. Eastern Time and will be held virtually. Submit either electronic or written comments on this public meeting by December 12, 2021. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

ADDRESSES: Registration to attend the virtual meeting and other information can be found at *https://www.eventbrite.com/o/fda-34063199905.* See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before December 12, 2021. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of December 12, 2021. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked, and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2020–N–1459 for ''Generic Drug User Fee Amendments; Public Meeting; Request for Comments.'' Received comments, those filed in a timely manner (see ADDRESSES), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Dat Doan, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 3334, Silver Spring, MD 20993, 240–402–8926, *Dat.Doan@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing a virtual public meeting to discuss proposed recommendations for the reauthorization of GDUFA, which authorizes FDA to assess and collect user fees to support human generic drug activities, which are defined under the FD&C Act [1] to include the activities necessary for the review (also called ''assessment'') of generic human drug applications and Type II active pharmaceutical ingredient (API) drug master files (DMFs),[2] and for conducting inspections related to generic drugs, and to engage in other related activities. The current authorization of the program (GDUFA II) expires at the end of September 2022. Without new legislation, FDA will no longer be able to assess and collect user fees to help fund human generic drug activities for future fiscal years.

Section 744C(f)(4) of the FD&C Act (21 U.S.C. 379j–43(f)(4)) requires that after FDA negotiates with the regulated industry,[3] we do the following: (1) Present recommendations for reauthorization of the GDUFA program to the relevant Congressional committees, (2) publish such recommendations in the **Federal Register**, (3) provide for a period of 30 days for the public to provide written comments on such recommendations, (4) hold a meeting at which the public may present its views on such recommendations, and (5) after consideration of such public views and comments, revise such recommendations as necessary.

This notice, the 30-day comment period, and the public meeting described in this notice will satisfy certain of these statutory requirements. After the public meeting, we will revise the recommendations as necessary and present the proposed recommendations

[1] See section 744A(9) of the FD&C Act (21 U.S.C. 379j–41(9)).

[2] Type II active pharmaceutical ingredient drug master file means a submission of information to the Secretary by a person that intends to authorize FDA to reference the information to support approval of a generic drug submission without the submitter having to disclose the information to the generic drug submission applicant. Section 744A(13) of the FD&C Act.

[3] Section 744C(f)(3) of the FD&C Act requires periodic consultation with representatives of patient and consumer advocacy groups during negotiations with the generic drug industry.

to the appropriate Congressional committees.

The purpose of the public meeting announced in this **Federal Register** notice is to obtain the public's views on the proposed recommendations for the reauthorized program (GDUFA III). The following information is provided to help potential meeting participants better understand the history and evolution of the GDUFA program and the proposed GDUFA III recommendations.

II. What is GDUFA and what does it do?

GDUFA amended the FD&C Act to authorize FDA to assess and collect fees from drug companies that submit marketing applications for human generic drug applications, as well as from certain DMFs holders and from manufacturing facilities referenced in generic drug applications. GDUFA was originally enacted in 2012 as part of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144) and was authorized for a period of 5 years.

In 2017, the GDUFA user fee program was reauthorized under the FDA Reauthorization Act of 2017 (Pub. L. 115–52, Title III), for FYs 2018 through 2022 (GDUFA II). GDUFA II was designed to finance critical and measurable generic drug program enhancements intended to help speed public access to safe, effective, and high-quality generic drugs. As described in the GDUFA II Commitment Letter, FDA committed to achieve certain performance goals, provide enhanced communication intended to streamline abbreviated new drug application (ANDA) development and assessment, and take other steps to increase the efficiency of the assessment process. GDUFA II's Commitment Letter also established a pre-ANDA program to make transparent FDA's regulatory expectations for complex generic product developers early in product development and during application assessment.

Additional information concerning GDUFA, including the text of the law, the GDUFA II Commitment Letter, key **Federal Register** documents, and GDUFA-related guidances, performance reports, and financial reports may be found on the FDA website at *https://www.fda.gov/gdufa.*

III. Proposed GDUFA III Recommendations

In preparing the proposed recommendations to Congress for GDUFA reauthorization for GDUFA III, FDA conducted discussions with the regulated industry and consulted with patient and consumer advocacy groups, as required by the law, among other stakeholders. FDA began the GDUFA reauthorization process by publishing a notice in the **Federal Register** requesting public input on the reauthorization and announcing a public meeting, which was held on July 21, 2020 (85 FR 38378, June 26, 2020). The meeting included presentations by FDA and different stakeholder groups, including patient and consumer advocacy groups, regulated industry, health professionals, and academic researchers. The materials from the meeting, including the agenda, presentations, and transcript can be found at *https://www.fda.gov/drugs/public-meeting-reauthorization-generic-drug-user-fee-amendments-gdufa-07212020-07212020.* The stakeholders were asked to respond to the following questions:

- What is your assessment of the overall performance of the GDUFA program to date?
- What aspects of GDUFA should be retained, changed, or discontinued to further strengthen and improve the program?
- What new features should FDA consider adding to the program to enhance efficiency and effectiveness of the generic drug review process?

Following the July 2020 public meeting, FDA conducted negotiations with the regulated industry and continued monthly consultations with other stakeholders from September 2020 through August 2021. As directed by Congress, FDA posted minutes of these meetings on its website: *https://www.fda.gov/drugs/development-approval-process-drugs/gdufa-iii.* The proposed enhancements for GDUFA III address many of the top priorities identified by FDA, the regulated industry, and other stakeholders. These include proposed program enhancements to advance approvals in fewer review cycles, proposals to enhance regulatory science and expedite complex generic drug development, and financial proposals to support the generic drug program as it evolves. The full descriptions of these proposed recommendations can be found in the proposed GDUFA III Commitment Letter (Proposed Commitment Letter), which will be posted prior to the public meeting on FDA's website at *www.fda.gov/gdufa.*

The enhancements are described below with references to the section of the Proposed Commitment Letter where more detailed information can be found.

A. Advancing Approvals

The enhancements made in GDUFA II were successful in increasing the number of generic drug approvals throughout its implementation. The proposed GDUFA III commitments are intended to build on this success to reduce the number of review cycles needed for approval by maximizing the value of each cycle and increasing the number of first-cycle approvals.

ANDA Assessment Efficiencies—FDA proposes several changes to the assessment process to increase communication and efficiency. For example, FDA proposes to work with industry to resolve minor issues during the review cycle, even when this may require goal date extensions, and to minimize complete response letters (CRLs) in which the only deficiency is labeling. In addition, FDA proposes to expand opportunities for timely regulatory advice through the expansion of the definition of controlled correspondence used in the Commitment Letter and, for certain applications, the opportunity for a post-CRL scientific meeting. FDA also proposes to utilize ''imminent actions'' when it may be possible to approve an application within 60 days after the goal date in certain circumstances. More examples can be found in the Proposed Commitment Letter, section II.

Drug Master Files (DMFs)—FDA proposes several enhancements related to the review of DMFs, including the opportunity for holders of certain DMFs to submit a request for assessment of the DMF 6 months prior to the planned submission date for certain original ANDAs, amendments containing a response to a CRL, and amendments seeking approval of an ANDA that previously received a tentative approval. In addition, FDA proposes to implement procedures to enhance the efficiency of the review of DMF amendments related to original ANDAs and prior approval supplements. Details of these enhancements can be found in the Proposed Commitment Letter, section VI.

Pre-Submission Facility Correspondence (PFC)—The PFC process was established for GDUFA II to reduce the review goal date to 8 months for ANDA submissions that qualify for priority review per MAPP 5240.3, Prioritization of the Review of Original ANDAs, Amendments, and Supplements.[4] For GDUFA III, FDA proposes to refine the description of the manufacturing information to be submitted in a PFC to focus on the

[4] Available at: *https://www.fda.gov/media/89061/download.*

information that is needed to inform FDA's decision regarding the need for a preapproval inspection. In addition, FDA proposes to reduce the information regarding bioequivalence and clinical studies needed in a PFC to focus on the key information needed by FDA to determine the need for a preapproval inspection and to better align with the timing of development programs. Details of the PFC enhancements can be found in the Proposed Commitment Letter, section II.F.

Facility Assessments—Although GDUFA II has generally been successful, facility assessments continue to be an area of opportunity for program improvement. For example, FDA recognizes that a manufacturing facility's violative compliance status may be resolved between the issuance of a CRL that included facility inspection-related deficiencies and the time of the applicant's CRL response. Where the resolution of the compliance status also resolves the facility-related deficiencies identified in a CRL, FDA proposes that applicants have the opportunity to request reclassification of facility-based Major CRL amendments to Minor amendments, thereby expediting the assessment of the submitted amendment. Details of the reclassification enhancement can be found in the Proposed Commitment Letter, section II.C.7.

To help resolve facility inspection deficiencies, FDA proposes to establish Post-Warning-Letter Meetings for eligible facilities to obtain preliminary feedback from FDA on the adequacy and completeness of the facility's corrective action plans. FDA further proposes to improve clarity regarding the generic drug manufacturing facility reinspection process with goal dates and metrics. Details of these facility enhancements and more can be found in the Proposed Commitment Letter, section VII.

B. Pre-ANDA Program

The goals of the pre-ANDA program are to establish transparent regulatory expectations for prospective applicants early in product development, assist applicants in developing complete submissions, promote a more efficient and effective ANDA assessment process, and reduce the number of assessment cycles required to obtain ANDA approval. The pre-ANDA program has been especially useful and successful in fulfilling these goals for complex generic products, and the proposals for GDUFA III are intended to expand on this success. Full details of the pre-ANDA program can be found in the Proposed Commitment Letter, section III.

Suitability Petitions—FDA proposes to work to enhance the Agency's processes for the review of new and pending suitability petitions. Under the proposal, beginning in FY 2024, suitability petitions would be assigned goal dates and prioritized based on parameters, such as public health emergency, mitigating possible pharmaceutical waste, or for products under the President's Emergency Plan for AIDS Relief. Details of the proposed suitability petition enhancements can be found in the Proposed Commitment Letter, section III.B.

Product-Specific Guidance (PSG)—Under GDUFA II, FDA established goals around PSGs for new chemical entities in order to facilitate generic competition. In GDUFA III, FDA proposes new goals around PSGs for complex products to further aid in the development of generic versions of complex drug products. FDA proposes to provide on its website information related to upcoming new and revised PSGs. FDA would make the prioritization of PSG development publicly available and allow for industry and public input on prioritization.

In addition, recognizing that regulatory science continually evolves, FDA proposes that qualified ANDA applicants or potential applicants may request a PSG Teleconference to obtain Agency feedback on the potential impact of new recommendation(s) on ongoing bioequivalence studies. Details of the proposed PSG program enhancements can be found in the Proposed Commitment Letter, section III.C.

C. ANDA Assessment Meeting Program

The goal of the ANDA Assessment Meeting Program is to provide targeted, robust advice to ANDA applicants as they work to meet the requirements for ANDA approval. FDA proposes two significant enhancements starting with the Enhanced Mid-Cycle Review Meeting, which would allow applicants to inquire about new data or information to address any possible deficiencies identified in a Discipline Review Letter. FDA also proposes the addition of a post-CRL Scientific Meeting in which the Agency may provide a qualified applicant scientific advice on possible alternative approaches to address deficiencies identified in a CRL related to establishing sameness. Details on the proposed ANDA Assessment Meeting Program enhancements can be found in the Proposed Commitment Letter, section IV.

D. Continued Enhancement of User Fee Resource Management

FDA is committed to ensuring the sustainability of GDUFA program resources and to enhancing the operational agility of the GDUFA program through maturation of the Resource Capacity Planning (RCP) capability and the proposed implementation of a Capacity Planning Adjustment (CPA). The CPA would allow for increases in inflation-adjusted target revenue for the upcoming fiscal year as a result of expected workload increases for certain human generic drug activities. Specifically, FDA proposes an amendment to the statute to add authority for the implementation of a CPA, which also would bring the GDUFA program in alignment in this respect with the Prescription Drug User Fee Act (PDUFA) and Biosimilar User Fee Amendments (BSUFA) programs. Under the proposed agreement, the CPA would be implemented starting in fiscal year 2024 and would include certain limits on its authorized increases. Continued maturation of RCP would include areas such as (1) continual improvement of time reporting to support enhanced management of GDUFA resources and (2) the integration of RCP analyses in the Agency's resource and operational decision-making processes.

In addition, new statutory language is proposed for GDUFA III to provide a mechanism to manage financial risks by authorizing a minimum amount of available operating reserves to be maintained each year. As proposed for GDUFA III, the amount of operating reserves that can be added through additional fees would be no more than 8 weeks of operations in FY 2024, increasing to a maximum of 10 weeks of operations by FY 2026. In addition, if operating reserves are estimated to exceed 12 weeks, there would be a reduction in fees to maintain the operating reserve at no more than 12 weeks.

FDA and industry also proposed the following changes to the allocation of total fee revenues among fee categories: (1) The proportion of fee revenues derived from API facility fees would decrease from 7 percent in GDUFA II to 6 percent in GDUFA III; (2) the fee revenues derived from generic drug facility fees (also referred to as finished dosage form or FDF fees) would remain at 20 percent, but the fee for contract manufacturing organizations would decrease from one-third of the annual FDF fee in GDUFA II to 24 percent of the annual FDF fee in GDUFA III; and (3) the proportion of fee revenues

derived from the generic drug applicant program fee would increase from 35 percent in GDUFA II to 36 percent in GDUFA III.

E. Impact of GDUFA III Enhancements on User Fee Revenue

To implement the proposed enhancements for GDUFA III, funding for a total of 128 new full-time equivalent staff is proposed for FY 2023.

IV. Public Meeting Information

A. Purpose and Scope of the Meeting

The meeting will include presentations by FDA and panels representing different stakeholder groups identified in the statute (such as patient and consumer advocacy groups and regulated industry). For members of the public who would like to make verbal comments on the proposed enhancements (see instructions below), there will be a public comment period at the end of the meeting. We will also provide an opportunity for individuals to submit written comments to the docket before and after the meeting.

B. Participating in the Public Meeting

Registration: Registration is optional to attend this virtual meeting. However, registering will allow FDA to provide you with email updates if any meeting details change. Persons interested in registering for this public meeting must register online by 11:59 p.m. Eastern Time on November 15, 2021, at *https://www.eventbrite.com/o/fda-34063199905.* Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone.

Opportunity for Public Comment: If you wish to present during the public comment session, please submit your request to *GenericDrugPolicy@fda.hhs.gov* by 11:59 p.m. Eastern Time on November 8, 2021. Your email should contain which topic(s) you wish to address and include complete contact information, including name, title, affiliation, address, and email address. We will do our best to accommodate requests to make public comments. Individuals and organizations with common interests are urged to consolidate or coordinate their presentations, and request time for a joint presentation. Following the close of registration, we will determine the amount of time allotted to each presenter and the approximate time each oral presentation is to begin, and will select and notify participants by November 9, 2021. If selected for presentation, any presentation materials must be emailed to *GenericDrugPolicy@fda.hhs.gov* no later than November 11, 2021. No commercial or promotional material will be permitted to be presented or distributed during the virtual public meeting.

Streaming Webcast of the Public Meeting: The Zoom Webinar ID for this public meeting is 160 003 0426. The webcast link for this public meeting, which should allow you to enter the webinar directly, can be found here: *https://fda.zoomgov.com/j/1600030426?pwd=YThMd0swe XNQOVNOdVpYZHMrdVFSUT09.* If Zoom asks for a passcode, please use the following case-sensitive passcode: GDUFa3!

Transcripts: Please be advised that as soon as a transcript is available, it will be accessible at *https://www.fda.gov/industry/fda-user-fee-programs/generic-drug-user-fee-amendments* and in this docket at *https://www.regulations.gov.* It may also be viewed at the Dockets Management Staff (see **ADDRESSES**).

Dated: October 22, 2021.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2021–23499 Filed 10–28–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0595]

Advice About Eating Fish: For Those Who Might Become or Are Pregnant or Breastfeeding and Children Ages 1–11 Years, From the Environmental Protection Agency and Food and Drug Administration; Revised Fish Advice; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the availability of revised fish advice entitled ''Advice About Eating Fish: For Those Who Might Become or Are Pregnant or Breastfeeding and Children Ages 1–11 Years.'' The revised advice updates advice that FDA and the U.S. Environmental Protection Agency (EPA) jointly issued in January 2017 and subsequently revised in July 2019. The advice is intended to help those who might become or are pregnant or breastfeeding, and parents and caregivers of children make informed choices about fish that are nutritious and safe to eat. We are revising the advice in accordance with a recent directive from Congress.

DATES: The announcement of the revised advice is published in the **Federal Register** on October 29, 2021.

ADDRESSES: You may submit comments on the advice at any time. Submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2014–N–0595 for ''Advice About Eating Fish: For Those Who Might Become or Are Pregnant or Breastfeeding and Children Ages 1–11 Years.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' FDA will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

Submit written requests for single copies of the advice to Division of Seafood Safety, Office of Food Safety, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Emanuel Hignutt, Jr., Office of Food Safety (HFS–325), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2469; or Alexandra Jurewitz, Office of Regulations and Policy (HFS–024), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2378.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of July 9, 2019 (84 FR 32747), FDA, in coordination with EPA, announced the availability of revised fish advice entitled ''Advice About Eating Fish: For Women Who Are or Might Become Pregnant, Breastfeeding Mothers, and Young Children'' (the ''2019 advice''). The 2019 advice responded to section 773 of the Consolidated Appropriations Act, 2019 (Pub. L. 116–6), which directed the Commissioner of Food and Drugs to, by July 1, 2019, and following the regulatory planning and review required under Executive Order 12866, issue advice revising the advice announced in the notice of availability entitled ''Advice About Eating Fish, From the Environmental Protection Agency and Food and Drug Administration, Revised Fish Advice, Availability'' (82 FR 6571; January 19, 2017) in a manner that is consistent with nutrition science recognized by FDA on the net effects of seafood consumption. The 2019 advice encouraged fish consumption by emphasizing the benefits of eating fish and helping those who are or might become pregnant or are breastfeeding, and parents of children over 2 years make informed choices among types of fish. The 2019 advice made clear that many types of fish are both nutritious and lower in mercury. The 2019 advice also discussed the nutritional value of fish, as outlined in the 2015–2020 Dietary Guidelines for Americans.

On December 27, 2020, the Consolidated Appropriations Act, 2021 (Pub. L. 116–260) became law. Section 745 of Public Law 116–260 directs the Commissioner of Food and Drugs to, by September 30, 2021, and following the review required under Executive Order No. 12866, issue advice revising the advice announced in the notice of availability entitled ''Advice About Eating Fish, From the Environmental Protection Agency and Food and Drug Administration; Revised Fish Advice; Availability'' (82 FR 6571), in a manner that is consistent with nutrition science recognized by FDA on the net effects of seafood consumption. This notice announcing the availability of revised fish advice entitled ''Advice About Eating Fish: For Those Who Might Become or Are Pregnant or Breastfeeding and Children Ages 1–11 Years'' responds to that directive.

On December 29, 2020, the Department of Health and Human Services and the U.S. Department of Agriculture released the Dietary Guidelines for Americans, 2020–2025 (Ref. 1), which, for the first time, provides dietary patterns for children under age 2 years. It also provides additional nutrition information for caregivers of children and those who are pregnant or lactating on healthy eating patterns that can help promote health and reduce the risk for chronic disease. The updated edition of the Dietary Guidelines is supported by a robust review of the scientific evidence on seafood and health outcomes across the populations for which the FDA/EPA Fish Advice is targeted and also includes additional evidence that is now available on the role of seafood, as part of a healthy eating pattern, in potentially achieving specific health benefits.

II. The Revised Fish Advice

The revised fish advice, like the 2019 advice, is intended to encourage fish and shellfish consumption (collectively referred to in the advice as ''fish'') by emphasizing the benefits of eating fish and to help those who might become or are pregnant or breastfeeding and parents and caregivers of children ages 1 through 11 years make informed choices among types of fish. Specifically, the revised advice, now renamed as ''Advice About Eating Fish: For Those Who Might Become or Are Pregnant or Breastfeeding and Children Ages 1–11 Years,'' expands the lower range of the target audience of children from 2 years to 1 year. The revised advice further explains that a healthy eating pattern consists of choices across all food groups (vegetables, fruits, grains, dairy, and protein foods, which includes fish), eaten in recommended amounts, and within calorie needs, and that healthy eating patterns include foods that provide vitamins, minerals, and other health-promoting components and have no or little added sugars, saturated fat, and sodium. Specific to fish, the revised advice elaborates that moderate scientific evidence shows that eating patterns relatively higher in fish but also in vegetables, fruits, legumes, whole grains, low- or non-fat dairy, lean meats and poultry, nuts, and unsaturated vegetable oils, and lower in red and processed meats, sugar-sweetened foods and beverages, and refined grains are not only associated with lower risk of obesity but now also promotion of bone health and lower risk of colon and rectal cancers. The revised advice states that strong evidence shows that eating fish, as part of a healthy eating pattern, may have heart health benefits. The revised advice also makes clear that many types of fish are both nutritious and lower in mercury.

The revised advice also discusses the nutritional value of fish, as outlined in the Dietary Guidelines for Americans, 2020–2025 (Ref. 1). Based on information in the Dietary Guidelines, the revised advice states that fish are part of a healthy eating pattern and provide protein, healthy omega-3 fats (called docosahexaenoic acid and eicosapentaenoic acid) and omega-6 fats, vitamins B12 and D, iron, and other key nutrients like selenium, zinc, iodine, and choline. In addition, the revised advice includes statements that fish provide omega-3 and omega-6 fats, iron, iodine, and choline, which are key nutrients during pregnancy, breastfeeding, and/or early childhood to support a child's brain development; choline also supports the development of the baby's spinal cord; and fish also provide iron and zinc to support children's immune systems. The revisions also include a statement that fish intake during pregnancy is recommended, as moderate evidence shows that it can help a baby's cognitive development.

The revised advice continues to provide information to help those who might become or are pregnant or breastfeeding, and parents and caregivers of children choose varieties of fish that are lower in mercury. The revised advice now includes a recommended serving size of about 1 ounce of ''Best Choices,'' to be consumed twice a week, for children age 1 year.

Finally, the revised advice also provides information on how the recommendations of the Healthy U.S.-Style Dietary Patterns for children in the Dietary Guidelines for Americans could be met when those recommendations include more ounces of fish per week than the amounts in the FDA/EPA advice. The revised advice provides a list of the subset of ''Best Choices'' of fish identified in Tables 2–1 and A3–1, Footnote E of the Dietary Guidelines for Americans, 2020–2025 that are at or below the mean methylmercury concentration that supports exposures at or under the methylmercury Reference Dose, when the amounts recommended in the Healthy U.S.-Style Dietary Pattern in the Dietary Guidelines are greater than the amount of all ''Best Choices'' in the FDA/EPA advice.

III. Consolidated Appropriations Act, 2021

The fish advice provides information for use by consumers. It is not intended to have the force and effect of law, does not implement, interpret, or prescribe law or policy, and does not describe procedural or practice requirements. Consistent with section 745 of Public Law 116–260, the revised advice was reviewed by the Office of Management and Budget.

The advice was revised in accordance with the directive in section 745 of Public Law 116–260 that the advice be updated in a manner that is consistent with nutrition science recognized by FDA on the net effects of seafood consumption. The overall changes we made include revised evidence statements on fish consumption and health benefits, as outlined in the Dietary Guidelines for Americans, 2020–2025, including new information about when and how to introduce fish to infants, and terminology changes for inclusivity. Specifically, with respect to health benefits, the revised advice now highlights that there is moderate scientific evidence regarding favorable measures of cognitive development in young children associated with fish intake in pregnancy as well as lower risk of additional diet-related conditions associated with consuming fish as part of a total eating pattern.

The primary focus of the revisions is to align the revised advice with the Dietary Guidelines for Americans, 2020–2025, which establishes Federal, evidence-based policy on diet and health. The revised advice supports the recommendations of the Dietary Guidelines for Americans, 2020–2025, which reflects current science on nutrition to help promote health and reduce chronic disease. The Dietary Guidelines for Americans focuses on dietary patterns and the effects of food and nutrient characteristics on health. FDA recognizes the nutrition science that is reflected in the Dietary Guidelines for Americans and the preceding Scientific Report of the 2020 Dietary Guidelines Advisory Committee (Ref. 2), including the nutrition science described therein that considered the net effects of seafood consumption on growth and development, as well as health. In addition, the Dietary Guidelines for Americans recommends eating fish as part of a healthy eating pattern because there are benefits in doing so.

EPA is in the process of updating its Integrated Risk Information System Assessment for Methylmercury. FDA will consider the final products from this effort, as appropriate, in any future updates to the fish advice.

IV. Paperwork Reduction Act of 1995

This revised advice contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

V. Electronic Access

Persons with access to the internet may obtain the advice at either *https://www.fda.gov/food/resources-you-food* or *https://www.regulations.gov.* Use the FDA website listed in the previous sentence to find the most current version of the advice.

VI. References

The following references are on display at the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *https://www.regulations.gov.* FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. U.S. Department of Agriculture and U.S. Department of Health and Human Services. *Dietary Guidelines for Americans, 2020–2025,* 9th Edition, December 2020. Available at *https://www.dietaryguidelines.gov.*
2. Dietary Guidelines Advisory Committee. 2020. Scientific Report of the 2020 Dietary Guidelines Advisory Committee: Advisory Report to the Secretary of Agriculture and the Secretary of Health and Human Services. U.S. Department of Agriculture, Agricultural Research Service, Washington, DC. Available at *https://www.dietaryguidelines.gov/2020-advisory-committee-report.*

Dated: October 26, 2021.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2021–23666 Filed 10–28–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Request for Public Comment: 30-Day Notice for Extension of the Indian Health Service Loan Repayment Program (LRP)

AGENCY: Indian Health Service, HHS.

ACTION: Notice and request for comments. Request for extension of approval.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA), the Indian Health Service (IHS) invites the general public to take this opportunity to comment on the information collection Office of Management and Budget (OMB) Control Number 0917–0014, titled, ''IHS Loan Repayment Program (LRP).'' The IHS is requesting OMB to approve an

extension for this collection, which expires on November 30, 2021. Notice regarding the information collection was last published in the **Federal Register** (86 FR 43257) on August 6, 2021, and allowed 60 days for public comment. The purpose of this notice is to announce the IHS' intent to submit this collection to OMB and to allow 30 days for public comment to be submitted directly to OMB.

DATES: Consideration will be given to all comments received by November 29, 2021.

Direct Your Comments To OMB: Send your comments and suggestions regarding the proposed information collection contained in this notice, especially regarding the estimated public burden and associated response time to: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for IHS.

FOR FURTHER INFORMATION CONTACT: To request additional information, please contact Evonne Bennett, Information Collection Clearance Officer at: *Evonne.Bennett@ihs.gov* or 301–443–4750.

SUPPLEMENTARY INFORMATION: This previously approved information collection project was last published in the **Federal Register** (86 FR 43257) on August 6, 2021, and allowed 60 days for public comment. No public comment was received in response to the notice. This notice announces our intent to submit this collection, which expires November 30, 2021, to OMB for approval of an extension and to allow 30 days for public comment to be submitted directly to OMB.

The IHS is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995, as amended, and its implementing regulations. This notice is soliciting comments from members of the public and affected agencies as required by 44 U.S.C. 3507 and 5 CFR 1320.10 concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques of other forms of information technology, *e.g.,* permitting electronic submission of responses.

Title: 0917–0014, ''Indian Health Service Loan Repayment Program.''

Type of Information Collection Request: Three-year extension approval of this information collection.

OMB Control Number: 0917–0014.

Forms: Educational and Professional Background, Financial Information, and General Applicant Information (*i.e.,* all forms are part of the LRP application). The LRP application is available in an electronically fillable and fileable format.

Need and Use of Information Collection: The IHS LRP identifies health professionals with pre-existing financial obligations for education expenses that meet program criteria and who are qualified and willing to serve at, often remote, IHS health care facilities. Under the program, eligible health professionals sign a contract through which the IHS agrees to repay part or all of their indebtedness in exchange for an initial two-year service commitment to practice full-time at an eligible Indian health program. This program is necessary to augment the critically low health professional staff at IHS health care facilities.

Eligible health professionals wishing to have their health education loans repaid may apply to the IHS LRP. A two-year contract obligation is signed by both parties, and the individual agrees to work at an eligible Indian health program location and provide health services to American Indian and Alaska Native individuals.

The information collected via the on-line application from individuals is analyzed and a score is given to each applicant. This score will determine which applicants will be awarded each fiscal year. The administrative scoring system assigns a score to the geographic location according to vacancy rates for that fiscal year and also considers whether the location is in an isolated area. When an applicant accepts employment at a location, the applicant in turn ''picks-up'' the score of that location.

Status of the Proposed Information Collection: Renewal of a current collection.

Affected Public: Individuals and households.

Type of Respondents: Individuals.

The table describes: Data collection instruments, estimated number of respondents, number of responses per respondent, average burden per response, and total annual burden hour(s).

Estimated Burden Hours

Data collection instrument(s)	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual responses (in hours)
LRP Application	1999	1	1.5	2998.5

There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Elizabeth A. Fowler,

Acting Director, Indian Health Service.

[FR Doc. 2021–23629 Filed 10–28–21; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning the opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer at (240) 276–0361.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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.

Proposed Project: Substance Abuse Prevention and Treatment Block Grant Synar Report Format, FFY 2022–2024—(OMB No. 0930–0222)—Extension

Section 1926 of the Public Health Service Act [42 U.S.C. 300x–26] stipulates that Substance Abuse Prevention and Treatment Block Grant (SABG) funding agreements for alcohol and drug abuse programs for fiscal year 1994 and subsequent fiscal years require states to have in effect a law stating that it is unlawful for any manufacturer, retailer, or distributor of tobacco products to sell or distribute any such product to any individual under the age of 21. This section further requires that states conduct annual, random, unannounced inspections to ensure compliance with the law; that the state submit annually a report describing the results of the inspections, the activities carried out by the state to enforce the required law, the success the state has achieved in reducing the availability of tobacco products to individuals under the age of 21, and the strategies to be utilized by the state for enforcing such law during the fiscal year for which the grant is sought.

Before making an award to a state under the SABG, the Secretary must make a determination that the state has maintained compliance with these requirements. If a determination is made that the state is not in compliance, penalties shall be applied. According to Public Law 116–94 (''Tobacco 21''), signed on December 20, 2019, penalties are capped at 10 percent. Respondents include the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, Palau, Micronesia, and the Marshall Islands. Red Lake Indian Tribe is not subject to tobacco requirements.

Regulations that implement this legislation are at 45 CFR 96.130, are approved by OMB under control number 0930–0163, and require that each state submit an annual Synar report to the Secretary describing their progress in complying with section 1926 of the PHS Act. The Synar report, due December 31 following the fiscal year for which the state is reporting, describes the results of the inspections and the activities carried out by the state to enforce the required law; the success the state has achieved in reducing the availability of tobacco products to individuals under the age of 21; and the strategies to be utilized by the state for enforcing such law during the fiscal year for which the grant is sought. SAMHSA's Center for Substance Abuse Prevention will request an extension of OMB approval of the current report format associated with section 1926 (42 U.S.C. 300x–26) to 2024. Extending OMB approval of the current report format will continue to facilitate consistent, credible, and efficient monitoring of Synar compliance across the states.

ANNUAL REPORTING BURDEN

45 CFR citation	Number of respondents [1]	Responses per respondents	Total number of responses	Hours per response	Total hour burden
Annual Report (Section 1—States and Territories) 96.130(e)(1–3)	59	1	59	15	885
State Plan (Section II—States and Territories) 96.130(e)(4,5), 96.130(g)	59	1	59	3	177
Total	59		118		1,062

[1] Red Lake Indian Tribe is not subject to tobacco requirements.

Send comments to Carlos D. Graham, SAMHSA Reports Clearance Officer, 5600 Fishers Lane, Room 15E57–A, Rockville, Maryland 20857, *OR* email a copy to *Carlos.Graham@samhsa.hhs.gov.* Written comments should be received by December 28, 2021.

Carlos Graham,

Reports Clearance Officer.

[FR Doc. 2021–23585 Filed 10–28–21; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork

Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, SAMHSA will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–0361.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including leveraging automated data collection techniques or other forms of information technology.

Proposed Project: Community Mental Health Services Block Grant and Substance Abuse Prevention and Treatment Block Grant FY 2022–2023 Plan and Report Guidance and Instructions (OMB No. 0930–0168)—Extension

SAMHSA is requesting approval from the Office of Management and Budget (OMB) for an extension of the 2020–21 Community Mental Health Services Block Grant (MHBG) and Substance Abuse Prevention and Treatment Block Grant (SABG) Application Plan and Report Guidance and Instructions.

Currently, the SABG and the MHBG differ on a number of their practices (*e.g.,* data collection at individual or aggregate levels) and statutory authorities (*e.g.,* method of calculating MOE, stakeholder input requirements for planning, set asides for specific populations or programs, etc.). Historically, the Centers within SAMHSA that administer these block grants have had different approaches to application requirements and reporting. To compound this variation, states have different structures for accepting, planning, and accounting for the block grants and the prevention set aside within the SABG. As a result, how these dollars are spent and what is known about the services and clients that receive these funds varies by block grant and by state.

SAMHSA has conveyed that block grant funds must be directed toward four purposes: (1) To fund priority treatment and support services for individuals without insurance or who cycle in and out of health insurance coverage; (2) to fund those priority treatment and support services not covered by Medicaid, Medicare, or private insurance offered through the exchanges and that demonstrate success in improving outcomes and/or supporting recovery; (3) to fund universal, selective and targeted prevention activities and services; and (4) to collect performance and outcome data to determine the ongoing effectiveness of behavioral health prevention, treatment and recovery support services and to plan the implementation of new services on a nationwide basis.

States will need help to meet future challenges associated with the implementation and management of an integrated physical health, mental health, and addiction service system. SAMHSA has established standards and expectations that will lead to an improved system of care for individuals with or at risk of mental and substance use disorders. Therefore, this application package continues to fully exercise SAMHSA's existing authority regarding states', territories' and the Red Lake Band of the Chippewa Tribe's (subsequently referred to as ''states'') use of block grant funds as they fully integrate behavioral health services into the broader health care continuum.

Consistent with previous applications, the FY 2022–2023 application has required sections and other sections where additional information is requested. The FY 2022–2023 application requires states to submit a face sheet, a table of contents, a behavioral health assessment and plan, reports of expenditures and persons served, an executive summary, and funding agreements and certifications. In addition, SAMHSA is requesting information on key areas that are critical to the states' success in addressing health care equity. Therefore, as part of this block grant planning process, states should identify promising or effective strategies as well as technical assistance needed to implement the strategies identified in their plans for FYs 2022 and 2023.

Pursuant to the supplemental funding appropriations for the MHBG and the SABG found in the Consolidated Appropriations Act, 2021 [Pub. L. 116–260] and the American Rescue Plan Act, 2021 [Pub. L. 117–2], SAMHSA has made changes to the Block Grant Plan and Report requirements for FFY 2022 and 2023. These changes are necessary to ensure that funds are spent in an appropriate and timely manner. Adjustments were made to pre-existing tables in the plan and report. Additionally, six new tables were added to the report to capture necessary changes based on the priorities of the supplemental funding. For simplification, one table was removed from both the plan and the report.

On the Application Planning document the narrative has been updated to reflect new funding streams (COVID–19 and ARP funding). Additionally, SABG and MHBG have split their funding tables (table 2 and table 6) in both the plan and the report to allow for more accurate reporting of both standard and supplemental funding. Table 5b has been absorbed into Table 5a and Table 5c is now relabeled Table 5b. Tables 5a and 5b are also now required. On the report there are more changes with the addition of six new tables to expenditures section (Table 2b on the SABG and Table 2c on the MHBG) and tables recording client service levels under the populations and services reports section (Tables 10b, 11b and 11c on the SABG and Table 19b on the MHBG). These additional tables should not require excessive effort as all data should already be being collected by the states for the additional funding efforts. Table 5b has also been absorbed into Table 5a for ease of response on both the application and reporting process and Table 5c has now been relabeled Table 5b and made a required table.

While the statutory deadlines and block grant award periods remain unchanged, SAMHSA encourages states to turn in their application as early as possible to allow for a full discussion and review by SAMHSA. Applications for the MHBG-only are due no later than September 1, 2021. The application for SABG-only is due no later than October 1, 2021. A single application for MHBG *and* SABG combined is due no later than September 1, 2021.

Estimates of Annualized Hour Burden

The estimated annualized burden for the uniform application will increase to 33,493 hours to account for recording of the additional supplemental funding efforts (approximately 2 hours per state agency). Burden estimates are broken out in the following tables showing burden separately for Year 1 and Year 2. Year 1 includes the estimates of burden for the uniform application and annual reporting. Year 2 includes the estimates of burden for the recordkeeping and annual reporting. The reporting burden remains constant for both years.

TABLE 1—ESTIMATES OF APPLICATION AND REPORTING BURDEN FOR YEAR 1

	Authorizing legislation SABG	Authorizing legislation MHBG	Implementing regulation	Number of respondent	Number of responses per year	Number of hours per response	Total hours
Substance Abuse Prevention and Treatment and Community Mental Health Services Block Grants							
Reporting	Standard Form and Content. 42 U.S.C. § 300x–32(a).						
SABG	Annual Report						11,190
	42 U.S.C. 300x–52(a)		45 CFR 96.122(f)	60	1		
	42 U.S.C. 300x–30–b			5	1		
	42 U.S.C. 300x–30(d)(2)		45 CFR 96.134(d).	60	1		
MHBG	Annual Report						11,003
		42 USC § 300x–6(a).		59	1		
		42 U.S.C. 300x–52(a).					
		42 U.S.C. 300x–4(b)(3)B.		59	1		
	State Plan (Covers 2 years).						
SABG elements	42 U.S.C. 300x–22(b)		45 CFR 96.124(c)(1).	60	1		
	42 U.S.C. 300x–23		45 CFR 96.126(f)	60	1		
	42 U.S.C. 300x–27		45 CFR 96.131(f)	60	1		
	42 U.S.C. 300x–32(b)		45 CFR 96.122(g).	60	1	120	7,230
MHBG elements		42 U.S.C. 300x–1(b).		59	1	120	7,109
		42 U.S.C. 300x–1(b)(2).		59	1		
		42 U.S.C. 300x–2(a).		59	1		
	Waivers						3,240
	42 U.S.C. 300x–24(b)(5)(B)			20	1		
	42 U.S.C. 300x–28(d)		45 CFR 96.132(d).	5	1		
	42 U.S.C. 300x–30(c)		45 CFR 96.134(b).	10	1		
	42 U.S.C. 300x–31(c)			1	1		
	42 U.S.C. 300x–32(c)			7	1		
	42 U.S.C. 300x–32(e)			10			
		42 U.S.C. 300x–2(a)(2).		10			
		42 U.S.C 300x–4(b)(3).		10			
		42 U.S.C 300x–6(b).		7			
Recordkeeping	42 U.S.C. 300x–23	42 U.S.C. 300x–3	45 CFR 96.126(c).	60/59	1	20	1200
	42 U.S.C. 300x–25		45 CFR 96.129(a)(13).	10	1	20	200
	42 U.S.C 300x–65		42 CFR Part 54	60	1	20	1200
Combined Burden.							42,373

Report

300x–52(a)—Requirement of Reports and Audits by States—Report
300x–30(b)—Maintenance of Effort (MOE) Regarding State Expenditures—Exclusion of Certain Funds (SABG)
300x–30(d)(2)—MOE—Noncompliance—Submission of Information to Secretary (SABG)

State Plan—SABG

300x–22(b)—Allocations for Women
300x–23—Intravenous Substance Abuse
300x–27—Priority in Admissions to Treatment
300x–29—Statewide Assessment of Need
300x–32(b)—State Plan

State Plan—MHBG

42 U.S.C. 300x–1(b)—Criteria for Plan
42 U.S.C. 300x–1(b)(2)—State Plan for Comprehensive Community Mental Health Services for Certain Individuals—Criteria for Plan—Mental Health System Data and Epidemiology
42 U.S.C. 300x–2(a)—Certain Agreements—Allocations for Systems Integrated Services for Children

Waivers—SABG

300x–24(b)(5)(B)—Human Immunodeficiency Virus—Requirement regarding Rural Areas
300x–28(d)—Additional Agreements
300x–30(c)—MOE
300x–31(c)—Restrictions on Expenditure of Grant—Waiver Regarding Construction of Facilities
300x–32(c)—Certain Territories
300x–32(e)—Waiver amendment for 1922, 1923, 1924 and 1927

Waivers—MHBG

300x–2(a)(2)—Allocations for Systems Integrated Services for Children
300x–6(b)—Waiver for Certain Territories

Recordkeeping

300x–23—Waiting list
300x–25—Group Homes for Persons in Recovery from Substance Use Disorders
300x–65—Charitable Choice

TABLE 2—ESTIMATES OF APPLICATION AND REPORTING BURDEN FOR YEAR 2

	Number of respondent	Number of responses per year	Number of hours per response	Total hours
Reporting:				
SABG	60	1	187	11,220
MHBG	59	1	187	11,033
Recordkeeping	60/59	1	40	2,360
Combined Burden				24,613

The total annualized burden for the application and reporting is 33,493 hours (42,373 + 24,613 = 66,986/2 years = 33,493).

Link for the application: http://www.samhsa.gov/grants/block-grants.

Send comments to Carlos Graham, SAMHSA Reports Clearance Officer, 5600 Fisher Lane, Room 15E57A, Rockville, MD 20852 *OR* email him a copy at *carlos.graham@samhsa.hhs.gov.* Written comments should be received by December 28, 2021.

Carlos Graham,

Reports Clearance Officer.

[FR Doc. 2021–23587 Filed 10–28–21; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0137]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Application for Employment Authorization for Abused Nonimmigrant Spouse

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment on this proposed extension, without change, of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until December 28, 2021.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0137 in the body of the letter, the agency name and Docket ID USCIS–2016–0004. Submit comments via the Federal eRulemaking Portal website at *https://www.regulations.gov* under e-Docket ID number USCIS–2016–0004.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721–3000 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *https://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions or additional information by visiting the Federal eRulemaking Portal site at: *https://www.regulations.gov* and entering USCIS–2016–0004 in the search box. All submissions will be posted, without change, to the Federal eRulemaking Portal at *https://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines 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 *https://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Employment Authorization for Abused Nonimmigrant Spouse.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–765V; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. USCIS uses Form I–765V, Application for Employment Authorization for Abused Nonimmigrant Spouse, to collect the information needed determine if the applicant is eligible for an initial EAD or renewal EAD as a qualifying abused nonimmigrant spouse. Noncitizens are required to possess an EAD as evidence of work authorization. To be authorized

for employment, a noncitizen must be lawfully admitted for permanent residence or authorized to be so employed by the INA or under regulations issued by DHS. Pursuant to statutory or regulatory authorization, certain noncitizens are authorized to be employed in the United States without restrictions as to location or type of employment as a condition of their admission or subsequent change to one of the indicated classes. USCIS may determine the validity period assigned to any document issued evidencing a noncitizen's authorization to work in the United States. USCIS also collects biometric information from EAD applicants to verify their identity, check or update their background information, and produce the EAD card.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–765V is 350 and the estimated hour burden per response is 3.75 hours; the estimated total number of respondents for the information collection Biometric Processing is 350 and the estimated hour burden per response is 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 1,723 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $87,500.

Dated: October 25, 2021.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2021–23635 Filed 10–28–21; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0136]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Application for Significant Public Benefit Entrepreneur Parole and Instructions for Biographic Information for Entrepreneur Parole Dependents

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: U.S. Citizenship and Immigration Services (USCIS), the Department of Homeland Security (DHS), will be submitting 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. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until November 29, 2021.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be submitted via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number USCIS–2016–0005. All submissions received must include the OMB Control Number 1615–0136 in the body of the letter, the agency name and Docket ID USCIS–2016–0005.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, Telephone number (240) 721–3000 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS Contact Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Comments

The information collection notice was previously published in the **Federal Register** on July 28, 2021, at 86 FR 40609, allowing for a 60-day public comment period. USCIS did not receive any comments in connection with this notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2016–0005 in the search box. The comments submitted to USCIS via this method are visible to the Office of Management and Budget and comply with the requirements of 5 CFR 1320.12(c). All submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines 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.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Significant Public Benefit Entrepreneur Parole and Instructions for Biographic Information for Entrepreneur Parole Dependents.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–941; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Entrepreneurs can use this form to make an initial request for parole based upon significant public benefit; make a subsequent request for parole for an additional period; or file an amended application to notify USCIS of a material change.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–941 is 2,940 and the estimated hour burden per response is 4.7 hours. The estimated total number of respondents for the biometric processing is 2,940 and the estimated hour burden per response is 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 17,258 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $1,440,600.

Dated: October 25, 2021.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2021–23642 Filed 10–28–21; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6270–N–03]

Notice of a Federal Advisory Committee Meeting: Manufactured Housing Consensus Committee

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (HUD).

ACTION: Notice of Federal Advisory Committee meeting: Manufactured Housing Consensus Committee.

SUMMARY: This notice sets forth the schedule and proposed agenda for a Manufactured Housing Consensus Committee teleconference meeting. The meeting is open to the public. The agenda for the meeting provides an opportunity for citizens to comment on the business before the MHCC.

DATES: Friday, November 19, 2021, 10:00 a.m. to 4:00 p.m. Eastern Standard Time (EST). The teleconference number is: 301–715–8592 or 646–558–8656 and the Meeting ID is: 81468510702. To access the webinar, use the following link: *https://us06web.zoom.us/j/81468510702.*

FOR FURTHER INFORMATION CONTACT: Teresa B. Payne, Administrator, Office of Manufactured Housing Programs, Department of Housing and Urban Development, 451 7th Street SW, Room 9166, Washington, DC 20410, telephone 202–402–2698 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION: Notice of the meeting is provided in accordance with the Federal Advisory Committee Act, 5 U.S.C. app. 10(a)(2) through implementing regulations at 41 CFR 102–3.150. The MHCC was established by the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5403(a)(3), as amended by the Manufactured Housing Improvement Act of 2000, (Pub. L. 106–569, sec. 601, *et seq.*). According to 42 U.S.C. 5403, as amended, the MHCC's purposes are to:

- Provide periodic recommendations to the Secretary to adopt, revise, and interpret the Federal manufactured housing construction and safety standards in accordance with this subsection;
- Provide periodic recommendations to the Secretary to adopt, revise, and interpret the procedural and enforcement regulations, including regulations specifying the permissible scope and conduct of monitoring in accordance with subsection (b); and
- Be organized and carry out its business in a manner that guarantees a fair opportunity for the expression and consideration of various positions and for public participation.

The MHCC is deemed an advisory committee not composed of Federal employees.

Public Comment: Citizens wishing to make comments on the MHCC's business must register in advance by contacting the Administering Organization (AO), Home Innovation Research Labs; Attention: Kevin Kauffman, 400 Prince Georges Blvd., Upper Marlboro, MD 20774; by emailing *mhcc@homeinnovation.com;* or calling 888–602–4663. With advance registration, members of the public will have an opportunity to provide written comments relative to agenda topics for the Committee's consideration. All written comments must be provided to *mhcc@homeinnovation.com* no later than November 12, 2021.

Please note that written comments submitted will not be read during the meeting, but will be provided to the MHCC members prior to the meeting. The MHCC will also provide an opportunity for oral public comments on specific matters before the MHCC at each meeting. The total amount of time for oral comments will be 30 minutes, in two 15-minute periods, with each commenter limited to two minutes to ensure pertinent MHCC business is completed and all public comments can be expressed. The MHCC will not respond to individual written or oral statements; however, it will take all public comments into account in its deliberations. The MHCC strives to accommodate citizen comments to the extent possible within the meeting agenda's time constraints.

Tentative Agenda for MHCC Teleconference

Friday, November 19, 2021—10 a.m. to 4 p.m. ET

I. Call to Order and Roll Call

II. Opening Remarks—MHCC Chair & Designated Federal Officer (DFO)

III. Approval of draft minutes from September 23, 2021, October 8, 2021, and October 21, 2021, MHCC teleconference meetings

IV. Public Comment Period—15 minutes

V. Discussion of Department of Energy's Notice of Data Availability related to the Supplemental Notice of Proposed Rulemaking and Request for Comment—Energy Conservation Standards for Manufactured Housing and Prepare Comments for HUD's consideration

VI. Lunch from 12:30 p.m. to 1:30 p.m.

VII. Continued Discussion of Supplemental Notice of Proposed Rulemaking and Request for Comments—Energy Conservation Standards for Manufactured Housing and Prepare Comments for HUD's consideration

VIII. Public Comment Period—15 minutes

IX. Wrap Up—DFO & AO

X. Adjourn

Janet Golrick,

Acting, Chief of Staff, Office of Housing—Federal Housing Administration.

[FR Doc. 2021–23646 Filed 10–28–21; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–FAC–2021–N192; FXFR13360900000–FF09F14000–201]

Aquatic Nuisance Species Task Force Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of teleconference/web meeting.

SUMMARY: The U.S. Fish and Wildlife Service gives notice of a teleconference/web meeting of the Aquatic Nuisance Species (ANS) Task Force, in accordance with the Federal Advisory Committee Act.

DATES:

Teleconference/Web Meeting: The ANS Task Force will meet Tuesday, Wednesday, and Thursday, November 16–18, 2021, from 12 p.m. to 4 p.m. each day (Eastern Time).

Registration: Registration is required. The deadline for registration is November 12, 2021.

Accessibility: The deadline for accessibility accommodation requests is November 12, 2021. Please see *Accessibility Information,* below.

ADDRESSES: The meeting will be held via teleconference and broadcast over the internet. To register and receive the web address and telephone number for participation, contact the Executive Secretary (see **FOR FURTHER INFORMATION CONTACT**) or visit the ANS Task Force website at *https://anstaskforce.gov.*

FOR FURTHER INFORMATION CONTACT: Susan Pasko, Executive Secretary, ANS Task Force, by telephone at (703) 358–2466, or by email at *Susan_Pasko@fws.gov.* If you use a telecommunications device for the deaf (TDD), please call the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The ANS Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990, and is composed of Federal and ex-officio members. The ANS Task Force's purpose is to develop and implement a program for U.S. waters to prevent introduction and dispersal of aquatic invasive species; to monitor, control, and study such species; and to disseminate related information.

The meeting agenda will include: ANS Task Force subcommittee reports and ANS Task Force discussion on priority outputs to advance the goals identified in the ANS Task Force Strategic Plan for 2020–2025; presentation by the U.S Geological Survey on new species occurrences in the United States; updates from ANS Task Force member agencies and interagency invasive species organizations; recommendations by the ANS Task Force regional panels; and public comment. The final agenda and other related meeting information will be posted on the ANS Task Force website, *https://anstaskforce.gov.*

Public Input

If you wish to listen to the webinar by telephone, listen and view through the internet, provide oral public comment, or provide a written comment for the ANS Task Force to consider, contact the ANS Task Force Executive Secretary (see **FOR FURTHER INFORMATION CONTACT**) no later than Friday, November 12, 2021.

Depending on the number of people who want to comment and the time available, the amount of time for individual oral comments may be limited. Interested parties should contact the ANS Task Force Executive Secretary, in writing (see **FOR FURTHER INFORMATION CONTACT**), for placement on the public speaker list for this teleconference. Registered speakers who wish to expand upon their oral statements, or those who had wished to speak but could not be accommodated on the agenda, may submit written statements to the Executive Secretary up to 30 days following the meeting. Requests to address the ANS Task Force during the teleconference will be accommodated in the order the requests are received.

Accessibility Information

Requests for sign language interpretation services, closed captioning, or other accessibility accommodations should be directed to the ANS Task Force Executive Secretary (see **FOR FURTHER INFORMATION CONTACT**) by close of business Friday, November 12, 2021.

Public Disclosure

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.

Authority: U.S.C. appendix 2.

David W. Hoskins,

Co-Chair, Aquatic Nuisance Species Task Force.

[FR Doc. 2021–23637 Filed 10–28–21; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–ES–2021–N199; FXES11130300000–201–FF03E00000]

Endangered and Threatened Species; Receipt of Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received applications for permits to conduct activities intended to enhance the propagation or survival of endangered or threatened species under the Endangered Species Act. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive your written comments on or before November 29, 2021.

ADDRESSES: *Document availability and comment submission:* Submit requests for copies of the applications and related documents, as well as any comments, by one of the following methods. All requests and comments should specify the applicant name(s) and application number(s) (*e.g.,* TEXXXXXX; see table in **SUPPLEMENTARY INFORMATION**):

- *Email: permitsR3ES@fws.gov.* Please refer to the respective application number (*e.g.,* Application No. TEXXXXXX) in the subject line of your email message.
- *U.S. Mail:* Regional Director, Attn: Nathan Rathbun, U.S. Fish and Wildlife Service, Ecological Services, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437–1458.

FOR FURTHER INFORMATION CONTACT: Nathan Rathbun, 612–713–5343 (phone); *permitsR3ES@fws.gov* (email).

Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), prohibits certain activities with endangered and threatened species unless authorized by a Federal permit. The ESA and our implementing regulations in part 17 of title 50 of the Code of Federal Regulations (CFR) provide for the issuance of such permits and require that we invite public comment before issuing permits for activities involving endangered species.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with endangered species for scientific purposes that promote recovery or for enhancement of propagation or survival of the species. Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

We invite local, State, and Federal agencies; Tribes; and the public to comment on the following applications:

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
ESPER0003023	Samuel Schratz, Villa Park, IL.	Add: new species—Indiana bat (*Myotis sodalis*) to existing authorized species: Gray bat (*M. grisescens*) and northern long-eared bat (*M. septentrionalis*).	AL, AR, CT, DC, GA, IL, IN, IA, KY, MD, MI, MS, MO, NJ, NY, NC, OH, OK, PA, TN, VT, VA, WV.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, evaluate impacts.	Capture with mist-nets or harp traps, handle, identify, radio-tag, band, collect non-intrusive measurements, release.	Amend.
ES35517B	Bryan Arnold, Jacksonville, IL.	Indiana bat (*Myotis sodalis*), gray bat (*M. grisescens*), northern long-eared bat (*M. septentrionalis*), Florida bonneted bat (*Eumops floridanus*).	IL, FL	Conduct presence/absence surveys, document habitat use, conduct population monitoring, evaluate impacts.	Capture with mist-nets, handle, identify, radio-tag, band, collect non-intrusive measurements, release.	Renew.
ES0022223	Caleb Knerr, Jefferson City, MO.	Curtis pearlymussel (*Epioblasma florentina curtisii*), fat pocketbook (*Potamilus capax*), Higgins' eye pearlymussel (*Lampsilis higginsii*), Neosho mucket (*Lampsilis rafinesqueana*), pink mucket (*Lampsilis abrupta*), rabbitsfoot (*Quadrula cylindrica cylindrica*), scaleshell mussel (*Leptodea leptodon*), sheepnose mussel (*Plethobasus cyphyus*), spectaclecase (*Cumberlandia monodonta*), snuffbox (*Epioblasma triquetra*), winged mapleleaf (*Quadrula fragosa*).	MO	Conduct presence/absence surveys, document habitat use, conduct population monitoring, evaluate impacts.	Capture, handle, temporary hold, release.	New.

Public Availability of Comments

Written comments we receive become part of the administrative record associated with this action. 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 request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Moreover, all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Next Steps

If we decide to issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**.

Authority

We publish this notice under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Lori Nordstrom,

Assistant Regional Director, Ecological Services.

[FR Doc. 2021–23581 Filed 10–28–21; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[222A2100DD/AAKC001030/ A0A501010.999900253G]

Draft Programmatic Environmental Impact Statement for the Navajo Nation Integrated Weed Management Plan, Arizona, New Mexico, and Utah

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA) as the lead Federal agency, with the Navajo Nation as a cooperating agency, intends to file a Draft Programmatic Environmental Impact Statement (DPEIS) with the Environmental Protection Agency for the proposed Navajo Nation Integrated Weed Management Plan (NNIWMP). This notice also announces that the DPEIS is now available for public review and comment and that a public hearing will be held to receive comments on the DPEIS.

DATES: To be fully considered, written comments on the DEIS must arrive no later than 45 days after EPA publishes its Notice of Availability in the **Federal Register**. The dates and times of the virtual public hearings will be published in the *Navajo Times,* the *Gallup Sun, Farmington Daily Times,* the *Gallup Independent,* and the *Navajo-Hopi Observer.*

ADDRESSES: Written comments should be sent to Leonard Notah, NEPA Coordinator, Navajo Regional Office, Branch of Environmental Quality Compliance and Review, P.O. Box 1060, Gallup City, New Mexico 87301 or by email to *leonard.notah@bia.gov.* The locations of the virtual public hearings will be published in the *Navajo Times,* the *Gallup Sun, Farmington Daily Times,* the *Gallup Independent,* and the *Navajo-Hopi Observer.* The NNIWMP DPEIS is available for review at: *https://www.bia.gov/regional-offices/navajo/navajo-nation-integrated-weed-management-plan.* Please see the **SUPPLEMENTARY INFORMATION** section of this notice for physical locations where the DPEIS is available and for information on how to register to participate in the virtual public hearings.

FOR FURTHER INFORMATION CONTACT: Leonard Notah, NEPA Coordinator, Bureau of Indian Affairs Navajo Regional Office, Branch of Environmental Quality Compliance and Review, P.O. Box 1060, Gallup City, New Mexico 87301, telephone (505) 863–8256, email *leonard.notah@bia.gov.*

SUPPLEMENTARY INFORMATION: The proposed Federal action is implementation of the NNIWMP. The BIA Navajo Regional Office prepared the NNIWMP to determine the most effective and appropriate methods to treat noxious and invasive weeds. The DPEIS discloses the direct, indirect, and cumulative environmental impacts of weed treatment techniques that would result from the Proposed Action and alternatives. The weed treatment techniques provide the BIA with the tools to implement an integrated approach to treating weeds on the Navajo Nation (Navajo Tribal Trust Lands, Navajo Indian Allotments, and Navajo Partitioned Lands).

The purpose of the NNIWMP is to prevent, eradicate, contain, and/or monitor 45 noxious weed species on the Navajo Nation including the Navajo Tribal trust lands, Navajo Indian allotments, and Navajo partitioned lands. The NNIWMP focuses on managing non-native invasive plant species using mechanical, manual, cultural, biological, and chemical weed treatment methods.

The following objectives were developed for the NNIWMP:

- Develop the best control techniques described for the target weed species in a planned, coordinated, and economically feasible program to limit the impact and spread of noxious and invasive weeds;
- Incorporate project successes and lessons learned from completed weed projects on the Navajo Nation when developing weed removal project proposals through adaptive management;
- Identify and prevent the expansion of existing infestations of target weed species, and quickly prevent the spread of new high priority weed species in the project area;
- Coordinate weed removal efforts with adjacent landowners, land managers, and/or Federal agencies to prevent the further spread of weed populations (*e.g.* State roads and Bureau of Land Management);
- Provide and promote economic opportunities to the Navajo people by improving rangeland productivity and potentially providing economic opportunities to remove noxious plant species; and
- Develop a public education program focusing on weed identification, prevention, and removal techniques for local communities and non-profit organizations.

The NNWIMP encompasses a 10-year period but will incorporate a plan review after five years. Repeated treatments will be necessary for most species since seeds can be viable in soil for 10 or more years. Therefore, re-occurring weed treatments will be implemented until the desired management goal is reached.

Cooperating agencies for this NEPA process include: The Navajo Nation, Arizona Department of Transportation (ADOT), Utah Department of Transportation (UDOT), Navajo Nation Soil and Water Conservation Districts (SWCD), San Juan Soil and Water Conservation District, U.S. Department of Agriculture (USDA) Natural Resource Conservation Service (NRCS), the Bureau of Land Management, USDA Animal and Plant Health Inspection Service (APHIS) and the National Park Service. The BIA will seek to coordinate weed removal projects on adjacent lands managed by the above-mentioned agencies and neighboring areas managed by the Coconino National Forest and the Hopi Tribe.

BIA will use the DPEIS to make decisions on the implementation of the NNIWMP.

Directions for Submitting Comments: In accordance with the regulations for implementing NEPA, the BIA solicits public comment on the DPEIS. Comments on the DPEIS may be submitted in writing or by email to the address listed above in the **ADDRESSES** section of this notice. At the top of your letter or in the subject line of your email message, indicate that the comments are ''Navajo Nation IWMP Draft EIS Comments.''

Public Hearings: To help protect the public and limit the spread of the COVID–19 virus, the BIA Navajo Regional Office will hold five virtual public hearings to facilitate public review and comment on the DPEIS. Members of the public can register for virtual public hearings at: *https://www.bia.gov/regional-offices/navajo/navajo-nation-integrated-weed-management-plan.*

After registering, participants will receive a confirmation email with instruction for joining the meeting.

Locations Where the DPEIS is Available for Review: The NNIWMP DPEIS is available for review at: *https://www.bia.gov/regional-offices/navajo/navajo-nation-integrated-weed-management-plan.* Paper and CD copies of the DPEIS may also be available to the public at the following BIA Offices (Natural Resources):

- Navajo Region, 301 West Hill Street, Room 214, Gallup, New Mexico 87301: Phone (505) 863–8314.
- Western Navajo Agency, East Highway 160 & Warrior Drive, #407

Federal Building, Tuba City, Arizona, 86045; Phone: (928) 283–2252.

- Chinle (Central) Navajo Agency, U.S. Highway 191 & Navajo Route 7, Federal Building #136C, Room C–12, Chinle, Arizona 86503; Phone: (928) 674–5100.
- Eastern Navajo Agency, Building #222, Chaco Boulevard, Crownpoint, New Mexico, 87313; Phone: (505) 786–6100.
- Fort Defiance Agency, Kit Carson Drive, Building #40, Fort Defiance, Arizona, 86504; Phone: (928) 729–7223.
- Shiprock (Northern) Navajo Agency, Nataani Nez Complex, 2nd Floor, Highway 491 South, Shiprock, New Mexico, 87420; Phone: (505) 368–3308.
- Navajo Partitioned Lands, ¼ mile South of Navajo Route 4 & Main, Pinon, Arizona, 86510; Phone: (928) 725–3343.

Public Comment Availability: All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public review to the extent consistent with applicable law. Before including your address, phone number, email address, or other personal identifying information in your comment, be aware your entire comment—including your personal identifying information—may be publicly available at any time. You can request the BIA to withhold your personal identifying information from public review, but we cannot guarantee that we will be able to do so. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments may not have standing to appeal the subsequent decision.

To be placed on the mailing list for future information, please see **FOR FURTHER INFORMATION CONTACT**.

Authority: This notice is published in accordance with section 1503.1 of the Council on Environmental Quality regulations (40 CFR 1500 *et seq.*) and the Department of the Interior Regulations (43 CFR part 46) implementing the procedural requirements of the National Environmental Policy Act (42 U.S.C. 4321 et seq), and in accordance with the exercise of authority delegated to the Principal Deputy Assistant Secretary—Indian Affairs by part 209 of the Department Manual.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2021–23591 Filed 10–28–21; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–ONAA–31167; PPWOWMADY0–PPMPSAS1Y.Y00000]

Indian Youth Service Corps Program Draft Guidelines and Tribal Consultations

AGENCY: National Park Service, Interior.

ACTION: Notice of Tribal consultations and availability of draft guidelines.

SUMMARY: In accordance with the John S. McCain III 21st Century Conservation Service Corps Act, the National Park Service (NPS) is giving notice that the Department of the Interior is holding consultation with Tribes, Alaska Native corporations, and the Native Hawaiian community to announce the availability of draft guidelines for the Departments of Agriculture, Commerce, and Interior to implement the Indian Youth Service Corps Program. This notice provides a link to the draft guidelines and provides information for how to register for each of the consultation sessions.

DATES: The Department of the Interior will hold consultation sessions on the dates listed in the **SUPPLEMENTARY INFORMATION** section of this notice. Written comments on the draft guidelines will be accepted until 11:59 ET December 17, 2021.

ADDRESSES: The draft guidelines are available at the Office of Native American Affairs' website at *https://www.nps.gov/orgs/1015/index.htm.* Tribes, Alaska Native corporations, and leaders of Native Hawaiian organizations may submit written comments to *onaa_program@nps.gov.* Please see the **SUPPLEMENTARY INFORMATION** section of this notice for information on how to register for the consultation sessions.

FOR FURTHER INFORMATION CONTACT: For information concerning these draft guidelines, contact George McDonald, Chief, Youth Programs Division, NPS, at *george_mcdonald@nps.gov,* or by telephone at (202) 997–5189, or Genevieve Giaccardo, Chief of Staff, Bureau of Indian Affairs, at *genevieve.giaccardo@bia.gov,* or by telephone at (202) 208–3587.

SUPPLEMENTARY INFORMATION:

Background

The John D. Dingell, Jr. Conservation, Management, and Recreation Act (Pub. L. 116–9, March 2019) established the John S. McCain III 21st Century Conservation Service Corps Act (21 CSC Act) that amends and expands the Public Lands Corps Act. Contained within the 21 CSC Act is the establishment of the Indian Youth Service Corps (IYSC) Program. The intent of the IYSC Program is to provide a direct benefit to members of federally recognized Indian Tribes or Alaska Native corporations. The IYSC Program will provide meaningful education, employment, and training opportunities to its participants through conservation projects on eligible service land, which includes public lands, Indian lands, and Hawaiian homelands.

While the Public Land Corps is established in the Departments of Agriculture and Commerce in addition to the Department of the Interior, the Act specifically charges the Secretary of the Interior with issuing guidelines for the management of the Indian Youth Service Corps (16 U.S.C. 1727b(c)).

Consultation

The Department invites Tribes, Alaska Native corporations, and the Native Hawaiian community to consult on the draft guidelines.

- Consultation for all Tribes east of the Mississippi River:
  - Tuesday, November 30, 2021
  - 3 p.m. to 5 p.m. ET
  - Please register in advance at: *https://www.zoomgov.com/meeting/register/vJIsce-qrjgrHR9_-5h-9vtljHz4Z6TDrVE*
- Consultation for all Tribes west of the Mississippi River and Alaska Native corporations:
  - Thursday, December 2, 2021
  - 3 p.m. to 5 p.m. ET
  - Please register in advance at: *https://www.zoomgov.com/meeting/register/vJIscumsrD8rHrvg9RUg-p5LnLRuZLfpkIo*
- Consultation for Native Hawaiian Organizations:
  - Thursday, December 9, 2021
  - 4 p.m. to 6 p.m. ET
  - Please register in advance at: *https://www.zoomgov.com/meeting/register/vJItce2hqDsiG4qyOuAZyPjzqd020qVcYZI*

Written Comments

Tribes are also invited to submit written comments by the deadline listed in the **DATES** section of this notice.

Public Disclosure of Comments: Before including your address, telephone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public

review, we cannot guarantee that we will be able to do so.

Authority: 16 U.S.C. 1727b.

Shawn Benge,

Deputy Director, Operations, Exercising the Delegated Authority of the Director, National Park Service.

[FR Doc. 2021–23630 Filed 10–28–21; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–32899; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting electronic comments on the significance of properties nominated before October 16, 2021, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by November 15, 2021.

ADDRESSES: Comments are encouraged to be submitted electronically to *National_Register_Submissions@nps.gov* with the subject line ''Public Comment on <property or proposed district name, (County) State>.'' If you have no access to email you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Sherry A. Frear, Chief, National Register of Historic Places/National Historic Landmarks Program, 1849 C Street NW, MS 7228, Washington, DC 20240, *sherry_frear@nps.gov,* 202–913–3763.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before October 16, 2021. Pursuant to Section 60.13 of 36 CFR part 60, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State or Tribal Historic Preservation Officers:

ARIZONA

Maricopa County

Westwood Village and Estates Historic District, (Residential Subdivisions and Architecture in Central Phoenix, 1870–1963, MPS), Roughly bounded by Thomas Rd. to Fairmont Ave. between 19th to 23rd Aves. and north side of Campus Dr. between 23rd and 24th Aves., Phoenix, MP100007166

IDAHO

Twin Falls County

Brose, Robert and Augusta, Ranch, (Agricultural Resources of Twin Falls County, Idaho: 1860 to 1970 MPS), 3094 North 3800 East, Hansen vicinity, MP100007168

INDIANA

Allen County

Beechwood Historic District, Roughly bounded by Fairfield and South Wayne Aves., Pierce and Beechwood Drs., Fort Wayne, SG100007177

Marion County

Highland Golf and Country Club, 1050 West 52nd St., Indianapolis, SG100007174

Colored Knights of Pythias Castle Hall, 701, 703 North Senate and 234, 236, 238, 240, 242, 244 West Walnut Sts., Indianapolis, SG100007176

Porter County

Valparaiso University Chapel of the Resurrection, 1600 Chapel Dr., Valparaiso, SG100007172

Clifford, Patrick and Catherine, House, 106 Washington St., Valparaiso, SG100007173

St. Joseph County

Walkerton Historic District, Roughly bounded by Michigan, Indiana and Van Buren Sts., Nickle Plate RR., Walkerton, SG100007175

MASSACHUSETTS

Franklin County

Millers Falls Village Historic District, Roughly bounded by Bridge, Church, Crescent, East Main, and West Main Sts., Montague, SG100007171

OHIO

Franklin County

First Congregational Church, 444 East Broad St., Columbus, SG100007182

Shelby County

Zenas King Bowstring Bridge, Benjamin Trail, Amos Lake, Tawawa Park, Sidney, SG100007183

VIRGINIA

Amherst County

Parr, Royster C., House, 156 Parrtown Rd., Amherst vicinity, SG100007185

Fauquier County

St. James Baptist Church and Cemetery, 7353 Botha Rd., Bealeton, SG100007186

Gloucester County

Troop 111 Boy Scout Cabin, 6361 Main St., Gloucester, SG100007187

Roanoke County

Gish Mill, 350 Gus Nicks Blvd., Vinton, SG100007188

WEST VIRGINIA

Kanawha County

Five Corners Historic District, Virginia St. West, Central Ave., 6th St., Elm St., Delaware Ave., Charleston, SG100007165

Monroe County

Dry Pond School, 4680 Pine Grove Rd., Lindside vicinity, SG100007164

WISCONSIN

La Crosse County

Fire Station No. 5, 1220–1222 Denton St., La Crosse, SG100007159

Milwaukee County

Marshall & Ilsley Bank, 770 North Water St., Milwaukee, SG100007170

WYOMING

Hot Springs County

Malta Lodge No. 17 AF&AM, 521 Arapahoe St., Thermopolis, SG100007161

A request for removal has been made for the following resources:

INDIANA

Hendricks County

Kellum-Jessup-Chandler Farm, 6726 South White Lick Creek Rd., Plainfield, OT94001111

Marion County

Nickel Plate Road Steam Locomotive No. 587, Off 1st Ave., Beech Grove, OT84000313

Additional documentation has been received for the following resources:

INDIANA

Vanderburgh County

Chute, Haller T., Building (Additional Documentation), (Downtown Evansville MRA), 223 Main St., Evansville, AD82000083

Chute, Haller T., Building (Additional Documentation), (Downtown Evansville MPS), 223 Main St., Evansville, AD82000083

NEW YORK

Albany County

Renshaw, Alfred, House (Additional Documentation), (Colonie Town MRA), 33 Fiddlers Ln., Colonie, AD85002746

Nomination submitted by Federal Preservation Officer:

The State Historic Preservation Officer reviewed the following nomination and responded to the Federal Preservation Officer within 45 days of receipt of the nomination and supports listing the property in the National Register of Historic Places.

MONTANA

Broadwater County

McMaster Ranch Historic District, 6043 US 12/287 East, East Helena vicinity, SG100007169

Authority: Section 60.13 of 36 CFR part 60.

Dated: October 19, 2021.

Sherry A. Frear,

Chief, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2021–23521 Filed 10–28–21; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2020–0018]

Draft Environmental Impact Statement on the Cook Inlet Lease Sale 258

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Notice of availability of a draft environmental impact statement.

SUMMARY: The Bureau of Ocean Energy Management (BOEM) announces the availability of the draft environmental impact statement (DEIS) for the proposed Cook Inlet Outer Continental Shelf (OCS) oil and gas Lease Sale 258 (Lease Sale 258). This notice marks the start of the public review and comment period and announces three virtual public hearings on the DEIS. After the public hearings and written comments on the DEIS have been reviewed and considered, a final EIS will be prepared. The DEIS and associated information, including the exploration, development and production, and decommissioning scenario (E&D Scenario) are available for review on the agency's website at *https://www.boem.gov/ak258.*

DATES: Comments are due by December 13, 2021.

BOEM will host three virtual public hearings on the DEIS as follows:

- November 16, 2021; 6:30 p.m.–8:30 p.m. (Alaska daylight time (AKDT))
- November 17, 2021; 2:00 p.m.–4:00 p.m. (AKDT)
- November 18; 6:30 p.m.–8:30 p.m. (AKDT)

Information regarding these hearings can be found at *https://www.boem.gov/ak258.*

ADDRESSES: You may submit your comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* In the search box, enter ''BOEM–2020–0018'' and then click ''Search.'' Select the document on which you want to comment and follow the instructions to submit comments and to view supporting and related materials available for this notice.

FOR FURTHER INFORMATION CONTACT: Tyler Moore, Section Chief, BOEM, Alaska Regional Office, 3801 Centerpoint Drive, Suite 500, Anchorage, Alaska 99503–5823, or at telephone number (907) 334–5200.

SUPPLEMENTARY INFORMATION: On January 17, 2017, the Secretary of the Interior approved the ''Proposed Final 2017–2022 Outer Continental Shelf Oil and Gas Leasing Program'' (National OCS Program). The National OCS Program includes proposed Lease Sale 258.

Cook Inlet stretches from the Gulf of Alaska to Anchorage in southcentral Alaska. The proposed action evaluated in the DEIS would offer for lease all available OCS blocks in the northern portion of the Cook Inlet OCS Planning Area. The proposed lease sale area comprises 224 OCS blocks, which covers an area of approximately 1.09 million acres.

On September 10, 2020, BOEM published in the **Federal Register** the notice of intent (NOI) to prepare an EIS in support of Lease Sale 258. Publication of the NOI opened a public scoping period that extended through October 13, 2020. In September 2020, BOEM held a series of public scoping meetings. The comments received during the public scoping period were used to inform the scope and content of the DEIS.

BOEM published the notice of availability of the DEIS in the **Federal Register** on January 15, 2021, initiating a 45-day comment period on the DEIS. On February 1, 2021, Executive Order 14008 directed the Secretary of the Interior to pause new oil and gas leasing on public lands and offshore waters, to the extent allowed by applicable law, pending completion of a comprehensive review of Federal oil and gas activities, including a review of climate and other impacts. After issuance of the Executive order, BOEM canceled the comment period and virtual public hearings for the Lease Sale 258 DEIS on February 4, 2021. Since then, BOEM updated its assessment of undiscovered oil and gas resources of the Nation's OCS (*https://www.boem.gov/2021-assessment-undiscovered-oil-and-gas-resources-nations-outer*) and is reviewing additional information made available since the January 2021 publication of the DEIS.

Proposed action: The proposed action addressed in the DEIS is to conduct an oil and gas lease sale on all available blocks in the northern portion of the Cook Inlet OCS Planning Area (Proposed Action). Proposed Lease Sale 258 would provide qualified bidders with the opportunity to bid on OCS lease blocks in Cook Inlet to gain conditional rights to explore for, develop, and produce oil and natural gas.

The DEIS analyzes the potential environmental impacts of the proposed lease sale on the physical, biological, and human environments in the Cook Inlet area. See 40 CFR 1508.8 [1] (2019 ed.). The DEIS describes a hypothetical scenario of exploration, development, production, and decommissioning activities that could result from the proposed lease sale and analyzes the potential impacts of those activities on the environment. The DEIS also analyzes reasonable alternatives to the Proposed Action. In addition to the Proposed Action and the no action alternative, BOEM analyzed three alternatives consistent with internal agency scoping, past public input received related to the current and prior National OCS Programs and previous lease sales, and comments received during the scoping period following the NOI that was published in September 2020. The three alternatives address potential impacts to the Cook Inlet distinct population segment (DPS) of beluga whale, the southwest Alaska DPS of northern sea otter, and the Cook Inlet drift gillnet fishery.

The Proposed Action defers certain areas from leasing due to potential conflicts with resources of high ecological and subsistence value. These deferred areas include: (1) The majority of the designated critical habitat for beluga whale and northern sea otter and all critical habitat for Stellar seas lions and the North Pacific right whale located within the Cook Inlet OCS Planning Area; (2) a buffer between the area considered for leasing and the Katmai National Park and Preserve, the Kodiak National Wildlife Refuge, and the Alaska Maritime National Wildlife Refuge; and (3) many of the subsistence

[1] Revisions to the Council on Environmental Quality (CEQ) regulations implementing NEPA (40 CFR parts 1500–1508) became effective on September 14, 2020 and apply to any NEPA process commenced after that date. *See* 40 CFR 1506.13. Because the NEPA process for this action began prior to September 14, 2020, the DEIS was prepared in conformance with the NEPA regulations in effect immediately prior to September 14, 2020.

use areas for the Native Villages of Nanwalek, Seldovia, and Port Graham identified during the Cook Inlet Lease Sale 191 process.

In this DEIS, BOEM has examined the potential environmental effects of activities that could result from the Proposed Action, along with several alternatives. The DEIS is based on BOEM's estimate of production potential from the recently national assessment of potential oil and gas resources in the proposed lease sale area and an associated scenario that estimates a range of potential oil and gas activities, including exploration, seismic surveying, on-lease ancillary activities, exploration and delineation drilling, development, production, and decommissioning.

Comment Submission: The public and all interested parties, including Federal, State, Tribal, and local governments or agencies, are invited to submit written comments on the DEIS and associated information, including the E&D scenario, through the Federal eRulemaking Portal: *http://www.regulations.gov.* In the search box, enter ''BOEM–2020–0018'' and then click ''Search.'' Select the document on which you want to comment and follow the instructions to submit comments and view supporting and related materials available for this notice.

BOEM does not accept anonymous comments. Your name and contact information are required to submit comments on the Federal eRulemaking Portal. Before including your address, phone number, email address, or other personally identifying information in your comment, you should be aware that your entire comment, including your personally identifying information, may be made publicly available at any time. While you can ask BOEM in your comment to withhold your personally identifying information from public review, BOEM cannot guarantee that it will be able to do so.

If you request BOEM to withhold from disclosure your personally identifiable information, you must identify any information contained in your comments that, if released, would constitute a clearly unwarranted invasion of your privacy. You also must briefly describe any possible harmful consequences of the disclosure of information, such as embarrassment, injury, or other harm. All submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses will be made available for public inspection in their entirety.

Public Hearings: BOEM will host virtual public hearings on the DEIS in October 2021. Information regarding these hearings can be found at *https://www.boem.gov/ak258.* The purpose of these hearings is to receive public comments on the Draft EIS. These hearings are scheduled as follows:

- November 16, 2021; 6:30 p.m.–8:30 p.m. (Alaska daylight time (AKDT))
- November 17, 2021; 2:00 p.m.–4:00 p.m. (AKDT)
- November 18, 2021; 6:30 p.m.–8:30 p.m. (AKDT)

Authority: 42 U.S.C. 4231 *et seq.;* 43 CFR 46.415 (2019 ed.).

Amanda B. Lefton,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2021–23505 Filed 10–28–21; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1261]

Certain LED Landscape Lighting Devices and Components Thereof; Commission Determination Not to Review an Initial Determination Terminating the Investigation as to Shenzhen Wanjia Lighting Co., Ltd. d/b/a Wonka Based on a Consent Order; Issuance of a Consent Order; Request for Written Submissions on Remedy, the Public Interest, and Bonding With Respect to the Defaulted Respondents

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 23) of the presiding administrative law judge (''ALJ'') granting a joint, unopposed motion to terminate Shenzhen Wanjia Lighting Co., Ltd. d/b/a WONKA of Shenzhen, China (''WONKA'') based on a consent order. WONKA is terminated from the investigation. The Commission has issued a consent order to WONKA. The Commission requests written submissions from the parties, interested government agencies, and other interested persons on the issues of remedy, the public interest, and bonding, under the schedule set forth below.

FOR FURTHER INFORMATION CONTACT: Ronald A. Traud, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3427. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on April 13, 2021, based on a complaint, as supplemented, filed on behalf of Wangs Alliance Corporation, d/b/a WAC Lighting (''WAC''). 86 FR 19282 (Apr. 13, 2021). The complaint alleged a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain LED landscape lighting devices and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 10,571,101 and 10,920,971. *Id.* The complaint further alleged that an industry in the United States exists as required by section 337. *Id.* The Commission named seven respondents: WONKA; cBright Lighting, Inc. of San Leandro, California (''cBright''); Dauer Manufacturing Corp. of Medley, Florida (''Dauer''); FUSA Corp. of Medley, Florida (''FUSA''); CAST Lighting LLC of Hawthorne, New Jersey (''CAST''); Lumien Enterprise, Inc. d/b/a Lumien Lighting of Acworth, Georgia (''Lumien''); and Jiangsu Sur Lighting Co., Ltd. of Jiangsu Province, China (with Lumien, the ''Lumien Respondents''). *Id.* The Office of Unfair Import Investigations is not named as a party in this investigation. *Id.*

This investigation has been terminated as to the Lumien Respondents and CAST; and cBright, Dauer, and FUSA have been found to be in default. Order No. 13 (July 9, 2021), *unreviewed by* Notice (July 29, 2021); Order No. 14 (Aug. 4, 2021), *unreviewed by* Notice (Aug. 18, 2021); Order No. 20 (Sept. 10, 2021), *unreviewed by* Notice (Oct. 6, 2021); Order No. 22 (Sept. 24, 2021), *unreviewed by* Notice (Oct. 14, 2021).

On September 21, 2021, WAC and WONKA filed a joint, unopposed motion to terminate this investigation with respect to WONKA based on a

consent order stipulation and a proposed consent order.

On September 24, 2021, the ALJ issued Order No. 23, the subject ID, which grants the motion. The subject ID found that the joint motion, consent order stipulation, and proposed consent order satisfy the requirements of Commission Rule 210.21, paragraphs (c)(3) and (c)(4) (19 CFR 210.21(c)(3), (c)(4)). The ID also found that termination of WONKA would not be contrary to the public interest.

The Commission has determined not to review the subject ID. WONKA is terminated from the investigation. The Commission has issued a consent order to WONKA.

In connection with the final disposition of this investigation, the statute authorizes issuance of, *inter alia,* (1) an exclusion order that could result in the exclusion of the subject articles from entry into the United States; and/or (2) cease and desist orders that could result in the respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843, Comm'n Op. at 7–10 (Dec. 1994).

The statute requires the Commission to consider the effects of that remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order and cease and desist orders would have on: (1) The public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no action on the Commission's determination. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The complainant to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding.

In their initial submissions, Complainant is also requested to identify the remedy sought and to submit proposed remedial orders for the Commission's consideration. Complainant is further requested to state the dates that the Asserted Patents expire, to provide the HTSUS subheadings under which the accused products are imported, and to supply the identification information for all known importers of the products at issue in this investigation. The initial written submissions and proposed remedial orders must be filed no later than close of business on November 9, 2021. Reply submissions must be filed no later than the close of business on November 16, 2021. No further submissions on any of these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (March 19, 2020). Submissions should refer to the investigation number (Inv. No. 337–TA–1261) in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf*). Persons with questions regarding filing should contact the Secretary, (202) 205–2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

The Commission vote for this determination took place on October 26, 2021.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

While temporary remote operating procedures are in place in response to COVID–19, the Office of the Secretary is not able to serve parties that have not retained counsel or otherwise provided a point of contact for electronic service. Accordingly, pursuant to Commission Rules 201.16(a) and 210.7(a)(1) (19 CFR 201.16(a), 210.7(a)(1)), the Commission orders that the Complainant(s) complete service for any party/parties without a method of electronic service noted on the attached Certificate of Service and shall file proof of service on the Electronic Document Information System (EDIS).

By order of the Commission.

Issued: October 26, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–23632 Filed 10–28–21; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1213]

Certain Light-Emitting Diode Products, Fixtures, and Components Thereof; Commission Determination To Review in Part A Final Initial Determination Finding a Violation of Section 337; Request for Written Submissions on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (''the Commission'') has determined to review in part a final initial determination (''ID'') of the presiding administrative law judge (''ALJ'') finding a violation of section 337 by the accused products of respondent RAB Lighting Inc. (''RAB'') of Northvale, New Jersey. The Commission requests written submissions from the parties, interested government agencies, and other interested persons on the issues of remedy, the public interest, and bonding, under the schedule set forth below.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–2310. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on August 17, 2020, based on a complaint filed on behalf of Ideal Industries Lighting LLC d/b/a Cree Lighting (''Cree'') of Durham, North Carolina. 85 FR 50047–48 (Aug. 17, 2020). The complaint, as supplemented, alleges violations of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain light-emitting diode products, fixtures, and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 8,403,531 (''the '531 patent''); 8,596,819 (''the '819 patent''); 8,777,449 (''the '449 patent''); 9,261,270 (''the '270 patent''); and 9,476,570 (''the '570 patent''). The complaint further alleges the existence of a domestic industry. The Commission's notice of investigation named RAB as the sole respondent. The Office of Unfair Import Investigations is not participating in the investigation. The Commission previously terminated the following claims from the investigation: (1) Claims 1–9 and 11–14 of the '449 patent; (2) claims 3–12 of the '270 patent; and (3) claims 2, 6–9, and 11–24 of the '570 patent. *See* Order No. 25 (May 5, 2021), *unreviewed by* Comm'n Notice (May 21, 2021).

On August 17, 2021, the ALJ issued the final ID finding a violation of section 337 based on infringement of the asserted claims of the '270 and '570 patents. The ID finds no violation of section 337 with respect to the '531 and '819 patents based on patent-ineligible subject matter, lack of enablement, and lack of written description. The ID also finds no violation with respect to the '449 patent. The ALJ recommended, should the Commission find a violation, issuing a limited exclusion order directed to RAB's infringing products and a cease and desist order directed to RAB and requiring a bond in the amount of five percent for importation of infringing articles during the Presidential review period.

On September 2, 2021, RAB and Cree petitioned for review of certain aspects of the final ID. Specifically, (1) RAB petitions for review of the ID's findings regarding claim construction and invalidity with respect to the '270 patent and infringement with respect to the '570 patent; and (2) Cree petitions for review of the ID's findings regarding invalidity and patent-ineligible subject matter with respect to the '531 and '819 patents. On September 13, 2021, RAB and Cree each filed a response in opposition to the other party's petition for review.

The Commission received no public interest comments from the public in response to the Commission's **Federal Register** notice seeking comment on the public interest. 86 FR 47146–47 (Aug. 23, 2021). On September 16, 2021, Cree and RAB submitted public interest comments pursuant to Commission Rule 210.50(a)(4) (19 CFR 210.50(a)(4)).

Having reviewed the record of the investigation, including the parties' briefing, the Commission has determined to review the final ID in part. Specifically, the Commission has determined to review the ID's finding that: (1) The asserted claims of the '531 and '819 patents are invalid due to patent-ineligible subject matter, lack of enablement, and lack of written description; and (2) the '819 patent is prior art to claims 1, 10–12, and 26 of the '531 patent. The Commission has determined not to review the remainder of the ID.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that results in the exclusion of the subject articles from entry into the United States, and/or (2) issue a cease and desist order that could result in the respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

When the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

When the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no action on the Commission's determination. *See* section 337(j), 19 U.S.C. 1337(j) and the Presidential Memorandum of July 21, 2005. 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission. The

Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, bonding, and the public interest. Such submissions should address the recommended determination by the ALJ on remedy and bonding.

In its initial submission, Complainant is also requested to identify the remedy sought and to submit proposed remedial orders for the Commission's consideration. Complainant is further requested to state the date that the asserted patents expire, to provide the HTSUS subheadings under which the accused products are imported, and to supply the identification information for all known importers of the products at issue in this investigation. The initial written submissions and proposed remedial orders must be filed no later than close of business on November 8, 2021. Reply submissions must be filed no later than the close of business on November 15, 2021. No further submissions on these issues will be permitted unless otherwise ordered by the Commission. Opening submissions are limited to 25 pages. Reply submissions are limited to 20 pages. No further submissions on any of these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (March 19, 2020). Submissions should refer to the investigation number (Inv. No. 337–TA–1213) in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf*). Persons with questions regarding filing should contact the Secretary, (202) 205–2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

The Commission vote for this determination took place on October 25, 2021.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: October 25, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–23547 Filed 10–28–21; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0070]

Agency Information Collection Activities; Proposed eCollection of eComments Requested; Extension Without Change of a Currently Approved Collection; Application for Federal Explosives License or Permit (FEL/P)—ATF Form 5400.13/5400.16

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ) will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for an additional 30 days until November 29, 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.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and, if so, how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension without change of a currently approved collection.

(2) *The Title of the Form/Collection:* Application for Federal Explosives License or Permit (FEL/P).

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: ATF Form 5400.13/5400.16.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: Individuals or households.

Abstract: The Application for Federal Explosives License or Permit (FEL/P)—ATF Form 5400.13/5400.16 must be completed by all persons who want to ship, transport, or possess explosives materials. The collected information will be used to determine if the applicant can be issued a FEL/P.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 10,200 respondents will complete this form once annually, and it will take each respondent approximately 1.5 hours to complete their responses.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 15,300 hours, which is equal to 10,200 (total responses) * 1.5 hours (total time taken to complete each response).

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, Mail Stop 3E.405A, Washington, DC 20530.

Dated: October 26, 2021.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2021–23626 Filed 10–28–21; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0101]

Agency Information Collection Activities; Proposed eCollection of eComments Requested; Revision of a Currently Approved Collection; National Firearms Act Division and Firearms and Explosives Services Division Customer Service Survey

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice

ACTION: 30-Day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ) will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for an additional 30 days until November 29, 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.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and, if so, how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *The Title of the Form/Collection:* National Firearms Act Division and Firearms and Explosives Services Division Customer Service Survey.

(3) *The agency form number, if any, and the applicable component of the Department* sponsoring the collection:

Form number: None.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Individuals or households.

Other: Business or other for-profit, Federal Government, and State, Local, or Tribal Government.

Abstract: The National Firearms Act Division and Firearms and Explosives Services Division Customer Service Survey is used to gather information about customer service provided to the firearms and explosives industry and government agencies, in order to improve service delivery.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 23,100 respondents will take this survey annually, and it will take each respondent approximately 5 minutes to complete their responses.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 1,925 hours, which is equal to 23,100 (total responses) * .0833333 (5 minutes or time taken to complete their responses).

(7) *An Explanation of the Change in Estimates:* Due to an increase in the estimated respondents to this survey, the total annual responses and burden hours for this collection have increased from 18,200 to 23,100 and from 1,517 to 1,925 hours respectively since the last renewal in 2018.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, Mail Stop 3E.405A, Washington, DC 20530.

Dated: October 26, 2021.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2021–23617 Filed 10–28–21; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0021]

Agency Information Collection Activities; Proposed eCollection Requested; Extension of a Currently Approved Collection

AGENCY: Office on Violence Against Women, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until December 28, 2021.

FOR FURTHER INFORMATION CONTACT: Written comments and/or suggestion regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to Cathy Poston, Office on Violence Against Women, at 202–514–5430 or *Catherine.poston@usdoj.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for Grantees from Grants to Enhance Culturally and Linguistically Specific Services for Victims of Domestic Violence, Dating Violence, Sexual Assault, and Stalking Program (Culturally and Linguistically Specific Services Program).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–0021. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the approximately 50 grantees of the Culturally and Linguistically Specific Services Program. The program funds projects that promote the maintenance and replication of existing successful domestic violence, dating violence, sexual assault, and stalking community-based programs providing culturally and linguistically specific services and other resources. The program also supports the development of innovative culturally and linguistically specific strategies and projects to enhance access to services and resources for victims of violence against women.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 50 respondents (Culturally and Linguistically Specific Services Program grantees) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities in which grantees may engage. A Culturally and Linguistically Specific Services Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 100 hours, that is 50 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Melody Braswell, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E, 405B, Washington, DC 20530.

Dated: October 26, 2021.

Melody Braswell,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2021–23620 Filed 10–28–21; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0022]

Agency Information Collection Activities; Proposed eCollection Requested; Extension of a Currently Approved Collection

AGENCY: Office on Violence Against Women, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until December 28, 2021.

FOR FURTHER INFORMATION CONTACT: Written comments and/or suggestion regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to Cathy Poston, Office on Violence Against Women, at 202–514–5430 or *Catherine.poston@usdoj.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Annual Progress Report for the Sexual Assault Services Formula Grant Program (SASP).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–0022. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the approximately 606 administrators and subgrantees of the SASP. SASP grants support intervention, advocacy, accompaniment, support services, and related assistance for adult, youth, and

child victims of sexual assault, family and household members of victims, and those collaterally affected by the sexual assault. The SASP supports the establishment, maintenance, and expansion of rape crisis centers and other programs and projects to assist those victimized by sexual assault. The grant funds are distributed by SASP state administrators to subgrantees as outlined under the provisions of the Violence Women Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 606 respondents (SASP administrators and subgrantees) approximately one hour to complete an annual progress report. The annual progress report is divided into sections that pertain to the different types of activities in which subgrantees may engage. A SASP subgrantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection form is 606 hours, that is 606 administrators and subgrantees completing a form once a year with an estimated completion time for the form being one hour.

If additional information is required contact: Melody Braswell, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E, 405B, Washington, DC 20530.

Dated: October 26, 2021.

Melody Braswell,

Department Clearance Officer, PRA,U.S. Department of Justice.

[FR Doc. 2021–23618 Filed 10–28–21; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0028]

Agency Information Collection Activities; Proposed eCollection Requested; Extension of a Currently Approved Collection

AGENCY: Office on Violence Against Women, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until December 28, 2021.

FOR FURTHER INFORMATION CONTACT: Written comments and/or suggestion regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to Cathy Poston, Office on Violence Against Women, at 202–514–5430 or *Catherine.poston@usdoj.gov.*

SUPPLEMENTARY INFORMATION:

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Semi-annual Progress Report for Children and Youth Exposed to Violence Program.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number: 1122–0028. U.S. Department of Justice, Office on Violence Against Women.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: The affected public includes the approximately 25 grantees under the Consolidated Grant Program to Address Children and Youth Experiencing Domestic and Sexual Assault and Engage Men and Boys as Allies (hereafter referred to as the Consolidated Youth Program) enacted in the FY 2012–2018 appropriation acts, which consolidated four previously authorized and appropriated programs into one comprehensive program. The four programs included in these consolidations were: Services to Advocate for and Respond to Youth (Youth Services), Grants to Assist Children and Youth Exposed to Violence (CEV), Engaging Men and Youth in Preventing Domestic Violence (EMY), and Supporting Teens through Education and Prevention (STEP). The Consolidated Youth Program supports projects designed to provide coordinated community responses that support child, youth and young adult victims through direct services, training, coordination and collaboration, effective intervention, treatment, response, and prevention strategies. The Consolidated Youth Program creates a unique opportunity for communities to increase collaboration among non-profit victim service providers; violence prevention, and children (0–10), youth (11–18), young adult (19–24) and men-serving organizations; tribes and tribal governments; local government agencies; schools; and programs that support men's role in combating sexual assault, domestic violence, dating violence and stalking.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: It is estimated that it will take the approximately 25 respondents (grantees from the Consolidated Youth Program) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities in which grantees may engage. A Consolidated Youth Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) An estimate of the total public burden (in hours) associated with the collection: The total annual hour burden to complete the data collection forms is 50 hours, that is 25 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Melody Braswell, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E, 405B, Washington, DC 20530.

Dated: October 26, 2021.

Melody Braswell,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2021–23619 Filed 10–28–21; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On October 25, 2021, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Northern District of Illinois in the lawsuit entitled *United States* v. *Navistar, Inc.,* Civil Action No. 15–cv–6143 (MRR).

The government's Amended Complaint alleges that Navistar, Inc. violated the Clean Air Act by introducing into commerce 7,749 heavy-duty diesel engines for use in trucks and buses in model year 2010 without a valid EPA-issued certificate of conformity demonstrating compliance with Clean Air Act standards to control nitrogen oxide (NO_X) emissions. The complaint also alleges that the engines did not conform to emission standards applicable to model year 2010 engines.

The Consent Decree requires Navistar, Inc. to perform projects to mitigate 10,000 tons of NO_X emissions, to retire Navistar's current balance of NO_X emission credits under EPA's Averaging, Banking, and Trading program (estimated to offset an additional 2,145 tons of NO_X emissions), and to pay a civil penalty of $52 million within thirty days of entry of the Decree.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Navistar, Inc.,* D.J. Ref. No. 90–5–2–1–10922. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ–ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $11.25 (25 cents per page reproduction cost) payable to the United States Treasury.

Patricia Mckenna,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2021–23572 Filed 10–28–21; 8:45 am]

BILLING CODE 4410–15–P

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Submission for OMB Review, Comment Request, Proposed Collection: 2022–2024 IMLS Native American Library Services Enhancement Grants Program Notice of Funding Opportunity (3137–0110)

AGENCY: Institute of Museum and Library Services, National Foundation on the Arts and the Humanities.

ACTION: Submission for OMB review, comment request.

SUMMARY: The Institute of Museum and Library Services announces that the following information collection has been submitted to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. This Notice proposes the clearance of the 2022–2024 IMLS Native American Library Services Enhancement Grants Program Notice of Funding Opportunity. A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **FOR FURTHER INFORMATION CONTACT** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before November 28, 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 particular information collection request by selecting ''Institute of Museum and Library Services'' under ''Currently Under Review;'' then check ''Only Show ICR for Public Comment'' checkbox. Once you have found this information collection request, select ''Comment,'' and enter or upload your comment and information. Alternatively, please mail your written comments to Office of Information and Regulatory Affairs, Attn.: OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503, or call (202) 395–7316.

OMB is particularly interested in comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses).

FOR FURTHER INFORMATION CONTACT: Anthony D. Smith, Associate Deputy Director, Office of Library Services, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Mr. Smith can be reached by telephone at 202–653–4716, or by email at *asmith@imls.gov.* Persons who are deaf or hard of hearing (TTY users) can contact IMLS at 202–207–7858 via 711 for TTY-Based Telecommunications Relay Service.

SUPPLEMENTARY INFORMATION: The Institute of Museum and Library Services is the primary source of federal support for the nation's libraries and museums. We advance, support, and empower America's museums, libraries, and related organizations through grant making, research, and policy

development. To learn more, visit *www.imls.gov.*

Current Actions: This Notice proposes the clearance of 2022–2024 IMLS Native American Library Services Enhancement Grants Program Notice of Funding Opportunity. The 60-day Notice was published in the **Federal Register** on September 2, 2021 (86 FR 168: 49355–49356). No public comments were received.

The Native American Library Services Enhancement Grants program is designed to assist Native American tribes in improving core library services for their communities. The program goals are (1) to improve digital services to support needs for education, workforce development, economic and business development, health information, critical thinking skills, and digital literacy skills; (2) to improve educational programs related to specific topics and content areas of interest to library patrons and community-based users; and (3) to enhance the preservation and revitalization of Native American cultures and languages. The proposed revision of the Notice of Funding Opportunity modifies the eligibility criteria, updates the description of performance measurement requirements, identifies new due dates for applications and award announcements, and accommodates the use of two *Grants.gov* forms approved since the last request for clearance of the Notice of Funding Opportunity.

If approved, the Native American Library Services Enhancement Grants program will no longer require applicants to first submit an application to the Native American Library Services Basic Grants program in the year in which they submit an application to the Native American Library Services Enhancement Grants program. This will reduce unnecessary administrative burden for applicants and awardees and allow applicants to choose the grant program(s) best suited to their needs. We published a Request for Information for the Modification of the Eligibility Requirements for the grant program in the **Federal Register** on September 2, 2021 (86 FR 168:49356) and received no responses.

Updating the description of the performance measurement requirements will bring this program into better alignment with other IMLS grant programs and make it easier for applicants to comply. Similarly, using the recently cleared *Grants.gov* forms eliminates the need to download separate fillable PDF forms from the IMLS website and thus lessens the burden on applicants.

Agency: Institute of Museum and Library Services.

Title: 2022–2024 IMLS Native American Library Services Enhancement Grants Program Notice of Funding Opportunity.

OMB Control Number: 3137–0110.

Agency Number: 3137.

Affected Public: Federally recognized Native American Tribes.

Total Number of Respondents: 40.

Frequency of Response: Once per request.

Average Hours per Response: 40.

Total Estimated Number of Annual Burden Hours: 1,600.

Cost Burden: $46,784.00.

Total Annual Federal Costs: $5,553.37.

Dated: October 26, 2021.

Suzanne Mbollo,

Grants Management Specialist, Institute of Museum and Library Services.

[FR Doc. 2021–23611 Filed 10–28–21; 8:45 am]

BILLING CODE 7036–01–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Sunshine Act Meetings; Audit Committee Meeting

TIME & DATE: 2:00 p.m., Friday, November 5, 2021.

PLACE: Via Conference Call.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Audit Committee Meeting.

The General Counsel of the Corporation has certified that in his opinion, one or more of the exemptions set forth in the Government in the Sunshine Act, 5 U.S.C. 552b (c)(2) and (4) permit closure of the following portion(s) of this meeting:

- Executive Session

Agenda

I. Call To Order
II. FY21 External Audit—BDO
III. Sunshine Act Approval of Executive (Closed) Session
IV. Other Matter
V. Executive Session with Chief Audit Executive
VI. Action Item FY22 Internal Audit Plan
VII. Action Item Internal Audit Reports with Management's Response
  a. Promotion and Compensation
  b. Grant Appropriation Disbursements
  c. Project Reinvest and Wind Down
  d. Application and Systems Change Management
  e. Covid 19: Procurement Adaptation Review
VIII. Internal Audit Reports Awaiting Management's Response
  ▪ HPN Launchpad Code Acquisition
IX. Internal Audit Status Reports
  a. Identity Access Management (IAM) Development ITS Audit and Security Roadmap
  b. TeamMate+ Migration Timeline—Key Activities Deliverables
  c. Internal Audit Performance Scorecard
  d. FY21 Plan Projects' Activity Summary as of October 8, 2021
  e. Implementation of Internal Audit Recommendations
X. Adjournment

CONTACT PERSON FOR MORE INFORMATION: Lakeyia Thompson, Special Assistant, (202) 524–9940; *Lthompson@nw.org.*

Lakeyia Thompson,

Special Assistant.

[FR Doc. 2021–23677 Filed 10–27–21; 11:15 am]

BILLING CODE 7570–02–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 99902069; NRC–2021–0193]

Kairos Power, LLC; Receipt of Construction Permit Application

AGENCY: Nuclear Regulatory Commission.

ACTION: Construction permit application; receipt.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is providing public notice of receipt and availability of an application for a construction permit from Kairos Power, LLC. The application for the construction permit was received on September 29, 2021.

DATES: October 29, 2021.

ADDRESSES: Please refer to Docket ID NRC–2021–0193 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0193. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the

ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

• *Attention:* The PDR, where you may examine and order copies of public documents, is currently closed. You may submit your request to the PDR via email at *pdr.resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Benjamin Beasley, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–348–5766; email: *Benjamin.Beasley@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Discussion

On September 29, 2021, Kairos Power LLC filed with the NRC pursuant to Section 103 of the Atomic Energy Act, as amended, and Part 50 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Domestic Licensing of Production and Utilization Facilities,'' an application for a construction permit for one test reactor located in Oak Ridge, Tennessee. The reactor is to be identified as Hermes and is a high-temperature fluoride salt-cooled design. This design utilizes solid tri-structural isotropic fuel and a molten salt coolant.

The application is available in ADAMS under Package Accession No. ML21272A375. Along with other documents, the ADAMS package includes the transmittal letter (ADAMS Accession No. ML21272A376) and the preliminary safety analysis report (ADAMS Accession No. ML21272A378). The information submitted by the applicant includes certain administrative information such as financial qualifications submitted pursuant to 10 CFR 50.33 as well as technical information submitted pursuant to 10 CFR 50.34. The environmental report will be submitted at a later date.

The NRC staff is currently undertaking its acceptance review of the application. If the application is accepted for docketing, subsequent **Federal Register** notices will be issued that address the acceptability of the tendered construction permit application for docketing and provisions for participation of the public in the permitting process.

Dated: October 25, 2021.

For the Nuclear Regulatory Commission.

Stewart L. Magruder,

Senior Project Manager, Advanced Reactor Licensing Branch, Division of Advanced Reactors and Non-Power Production and Utilization Facilities, Office of Nuclear Reactor Regulation.

[FR Doc. 2021–23568 Filed 10–28–21; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2022–14 and CP2022–15]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* November 2, 2021.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2022–14 and CP2022–15; *Filing Title:* USPS Request to Add First-Class Package Service Contract 118 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 25, 2021; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* November 2, 2021.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2021–23584 Filed 10–28–21; 8:45 am]

BILLING CODE 7710–FW–P

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[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

SMALL BUSINESS ADMINISTRATION

Disaster Declaration #17236 and #17237; MISSISSIPPI Disaster Number MS–00142]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Mississippi

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Mississippi (FEMA–4626–DR), dated 10/22/2021.

Incident: Hurricane Ida.

Incident Period: 08/28/2021 through 09/01/2021.

DATES: Issued on 10/22/2021.

Physical Loan Application Deadline Date: 12/21/2021.

Economic Injury (EIDL) Loan Application Deadline Date: 07/22/2022.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 10/22/2021, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Amite, Claiborne, Copiah, Covington, Franklin, George, Hancock, Harrison, Jackson, Jefferson, Jefferson Davis, Lawrence, Lincoln, Pearl River, Pike, Simpson, Walthall, Wayne, Wilkinson.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	2.000
Non-Profit Organizations without Credit Available Elsewhere	2.000
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.000

The number assigned to this disaster for physical damage is 17236 8 and for economic injury is 17237 0.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2021–23541 Filed 10–28–21; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 17238 and # 17239; DELAWARE Disaster Number DE–00029]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Delaware

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of DELAWARE (FEMA–4627–DR), dated 10/24/2021.

Incident: Remnants of Hurricane Ida.

Incident Period: 09/01/2021 through 09/07/2021.

DATES: Issued on 10/24/2021.

Physical Loan Application Deadline Date: 12/23/2021.

Economic Injury (EIDL) Loan Application Deadline Date: 07/25/2022.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 10/24/2021, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: New Castle.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	2.000
Non-Profit Organizations without Credit Available Elsewhere	2.000
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.000

The number assigned to this disaster for physical damage is 17238 8 and for economic injury is 17239 0.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2021–23537 Filed 10–28–21; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17234 and #17235; MISSISSIPPI Disaster Number MS–00136]

Presidential Declaration of a Major Disaster for the State of Mississippi

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Mississippi (FEMA–4626–DR), dated 10/22/2021.

Incident: Hurricane Ida.

Incident Period: 08/28/2021 through 09/01/2021.

DATES: Issued on 10/22/2021.

Physical Loan Application Deadline Date: 12/21/2021.

Economic Injury (EIDL) Loan Application Deadline Date: 07/22/2022.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 10/22/2021, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Amite, Hancock, Harrison, Jackson, Pearl River, Pike, Walthall, Wilkinson

Contiguous Counties (Economic Injury Loans Only):

Mississippi: Adams, Forrest, Franklin,

George, Lamar, Lawrence, Lincoln, Marion, Stone

Alabama: Mobile

Louisiana: Concordia, East Feliciana, Saint Helena, Saint Tammany, Tangipahoa, Washington, West Feliciana

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	3.125
Homeowners without Credit Available Elsewhere	1.563
Businesses with Credit Available Elsewhere	5.710
Businesses without Credit Available Elsewhere	2.855
Non-Profit Organizations with Credit Available Elsewhere	2.000
Non-Profit Organizations without Credit Available Elsewhere	2.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	2.855
Non-Profit Organizations without Credit Available Elsewhere	2.000

The number assigned to this disaster for physical damage is 17234 8 and for economic injury is 17235 0.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2021–23540 Filed 10–28–21; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

Military Reservist Economic Injury Disaster Loans; Interest Rate for First Quarter FY 2022

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of the Military Reservist Economic Injury Disaster Loans interest rate for loans approved on or after October 22, 2021.

DATES: Issued on 10/21/2021.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The Small Business Administration publishes an interest rate for Military Reservist Economic Injury Disaster Loans (13 CFR 123.512) on a quarterly basis. The interest rate will be 2.830 for loans approved on or after October 22, 2021.

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2021–23536 Filed 10–28–21; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

Request for Comments on Small Business Administration Draft FY 2022–2026 Strategic Plan Framework and Enterprise Learning Agenda

Correction

In notice document 2021–23001, appearing on page 58376 in the issue of Thursday, October 21, 2021, make the following change:

On page 58376, in the first column, in the **ADDRESSES** section, beginning in the fourth line of text, ''FY22–26StrategicPlan *Feedback@SBA.gov*'' should read ''*FY22-26StrategicPlanFeedback@SBA.gov*''.

[FR Doc. C1–2021–23001 Filed 10–28–21; 8:45 am]

BILLING CODE 0099–10–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No.: FAA–2021–0733]

Safety Management System Data

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

ACTION: Notice of availability and request for comments.

SUMMARY: The FAA is proposing to designate certain reports, data, and information created as part of the development and implementation of safety management systems (SMS) as protected information when the information is voluntarily provided to the agency. Protected information generally is not subject to public disclosure. The designation is intended to encourage certificate holders to voluntarily share SMS-related data with the FAA and to protect the voluntarily provided information if the FAA has a need to share it with other Federal agencies with safety or security responsibilities.

DATES: Send comments on or before November 29, 2021.

ADDRESSES: Send comments identified by docket number FAA–2021–0733 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Privacy:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*
- *Docket:* Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dale Whitmore, Flight Standards Service, AFS–910, Federal Aviation Administration, 800 Independence Ave. SW, Washington, DC 20591, telephone (703) 342–9253.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

The FAA is proposing to designate certain reports, data, and information created as part of the development and implementation of SMSs as protected from public disclosure when the information is voluntarily provided to the agency. Part 5 of title 14 of the Code of Federal Regulations requires that certificate holders under 14 CFR part 119 authorized to conduct operations in accordance with the requirements of 14 CFR part 121 establish SMS. SMS may also be developed and implemented voluntarily by other types of certificate holders, such as, but not limited to, 14 CFR part 135 air operators, and 14 CFR part 145 repair stations, 14 CFR part 141, 142, 147 aviation training organizations, as well as certain other aviation service providers such as design and manufacturing organizations and non-certificated airports.

An SMS consists of a set of processes divided into four major components: (1)

Safety policy; (2) safety risk management; (3) safety assurance; and (4) safety promotion. The intent of these systems is to enhance the decision-making capabilities of aviation service providers to address risks inherent in their operations and activities.

In accordance with the FAA's statutory authority at Title 49 U.S.C. 40123 and the FAA's implementing regulations at 14 CFR part 193, as described more fully below, the FAA is proposing that reports, data, and other information voluntarily provided to the agency in connection with the development and implementation of SMS be designated in an FAA order as protected information that is not subject to public disclosure. While this type of information enjoys some protection from disclosure in accordance with 49 U.S.C. 44735,the FAA intends this designation to further encourage certificate holders to voluntarily share SMS-related data with the FAA to protect the voluntarily provided information if the FAA has a need to share it with other Federal agencies with safety or security responsibilities.

II. Statutory Authorities

Title 49 U.S.C. 44735 offers statutory protection from disclosure under the Freedom of Information Act, pursuant to 5 U.S.C. 552(b)(3)(B), for certain reports, data, or other information that are submitted to the FAA voluntarily and that are not required to be submitted to the Administrator under any other provision of law. Section 44735(b)(4) extends the limitation on disclosure to ''reports, data, or other information produced or collected for purposes of developing and implementing a safety management system acceptable to the Administrator.'' Section 44735(b)(5) also extends the limitation on disclosure to ''reports, analyses, and directed studies, based in whole or in part on reports, data or other information'' related to the development and implementation of a safety management system (SMS).

Under 49 U.S.C. 40123, notwithstanding any other provision of law, neither the FAA Administrator nor any agency receiving information from the Administrator shall disclose voluntarily-provided safety or security related information if the Administrator finds that the disclosure of the information would inhibit the voluntary provision of that type of information and that the receipt of that type of information aids in fulfilling the Administrator's safety and security responsibilities; and withholding such information from disclosure would be consistent with the Administrator's safety and security responsibilities. This statutory provision grants the Administrator the authority to issue regulations to carry out the provision. Those regulations are found in 14 CFR part 193.

III. Description of Safety Management System Data Subject to the Proposed Part 193 Program

A. SMS Description

As summarized above, an SMS consists of a set of processes divided into four major components: (1) Safety policy; (2) safety risk management; (3) safety assurance; and (4) safety promotion. The principal components are safety risk management and safety assurance. Safety policy provides overarching safety philosophy and establishes safety responsibilities in the organization's management and staff. The safety promotion component provides for training and competencies necessary for safety risk management and safety assurance as well as communication of critical safety information to the certificate holder's workforce.

The safety risk management component consists of processes to analyze systems, identify potential hazards in those systems, analyze and assess risk associated with those systems, and, where necessary, develop risk controls. These processes are required any time the organization proposes to develop and implement new systems or procedures or to revise existing ones. Open exchange of information on these actions would be highly advantageous to the certificate holder and to FAA oversight organizations tasked with evaluating and approving, accepting, or certificating these systems and changes.

The safety assurance component is used to assess the effectiveness of risk controls developed under the safety risk management component and to provide a means of detecting new or otherwise unaddressed hazards. The safety assurance component includes processes for monitoring, auditing, and evaluating a carrier certificate holder's technical and operational processes. It also includes processes for internal investigations of accidents, incidents, and potential regulatory noncompliance. The latter element also provides a structured means of interacting with the FAA on compliance issues.

The safety assurance component further includes a requirement for confidential employee reporting on the part of all employee groups within the certificate holder. It also requires a safety assessment process, including management reviews by senior management, including the top-level accountable executive of the certificate holder.

Open exchange of information from these processes and open dialogue on the contents of the information greatly enhances the ability of the certificate holder and FAA oversight to assure effective compliance with regulations as well as safety issues outside of the scope of existing regulations.

B. Summary of SMS Part 193 Program

1. *Who may participate:* Certificate holders under 14 CFR part 119 authorized to conduct operations in accordance with the requirements of 14 CFR part 121 are required to have an SMS that meets the requirements of 14 CFR part 5 and, to such extent, may participate. A certificate holder subject to other provisions of 14 CFR may participate if that certificate holder (i) is required to develop and implement an SMS that meets the requirements as identified in 14 CFR part 5; or (ii) that certificate holder voluntarily develops and implements an SMS that is accepted by the FAA, and maintains the SMS in acceptable active status [1] under the SMS Voluntary Program (SMSVP) standard [2] or under another FAA-sponsored SMS voluntary program.

2. Data covered from protection from disclosure will not include reports or other data involving possible criminal activity, substance abuse, improper use of controlled substances and/or alcohol, or intentional falsification. In addition, any record, document, or report required for the FAA to determine statutory or regulatory compliance that the FAA specifically requests is not considered protected.[3]

3. *How persons may participate:* A certificate holder participates by having an SMS that is applicable to that certificate holder as described in paragraph A., above, and by voluntarily sharing information from the SMS with the FAA.

4. *Duration of this information sharing program:* This program will continue in effect as long as a certificate holder maintains the SMS that is applicable to that certificate holder as described in paragraph A, above.

[1] Active status refers to the organization's continuing to conform to the regulations or voluntary program standards as assessed by the FAA organization responsible for their oversight.

[2] The SMSVP standard is derived from and functionally equivalent to 14 CFR part 5 and is published in FAA Order 8900.1.

[3] For example, under 14 CFR 119.59(e), the failure by any certificate holder to make such information available to the Administrator upon request is grounds for legal enforcement action.

IV. Proposed Findings

Based on the following findings and pursuant to the FAA's authority under 49 U.S.C. 40123 and 14 CFR 193.7, the FAA proposes to designate voluntarily provided information associated with the processes described in 14 CFR part 5 as protected from disclosure in accordance with 14 CFR part 193, including but not limited to information set forth in the Appendix 1:[4]

1. Summary of why the FAA finds that the information will be provided voluntarily.

The FAA anticipates that information from a certificate holder's SMS will be provided to the FAA voluntarily to facilitate ongoing compliance and oversight processes such as approval, acceptance, and certification of proposed actions on the part of the organization. As a result of this proposed designation, certificate holders will be reassured that information they voluntarily provide from their SMS will receive further protection from disclosure, including when the FAA shares the information with other Federal agencies with safety or security responsibilities.

2. Description of the type of information that may be voluntarily provided under the program and a summary of why the FAA finds that the information is safety or security related.

Certificate holders under 14 CFR part 119 authorized to conduct operations in accordance with the requirements of 14 CFR part 121 may voluntarily provide information that is associated with the processes described in 14 CFR part 5, including but not limited to information set forth in Appendix 1. For example, voluntary provided information includes records of the outputs of safety risk management and safety assurance processes, training records of employees performing risk management and assurance processes, and safety objectives upon which safety performance assessments are based.

Other certificate holders may voluntarily provide information that is associated with the processes described in the voluntary SMS program standards applicable to the specific certificate holder. Such standards are identical to those set forth in 14 CFR part 5.

3. Summary of why the FAA finds that the disclosure of the information would inhibit persons from voluntarily providing that type of information.

Safety risk management and safety assurance data contains details of an organization's internal processes, the risks that they face, and the decisions and actions taken to address them. Disclosure of these data could harm the certificate holder in terms of publicity and litigation. These considerations could inhibit the willingness of certificate holders to interact openly with the FAA on collaborative approaches to solution of safety problems. While this type of information enjoys some protection from disclosure in accordance with 49 U.S.C. 44735, the FAA is exercising its authority to broaden protection from disclosure under 49 U.S.C. 40123 including in circumstances when the FAA needs to share information with other Federal agencies with safety or security responsibilities.

4. Summary of why the receipt of that type of information aids in fulfilling the FAA's safety and security responsibilities.

The FAA finds that receipt of SMS information aids in fulfilling the FAA's safety and security responsibilities. Because of its capacity to provide early identification of needed safety improvements, an SMS offers significant potential for incident and accident avoidance. For example, SMS data concerning technical or operational events could potentially identify common causal factors in producing such incidents. Receipt of this information provides the FAA with an improved basis for modifying procedures, policies, and regulations in order to improve safety and efficiency. Other programs (*e.g.,* ASAP, FOQA, VDRP) provide some of this information from participating organizations. However, SMS is more comprehensive, covering significant gaps that may exist, even where these programs are in place. Moreover, SMS serves as an integrated system, which will incorporate any existing programs.

As noted above, this information is protected from disclosure in accordance with 49 U.S.C. 44735. However, broader protection under 49 U.S.C. 40123 further encourages submission of information to aid the FAA in fulfilling its safety and security responsibilities, including where the FAA shares the information with other Federal agencies with safety or security responsibilities.

5. Summary of why withholding such information from disclosure would be consistent with the FAA's safety and security responsibilities, including a statement as to the circumstances under which, and a summary of why, withholding such information from disclosure would not be consistent with the FAA's safety and security responsibilities, as described in 14 CFR 193.9.

The FAA finds that withholding SMS information provided to the FAA is consistent with the FAA's safety responsibilities. The SMS specifically provides that corrective action will be taken when necessary.[5] Corrective action under the SMS can be accomplished without disclosure of protected information.

In order to explain the need for changes in FAA policies, procedures, and regulations, the FAA may disclose de-identified (*e.g.,* the identity of the source of the information and the names of the certificate holder, the employee, and other persons redacted) summary information that has been extracted from reports under the SMS data. The FAA may disclose de-identified, summarized SMS information that identifies a systemic problem in the aviation system, when other persons need to be advised of the problem so that they can take corrective action. The FAA may disclose de-identified aggregate statistical information concerning SMS activities. The FAA may disclose independently obtained information relating to any event disclosed in SMS data.

6. Summary of how the FAA will distinguish information protected under part 193 from information the FAA receives from other sources.

All voluntarily submitted SMS data must be clearly labeled as such. It must be clearly labeled as follows in order to be protected under this designation: ''WARNING: The information in this document/system is protected from disclosure under 49 U.S.C. 40123 and/or § 44735, and/or 14 CFR part 193.'' To ensure that the FAA appropriately applies these protections from disclosure, the FAA will take steps to ensure that the information that a certificate holder voluntarily provides through its SMS is segregated from any required information that the certificate also provides through its SMS.

V. Proposed Designation

Accordingly, the Federal Aviation Administration hereby proposes to designate the above described information submitted from a certificate holder's SMS to be protected under 49 U.S.C. 40123 and 14 CFR part 193.

VI. Comments Invited

Interested persons are invited to comment on the proposed designation by submitting such written data, views, or arguments as they may desire. Comments relating to the

[4] Appendix 1 cites the processes and associated data requirements under 14 CFR part 5.

[5] See 14 CFR 5.73(b) for situations where new hazards or ineffective risk controls are found as a result of safety performance assessments and 14 CFR 5.75 for other safety performance deficiencies.

environmental, energy, federalism, or economic impact that might result from adopting the proposal in this notice are also invited. Substantive comments should be accompanied by cost estimates, where appropriate. Comments should identify the notice number and should be submitted to the docket address specified above.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed designation. Before taking action on this proposed designation, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The Agency may change this proposal in light of the comments it receives.

VII. Availability of This Proposed Designation

An electronic copy of designation documents may be obtained from the internet by—

- Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);
- Accessing the Government Publishing Office's web page at *https://www.govinfo.gov.*

All documents the FAA considered in developing this proposed designation, may be accessed from the internet through the Federal eRulemaking Portal referenced in item (1) above.

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Air Transportation Division, AFS–200, 800 Independence Ave. SW, Washington, DC 20591, or by calling (202) 267–8166. Communications must identify the docket number and title of this designation.

Issued in Washington, DC, on October 21, 2021.

Robert C. Carty,

Acting Executive Director, Flight Standards Service.

Appendix 1

Processes per 14 CFR part 5 and Flight Standards SMS Voluntary Program (SMSVP) Standard.

Part 5 and, therefore, the SMSVP Standard are process-based standards.[6] That is, these standards require certificate holders or SMSVP participants, as appropriate, to implement certain processes but without prescriptive requirements for the configuration, methods, or organizational structures to support these processes. § 5.97 requires records of the ''outputs'' of Safety Risk Management (SRM) and Safety Assurance (SA) processes.

The table below summarizes the process requirements in subparts C (SRM) and D (SA). Additionally, § 5.97 requires certificate holders/participants to maintain records of training required under § 5.91 and safety communications required under § 5.93.

This summary includes known data in a properly designed and performing SMS. The exact data elements and media is at the discretion of the certificate holder/participant, as accepted by the FAA.

Part 5 ref	Process or process-related information	Comments
	Policy Related to Processes	
5.21(a)(1), 5.95	Safety Objectives	5.73(a) refers to assessments, ''against (CH's) safety objectives''.
	Safety Risk Management Processes (Records of Outputs Required per 5.97(a))	
5.53(c)	Hazard Identification.	
5.55(a)	Risk Analysis.	
5.55(b)	Risk Assessment (acceptability decision)	Process for acceptability decisions including tools (*e.g.,* matrix).
5.55(c)	Risk Control.	
5.55(d)	Risk Control Effectiveness	Pre-implementation evaluation of estimated effectiveness.
	Safety Assurance Processes (Records of Outputs Required per 5.97(b))	
5.71(a)(1)	Monitoring of operational processes	May have FOQA relationship where used.
5.71(a)(2)	Monitoring of operational environment.	
5.71(a)(3)	Auditing of operational processes and systems	May have LOSA relationships where used.
5.71(a)(4)	Evaluation of SMS and operational processes	May have IEP relationship where integrated.
5.71(a)(5)	Investigations of incidents and accidents.	
5.71(a)(6)	Investigations of reports regarding potential noncompliance	May have Compliance Philosophy and/or VDRP implications.
5.71(a)(7)	Confidential Employee Reporting System	May be additional requirements where ASAP is involved.
5.71(b)	Performance Monitoring and Measurement Analysis.	
5.73(a)	Safety Performance Assessment Process (including):	
	Management Review and assessments of:	
	(1) Compliance with risk controls.	
	(2) Performance of the SMS.	
	(3) Effectiveness of risk controls.	
	(4) Changes in operational environment.	
	(5) new hazards.	
5.75	Corrective Action Process.	

[6] Additional information can be obtained in the **Federal Register** Vol. 80, No. 5, Jan 8, 2015, Final Rule: Safety Management Systems for Domestic, Flag, and Supplemental Operations Certificate Holders, Paragraph Q.

Part 5 ref	Process or process-related information	Comments
Training Requirements		
5.91	Employee training as required.	
Communication Related to Process Outputs		
5.93	Communication. • Employee awareness of SMS. • Hazard information to employees. • Explanation of why actions have been taken. • Explanation of why safety procedures are introduced or changed.	

[FR Doc. 2021–23522 Filed 10–28–21; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2021–0013]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of denials.

SUMMARY: FMCSA announces its decision to deny applications from 42 individuals who requested an exemption from the vision standard in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a CMV in interstate commerce.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing materials in the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number, FMCSA–2021–0013, in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

B. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its regulatory process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.transportation.gov/privacy.*

II. Background

FMCSA received applications from 42 individuals who requested an exemption from the vision standard in the FMCSRs.

FMCSA has evaluated the eligibility of these applicants and concluded that granting these exemptions would not provide a level of safety that would be equivalent to, or greater than, the level of safety that would be obtained by complying with § 391.41(b)(10).

III. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. FMCSA grants exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The Agency's decision regarding these exemption applications is based on medical reports about the applicants' vision, as well as their driving records and experience driving with the vision deficiency.

IV. Conclusion

The Agency has determined that these applicants do not satisfy the eligibility criteria or meet the terms and conditions of the Federal exemption and granting these exemptions would not provide a level of safety that would be equivalent to, or greater than, the level of safety that would be obtained by complying with § 391.41(b)(10). Therefore, the 42 applicants in this notice have been denied exemptions from the physical qualification standards in § 391.41(b)(10).

Each applicant has, prior to this notice, received a letter of final disposition regarding his/her exemption request. Those decision letters fully outlined the basis for the denial and constitute final action by the Agency. This notice summarizes the Agency's recent denials as required under 49 U.S.C. 31315(b)(4) by periodically publishing names and reasons for denial.

The following applicant, Ryan K. Terrill (VT), did not have sufficient driving experience over the past 3 years under normal highway operating conditions due to limited hours of driving.

The following 26 applicants had no experience operating a CMV:

Wolfgang Albarran (NM)
Richard Athey (IL)
Noah R. Barnes (OH)
Maxwell J. Boeckel (ND)
Jesus A. Borrego (NM)
Chase D. Carey (WI)
Jackie W. Cline (AL)
Ivan Delgado (FL)
Daniel C. Elliott (SD)
Timothy W. Garrett (OK)
Isaiah D. Guardado (CA)
Joshua M. Helgerman (PA)
Kyle R. Henderson (NJ)
Edmond S. Kerol (GA)
Mubeen A. Kidwai (IL)

Mussie D. Mekonen (MD)
Teresa Miller (AR)
Mike D. Newman (WA)
Nichole Otterson (OH)
Carlos A. Reyes (NJ)
Derrick Robinson (AL)
Sterling W. Saunders (IN)
Chandler W. Smith (OK)
Brian S. Sturtz (IA)
Jasily Valdez (NJ)
Gregory A. Viverette (IL)

The following eight applicants did not have 3 years of experience driving a CMV on public highways with their vision deficiencies:

John D. Bequette (ID)
John D. Hicks (NM)
James M. Miller (SC)
Miguel A. Salvatierra (CO)
Howard B. Seal (WV)
Robert E. Smith (VA)
Douglas R. Washabaugh (PA)
Glen S. Zimmerman (PA)

The following applicant, David C. Benson (MO), did not have 3 years of recent experience driving a CMV on public highways with his vision deficiency.

The following applicant, Eugene F. Napieralski (MN), did not have sufficient driving experience over the past 3 years under normal highway operating conditions due to gaps in his driving record.

The following two applicants were denied for multiple reasons:

Devin L. Boyett (AL); and Ezra C. Childress (OR)

The following applicant, Daniel L. Foth (WI), has not had stable vision for the preceding 3-year period.

The following two applicants drove interstate while restricted to intrastate driving:

Natalie M. Babcock (WA); and Russell E. Burden (WY)

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2021–23601 Filed 10–28–21; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2021–0011]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt six individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. They are unable to meet the vision requirement in one eye for various reasons. The exemptions enable these individuals to operate CMVs in interstate commerce without meeting the vision requirement in one eye.

DATES: The exemptions were applicable on October 9, 2021. The exemptions expire on October 9, 2023.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number, FMCSA–2021–0011, in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

B. Privacy Act

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II. Background

On September 8, 2021, FMCSA published a notice announcing receipt of applications from six individuals requesting an exemption from vision requirement in 49 CFR 391.41(b)(10) and requested comments from the public (86 FR 50424). The public comment period ended on October 8, 2021, and one comment was received.

FMCSA has evaluated the eligibility of these applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(10).

The physical qualification standard for drivers regarding vision found in § 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber.

III. Discussion of Comments

FMCSA received one comment in this proceeding. Lee Cole submitted a comment that was outside the scope of this notice.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The Agency's decision regarding these exemption applications is based on medical reports about the applicants' vision, as well as their driving records and experience driving with the vision deficiency. The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the September 8, 2021, **Federal Register** notice (86 FR 50424) and will not be repeated here.

FMCSA recognizes that some drivers do not meet the vision requirement but have adapted their driving to accommodate their limitation and demonstrated their ability to drive safely. The six exemption applicants listed in this notice are in this category. They are unable to meet the vision requirement in one eye for various

reasons, including amblyopia, complete loss of vision, refractive amblyopia, retinal detachment, and retinal hemorrhage. In most cases, their eye conditions did not develop recently. Three of the applicants were either born with their vision impairments or have had them since childhood. The three individuals that developed their vision conditions as adults have had them for a range of 4 to 12 years. Although each applicant has one eye that does not meet the vision requirement in § 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and, in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV.

Doctors' opinions are supported by the applicants' possession of a valid license to operate a CMV. By meeting State licensing requirements, the applicants demonstrated their ability to operate a CMV with their limited vision in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. FMCSA believes that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions.

The applicants in this notice have driven CMVs with their limited vision in careers ranging from 5 to 44 years. In the past 3 years, one driver was involved in a crash, and no drivers were convicted of moving violations in CMVs. All the applicants achieved a record of safety while driving with their vision impairment that demonstrates the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

Consequently, FMCSA finds that in each case exempting these applicants from the vision requirement in § 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption.

V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and includes the following: (1) Each driver must be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in § 391.41(b)(10) and (b) by a certified medical examiner (ME) who attests that the individual is otherwise physically qualified under § 391.41; (2) each driver must provide a copy of the ophthalmologist's or optometrist's report to the ME at the time of the annual medical examination; and (3) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the six exemption applications, FMCSA exempts the following drivers from the vision requirement, § 391.41(b)(10), subject to the requirements cited above:

Jason R. Flodin (WA)

Justin W. Green (AR)

Joshua L. Kupsch (WI)

Josue M. Rodriguez-Espinoza (CA)

Dana R. Williams (IL)

Larry L. Yow (NC)

In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2021–23602 Filed 10–28–21; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1999–5578; FMCSA–1999–5748; FMCSA–2000–7006; FMCSA–2000–7918; FMCSA–2001–9561; FMCSA–2001–10578; FMCSA–2002–11426; FMCSA–2002–12844; FMCSA–2002–13411; FMCSA–2003–14223; FMCSA–2003–14504; FMCSA–2004–17195; FMCSA–2005–20560; FMCSA–2005–21254; FMCSA–2005–21711; FMCSA–2005–22194; FMCSA–2006–26066; FMCSA–2007–25246; FMCSA–2007–27333; FMCSA–2007–27897; FMCSA–2007–29019; FMCSA–2008–0106; FMCSA–2008–0266; FMCSA–2009–0154; FMCSA–2009–0206; FMCSA–2010–0161; FMCSA–2010–0287; FMCSA–2010–0354; FMCSA–2010–0372; FMCSA–2010–0385; FMCSA–2011–0057; FMCSA–2011–0092; FMCSA–2011–0124; FMCSA–2011–0140; FMCSA–2011–0141; FMCSA–2011–0142; FMCSA–2011–0189; FMCSA–2011–26690; FMCSA–2012–0040; FMCSA–2012–0161; FMCSA–2012–0337; FMCSA–2012–0338; FMCSA–2013–0021; FMCSA–2013–0022; FMCSA–2013–0025; FMCSA–2013–0027; FMCSA–2013–0028; FMCSA–2013–0029; FMCSA–2013–0030; FMCSA–2013–0165; FMCSA–2013–0166; FMCSA–2013–0168; FMCSA–2013–0169; FMCSA–2014–0005; FMCSA–2014–0010; FMCSA–2014–0298; FMCSA–2014–0300; FMCSA–2014–0301; FMCSA–2014–0302; FMCSA–2014–0304; FMCSA–2014–0305; FMCSA–2015–0048; FMCSA–2015–0049; FMCSA–2015–0052; FMCSA–2015–0055; FMCSA–2015–0056; FMCSA–2015–0071; FMCSA–2015–0072; FMCSA–2015–0347; FMCSA–2016–0025; FMCSA–2016–0030; FMCSA–2016–0210; FMCSA–2016–0212; FMCSA–2016–0213; FMCSA–2017–0016; FMCSA–2017–0017; FMCSA–2017–0018; FMCSA–2017–0019; FMCSA–2017–0020; FMCSA–2017–0022; FMCSA–2017–0023; FMCSA–2018–0010; FMCSA–2018–0013; FMCSA–2018–0015; FMCSA–2018–0018; FMCSA–2018–0207; FMCSA–2018–0209; FMCSA–2019–0005; FMCSA–2019–0006; FMCSA–2019–0008; FMCSA–2019–0009; FMCSA–2019–0014; FMCSA–2019–0015]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions for 156 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these individuals to continue to operate CMVs in interstate commerce without meeting the vision requirements in one eye.

DATES: Each group of renewed exemptions were applicable on the

dates stated in the discussions below and will expire on the dates stated in the discussions below. Comments must be received on or before November 29, 2021.

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA–1999–5578, Docket No. FMCSA–1999–5748, Docket No. FMCSA–2000–7006, Docket No. FMCSA–2000–7918, Docket No. FMCSA–2001–9561, Docket No. FMCSA–2001–10578, Docket No. FMCSA–2002–11426, Docket No. FMCSA–2002–12844, Docket No. FMCSA–2002–13411, Docket No. FMCSA–2003–14223, Docket No. FMCSA–2003–14504, Docket No. FMCSA–2004–17195, Docket No. FMCSA–2005–20560, Docket No. FMCSA–2005–21254, Docket No. FMCSA–2005–21711, Docket No. FMCSA–2005–22194, Docket No. FMCSA–2006–26066, Docket No. FMCSA–2007–25246, Docket No. FMCSA–2007–27333, Docket No. FMCSA–2007–27897, Docket No. FMCSA–2007–29019, Docket No. FMCSA–2008–0106, Docket No. FMCSA–2008–0266, Docket No. FMCSA–2009–0154, Docket No. FMCSA–2009–0206, Docket No. FMCSA–2010–0161, Docket No. FMCSA–2010–0287, Docket No. FMCSA–2010–0354, Docket No. FMCSA–2010–0372, Docket No. FMCSA–2010–0385, Docket No. FMCSA–2011–0057, Docket No. FMCSA–2011–0092, Docket No. FMCSA–2011–0124, Docket No. FMCSA–2011–0140, Docket No. FMCSA–2011–0141, Docket No. FMCSA–2011–0142, Docket No. FMCSA–2011–0189, Docket No. FMCSA–2011–26690, Docket No. FMCSA–2012–0040, Docket No. FMCSA–2012–0161, Docket No. FMCSA–2012–0337, Docket No. FMCSA–2012–0338, Docket No. FMCSA–2013–0021, Docket No. FMCSA–2013–0022, Docket No. FMCSA–2013–0025, Docket No. FMCSA–2013–0027, Docket No. FMCSA–2013–0028, Docket No. FMCSA–2013–0029, Docket No. FMCSA–2013–0030, Docket No. FMCSA–2013–0165, Docket No. FMCSA–2013–0166, Docket No. FMCSA–2013–0168, Docket No. FMCSA–2013–0169, Docket No. FMCSA–2014–0005, Docket No. FMCSA–2014–0010, Docket No. FMCSA–2014–0298, Docket No. FMCSA–2014–0300, Docket No. FMCSA–2014–0301, Docket No. FMCSA–2014–0302, Docket No. FMCSA–2014–0304, Docket No. FMCSA–2014–0305, Docket No. FMCSA–2015–0048, Docket No. FMCSA–2015–0049, Docket No. FMCSA–2015–0052, Docket No. FMCSA–2015–0055, Docket No. FMCSA–2015–0056, Docket No. FMCSA–2015–0071, Docket No. FMCSA–2015–0072, Docket No. FMCSA–2015–0347, Docket No. FMCSA–2016–0025, Docket No. FMCSA–2016–0030, Docket No. FMCSA–2016–0210, Docket No. FMCSA–2016–0212, Docket No. FMCSA–2016–0213, Docket No. FMCSA–2017–0016, Docket No. FMCSA–2017–0017, Docket No. FMCSA–2017–0018, Docket No. FMCSA–2017–0019, Docket No. FMCSA–2017–0020, Docket No. FMCSA–2017–0022, Docket No. FMCSA–2017–0023, Docket No. FMCSA–2018–0010, Docket No. FMCSA–2018–0013, Docket No. FMCSA–2018–0015, Docket No. FMCSA–2018–0018, Docket No. FMCSA–2018–0207, Docket No. FMCSA–2018–0209, Docket No. FMCSA–2019–0005, Docket No. FMCSA–2019–0006, Docket No. FMCSA–2019–0008, Docket No. FMCSA–2019–0009, Docket No. FMCSA–2019–0014, or Docket No. FMCSA–2019–0015 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov/,* insert the docket number, FMCSA–1999–5578, FMCSA–1999–5748, FMCSA–2000–7006, FMCSA–2000–7918, FMCSA–2001–9561, FMCSA–2001–10578, FMCSA–2002–11426, FMCSA–2002–12844, FMCSA–2002–13411, FMCSA–2003–14223, FMCSA–2003–14504, FMCSA–2004–17195, FMCSA–2005–20560, FMCSA–2005–21254, FMCSA–2005–21711, FMCSA–2005–22194, FMCSA–2006–26066, FMCSA–2007–25246, FMCSA–2007–27333, FMCSA–2007–27897, FMCSA–2007–29019, FMCSA–2008–0106, FMCSA–2008–0266, FMCSA–2009–0154, FMCSA–2009–0206, FMCSA–2010–0161, FMCSA–2010–0287, FMCSA–2010–0354, FMCSA–2010–0372, FMCSA–2010–0385, FMCSA–2011–0057, FMCSA–2011–0092, FMCSA–2011–0124, FMCSA–2011–0140, FMCSA–2011–0141, FMCSA–2011–0142, FMCSA–2011–0189, FMCSA–2011–26690, FMCSA–2012–0040, FMCSA–2012–0161, FMCSA–2012–0337, FMCSA–2012–0338, FMCSA–2013–0021, FMCSA–2013–0022, FMCSA–2013–0025, FMCSA–2013–0027, FMCSA–2013–0028, FMCSA–2013–0029, FMCSA–2013–0030, FMCSA–2013–0165, FMCSA–2013–0166, FMCSA–2013–0168, FMCSA–2013–0169, FMCSA–2014–0005, FMCSA–2014–0010, FMCSA–2014–0298, FMCSA–2014–0300, FMCSA–2014–0301, FMCSA–2014–0302, FMCSA–2014–0304, FMCSA–2014–0305, FMCSA–2015–0048, FMCSA–2015–0049, FMCSA–2015–0052, FMCSA–2015–0055, FMCSA–2015–0056, FMCSA–2015–0071, FMCSA–2015–0072, FMCSA–2015–0347, FMCSA–2016–0025, FMCSA–2016–0030, FMCSA–2016–0210, FMCSA–2016–0212, FMCSA–2016–0213, FMCSA–2017–0016, FMCSA–2017–0017, FMCSA–2017–0018, FMCSA–2017–0019, FMCSA–2017–0020, FMCSA–2017–0022, FMCSA–2017–0023, FMCSA–2018–0010, FMCSA–2018–0013, FMCSA–2018–0015, FMCSA–2018–0018, FMCSA–2018–0207, FMCSA–2018–0209, FMCSA–2019–0005, FMCSA–2019–0006, FMCSA–2019–0008, FMCSA–2019–0009, FMCSA–2019–0014, or FMCSA–2019–0015 in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click on the ''Comment'' button. Follow the online instructions for submitting comments.
- *Mail:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–1999–5578; FMCSA–1999–5748; FMCSA–2000–

7006; FMCSA–2000–7918; FMCSA–2001–9561; FMCSA–2001–10578; FMCSA–2002–11426; FMCSA–2002–12844; FMCSA–2002–13411; FMCSA–2003–14223; FMCSA–2003–14504; FMCSA–2004–17195; FMCSA–2005–20560; FMCSA–2005–21254; FMCSA–2005–21711; FMCSA–2005–22194; FMCSA–2006–26066; FMCSA–2007–25246; FMCSA–2007–27333; FMCSA–2007–27897; FMCSA–2007–29019; FMCSA–2008–0106; FMCSA–2008–0266; FMCSA–2009–0154; FMCSA–2009–0206; FMCSA–2010–0161; FMCSA–2010–0287; FMCSA–2010–0354; FMCSA–2010–0372; FMCSA–2010–0385; FMCSA–2011–0057; FMCSA–2011–0092; FMCSA–2011–0124; FMCSA–2011–0140; FMCSA–2011–0141; FMCSA–2011–0142; FMCSA–2011–0189; FMCSA–2011–26690; FMCSA–2012–0040; FMCSA–2012–0161; FMCSA–2012–0337; FMCSA–2012–0338; FMCSA–2013–0021; FMCSA–2013–0022; FMCSA–2013–0025; FMCSA–2013–0027; FMCSA–2013–0028; FMCSA–2013–0029; FMCSA–2013–0030; FMCSA–2013–0165; FMCSA–2013–0166; FMCSA–2013–0168; FMCSA–2013–0169; FMCSA–2014–0005; FMCSA–2014–0010; FMCSA–2014–0298; FMCSA–2014–0300; FMCSA–2014–0301; FMCSA–2014–0302; FMCSA–2014–0304; FMCSA–2014–0305; FMCSA–2015–0048; FMCSA–2015–0049; FMCSA–2015–0052; FMCSA–2015–0055; FMCSA–2015–0056; FMCSA–2015–0071; FMCSA–2015–0072; FMCSA–2015–0347; FMCSA–2016–0025; FMCSA–2016–0030; FMCSA–2016–0210; FMCSA–2016–0212; FMCSA–2016–0213; FMCSA–2017–0016; FMCSA–2017–0017; FMCSA–2017–0018; FMCSA–2017–0019; FMCSA–2017–0020; FMCSA–2017–0022; FMCSA–2017–0023; FMCSA–2018–0010; FMCSA–2018–0013; FMCSA–2018–0015; FMCSA–2018–0018; FMCSA–2018–0207; FMCSA–2018–0209; FMCSA–2019–0005; FMCSA–2019–0006; FMCSA–2019–0008; FMCSA–2019–0009; FMCSA–2019–0014; FMCSA–2019–0015), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *www.regulations.gov/,* insert the docket number, FMCSA–1999–5578, FMCSA–1999–5748, FMCSA–2000–7006, FMCSA–2000–7918, FMCSA–2001–9561, FMCSA–2001–10578, FMCSA–2002–11426, FMCSA–2002–12844, FMCSA–2002–13411, FMCSA–2003–14223, FMCSA–2003–14504, FMCSA–2004–17195, FMCSA–2005–20560, FMCSA–2005–21254, FMCSA–2005–21711, FMCSA–2005–22194, FMCSA–2006–26066, FMCSA–2007–25246, FMCSA–2007–27333, FMCSA–2007–27897, FMCSA–2007–29019, FMCSA–2008–0106, FMCSA–2008–0266, FMCSA–2009–0154, FMCSA–2009–0206, FMCSA–2010–0161, FMCSA–2010–0287, FMCSA–2010–0354, FMCSA–2010–0372, FMCSA–2010–0385, FMCSA–2011–0057, FMCSA–2011–0092, FMCSA–2011–0124, FMCSA–2011–0140, FMCSA–2011–0141, FMCSA–2011–0142, FMCSA–2011–0189, FMCSA–2011–26690, FMCSA–2012–0040, FMCSA–2012–0161, FMCSA–2012–0337, FMCSA–2012–0338, FMCSA–2013–0021, FMCSA–2013–0022, FMCSA–2013–0025, FMCSA–2013–0027, FMCSA–2013–0028, FMCSA–2013–0029, FMCSA–2013–0030, FMCSA–2013–0165, FMCSA–2013–0166, FMCSA–2013–0168, FMCSA–2013–0169, FMCSA–2014–0005, FMCSA–2014–0010, FMCSA–2014–0298, FMCSA–2014–0300, FMCSA–2014–0301, FMCSA–2014–0302, FMCSA–2014–0304, FMCSA–2014–0305, FMCSA–2015–0048, FMCSA–2015–0049, FMCSA–2015–0052, FMCSA–2015–0055, FMCSA–2015–0056, FMCSA–2015–0071, FMCSA–2015–0072, FMCSA–2015–0347, FMCSA–2016–0025, FMCSA–2016–0030, FMCSA–2016–0210, FMCSA–2016–0212, FMCSA–2016–0213, FMCSA–2017–0016, FMCSA–2017–0017, FMCSA–2017–0018, FMCSA–2017–0019, FMCSA–2017–0020, FMCSA–2017–0022, FMCSA–2017–0023, FMCSA–2018–0010, FMCSA–2018–0013, FMCSA–2018–0015, FMCSA–2018–0018, FMCSA–2018–0207, FMCSA–2018–0209, FMCSA–2019–0005, FMCSA–2019–0006, FMCSA–2019–0008, FMCSA–2019–0009, FMCSA–2019–0014, or FMCSA–2019–0015 in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, click the ''Comment'' button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number, FMCSA–1999–5578, FMCSA–1999–5748, FMCSA–2000–7006, FMCSA–2000–7918, FMCSA–2001–9561, FMCSA–2001–10578, FMCSA–2002–11426, FMCSA–2002–12844, FMCSA–2002–13411, FMCSA–2003–14223, FMCSA–2003–14504, FMCSA–2004–17195, FMCSA–2005–20560, FMCSA–2005–21254, FMCSA–2005–21711, FMCSA–2005–22194, FMCSA–2006–26066, FMCSA–2007–25246, FMCSA–2007–27333, FMCSA–2007–27897, FMCSA–2007–29019, FMCSA–2008–0106, FMCSA–2008–0266, FMCSA–2009–0154, FMCSA–2009–0206, FMCSA–2010–0161, FMCSA–2010–0287, FMCSA–2010–0354, FMCSA–2010–0372, FMCSA–2010–0385, FMCSA–2011–0057, FMCSA–2011–0092, FMCSA–2011–0124, FMCSA–2011–0140, FMCSA–2011–0141, FMCSA–2011–0142, FMCSA–2011–0189, FMCSA–2011–26690, FMCSA–2012–0040, FMCSA–2012–0161, FMCSA–2012–0337, FMCSA–2012–0338, FMCSA–2013–0021, FMCSA–2013–0022, FMCSA–2013–0025, FMCSA–2013–0027, FMCSA–2013–0028, FMCSA–2013–0029, FMCSA–2013–0030, FMCSA–2013–0165, FMCSA–2013–0166, FMCSA–2013–0168, FMCSA–2013–0169, FMCSA–2014–0005, FMCSA–2014–0010, FMCSA–2014–0298, FMCSA–2014–0300, FMCSA–2014–0301, FMCSA–2014–0302, FMCSA–2014–0304, FMCSA–2014–0305, FMCSA–2015–0048, FMCSA–2015–0049, FMCSA–2015–0052, FMCSA–2015–0055, FMCSA–2015–0056, FMCSA–2015–0071, FMCSA–2015–0072, FMCSA–2015–0347, FMCSA–2016–0025, FMCSA–2016–0030, FMCSA–2016–0210, FMCSA–2016–0212, FMCSA–2016–0213, FMCSA–2017–0016, FMCSA–2017–0017, FMCSA–2017–0018, FMCSA–2017–0019, FMCSA–2017–0020, FMCSA–2017–0022, FMCSA–2017–0023, FMCSA–2018–0010, FMCSA–2018–0013, FMCSA–2018–0015, FMCSA–2018–0018, FMCSA–2018–0207, FMCSA–2018–0209, FMCSA–2019–0005,

FMCSA–2019–0006, FMCSA–2019–0008, FMCSA–2019–0009, FMCSA–2019–0014, or FMCSA–2019–0015 in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its regulatory process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.transportation.gov/privacy.*

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The physical qualification standard for drivers regarding vision found in 49 CFR 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber.

The 156 individuals listed in this notice have requested renewal of their exemptions from the vision standard in § 391.41(b)(10), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b), FMCSA will take immediate steps to revoke the exemption of a driver.

IV. Basis for Renewing Exemptions

In accordance with 49 U.S.C. 31136(e) and 31315(b), each of the 156 applicants has satisfied the renewal conditions for obtaining an exemption from the vision standard (see 64 FR 27027, 64 FR 40404, 64 FR 51568, 64 FR 66962, 65 FR 20245, 65 FR 57230, 65 FR 66286, 66 FR 13825, 66 FR 3050, 66 FR 41654, 66 FR 53826, 66 FR 63289, 66 FR 66966, 67 FR 10471, 67 FR 19798, 67 FR 57266, 67 FR 68719, 67 FR 76439, 68 FR 2629, 68 FR 10298, 68 FR 10301, 68 FR 13360, 68 FR 19596, 68 FR 19598, 68 FR 33570, 68 FR 44837, 68 FR 64944, 68 FR 69434, 69 FR 17263, 69 FR 19611, 69 FR 31447, 69 FR 52741, 69 FR 71100, 70 FR 7545, 70 FR 12265, 70 FR 16886, 70 FR 17504, 70 FR 25878, 70 FR 30997, 70 FR 30999, 70 FR 41811, 70 FR 46567, 70 FR 48797, 70 FR 53412, 70 FR 57353, 70 FR 61493, 70 FR 67776, 70 FR 72689, 70 FR 74102, 71 FR 27033, 71 FR 53489, 71 FR 63379, 72 FR 180, 72 FR 1050, 72 FR 1051, 72 FR 1053, 72 FR 7812, 72 FR 9397, 72 FR 11426, 72 FR 12666, 72 FR 18726, 72 FR 25831, 72 FR 27624, 72 FR 28093, 72 FR 39879, 72 FR 52419, 72 FR 54971, 72 FR 58362, 72 FR 62896, 72 FR 62897, 72 FR 64273, 72 FR 67344, 73 FR 35197, 73 FR 36955, 73 FR 48275, 73 FR 51336, 73 FR 51689, 73 FR 63047, 73 FR 76440, 73 FR 78423, 74 FR 6689, 74 FR 8302, 74 FR 11991, 74 FR 15586, 74 FR 20253, 74 FR 20523, 74 FR 23472, 74 FR 34395, 74 FR 37295, 74 FR 41971, 74 FR 43217, 74 FR 43221, 74 FR 48343, 74 FR 49069, 74 FR 57551, 74 FR 57553, 74 FR 60021, 74 FR 62632, 75 FR 36779, 75 FR 39725, 75 FR 44051, 75 FR 52062, 75 FR 61833, 75 FR 66423, 75 FR 69737, 75 FR 72863, 75 FR 77942, 75 FR 79083, 75 FR 80887, 76 FR 1499, 76 FR 2190, 76 FR 5425, 76 FR 7894, 76 FR 9859, 76 FR 11215, 76 FR 12216, 76 FR 17483, 76 FR 18824, 76 FR 20078, 76 FR 21796, 76 FR 25762, 76 FR 25766, 76 FR 29024, 76 FR 29026, 76 FR 32017, 76 FR 34136, 76 FR 37169, 76 FR 37885, 76 FR 40445, 76 FR 44652, 76 FR 49528, 76 FR 50318, 76 FR 53708, 76 FR 53710, 76 FR 54530, 76 FR 55463, 76 FR 55465, 76 FR 61143, 76 FR 62143, 76 FR 64169, 76 FR 66123, 76 FR 67246, 76 FR 70210, 76 FR 70212, 76 FR 70215, 76 FR 75942, 76 FR 75943, 77 FR 23799, 77 FR 33558, 77 FR 38384, 77 FR 41879, 77 FR 46153, 77 FR 52389, 77 FR 52391, 77 FR 56262, 77 FR 70534, 77 FR 74273, 77 FR 74731, 77 FR 74733, 77 FR 74734, 77 FR 76167, 78 FR 8689, 78 FR 9772, 78 FR 10251, 78 FR 12811, 78 FR 12815, 78 FR 12822, 78 FR 14410, 78 FR 16762, 78 FR 18667, 78 FR 20376, 78 FR 2037, 78 FR 22596, 78 FR 22602, 78 FR 24798, 78 FR 26106, 78 FR 27281, 78 FR 30954, 78 FR 32708, 78 FR 34141, 78 FR 34143, 78 FR 37270, 78 FR 41188, 78 FR 41975, 78 FR 46407, 78 FR 47818, 78 FR 52602, 78 FR 56986, 78 FR 56993, 78 FR 62935, 78 FR 63302, 78 FR 63307, 78 FR 64274, 78 FR 64280, 78 FR 65032, 78 FR 66099, 78 FR 67452, 78 FR 76395, 78 FR 77778, 78 FR 77780, 78 FR 77782, 78 FR 78477, 79 FR 4531, 79 FR 24298, 79 FR 27365, 79 FR 27681, 79 FR 35218, 79 FR 38649, 79 FR 38661, 79 FR 46153, 79 FR 46300, 79 FR 51642, 79 FR 51643, 79 FR 64001, 79 FR 65760, 79 FR 69985, 79 FR 73687, 79 FR 74168, 80 FR 2473, 80 FR 3305, 80 FR 3308, 80 FR 6162, 80 FR 7678, 80 FR 8751, 80 FR 8927, 80 FR 9304, 80 FR 12248, 80 FR 12251, 80 FR 14220, 80 FR 14223, 80 FR 15863, 80 FR 16500, 80 FR 16502, 80 FR 18693, 80 FR 18696, 80 FR 20562, 80 FR 22773, 80 FR 25766, 80 FR 26139, 80 FR 26320, 80 FR 29149, 80 FR 29152, 80 FR 29154, 80 FR 31636, 80 FR 31640, 80 FR 33007, 80 FR 33011, 80 FR 35699, 80 FR 36395, 80 FR 37718, 80 FR 41548, 80 FR 44188, 80 FR 45573, 80 FR 48402, 80 FR 48404, 80 FR 48409, 80 FR 48411, 80 FR 48413, 80 FR 49302, 80 FR 50917, 80 FR 53383, 80 FR 59225, 80 FR 59230, 80 FR 62161, 80 FR 63869, 80 FR 67472, 80 FR 67481, 80 FR 70060, 81 FR 1284, 81 FR 1474, 81 FR 11642, 81 FR 16265, 81 FR 21647, 81 FR 28138, 81 FR 45214, 81 FR 48493, 81 FR 66726, 81 FR 71173, 81 FR 72664, 81 FR 80161, 81 FR 81230, 81 FR 86063, 81 FR 90050, 81 FR 94013, 81 FR 96165, 81 FR 96180, 81 FR 96196, 82 FR 12683, 82 FR 13043, 82 FR 13048, 82 FR 13187, 82 FR 15277, 82 FR 18818, 82 FR 18949, 82 FR 18954, 82 FR 20962, 82 FR 22379, 82 FR 23712, 82 FR 24430, 82 FR 28734, 82 FR 32919, 82 FR 33542, 82 FR 34564, 82 FR 35043, 82 FR 35050, 82 FR 37499, 82 FR 37504, 82 FR 43647, 82 FR 47295, 82 FR 47296, 82 FR 47309, 82 FR 47312, 83 FR 2289, 83 FR 2306, 83 FR 3861, 83 FR 4537, 83 FR 18644, 83 FR 28332, 83 FR 28335, 83 FR 28342, 83 FR 34661, 83 FR 34667, 83 FR 40638, 83 FR 40648, 83 FR 53724, 83 FR 53727, 83 FR 53732, 83 FR 56140, 83 FR 56902, 84 FR 2309, 84 FR 2311, 84 FR 2314, 84 FR

2323, 84 FR 2326, 84 FR 2328, 84 FR 10389, 84 FR 11859, 84 FR 12665, 84 FR 16320, 84 FR 16333, 84 FR 16336, 84 FR 21393, 84 FR 21397, 84 FR 21401, 84 FR 23629, 84 FR 27685, 84 FR 27688, 84 FR 47047, 84 FR 47050, 84 FR 47057, 84 FR 52160, 84 FR 52166, 84 FR 58448, 84 FR 58450, 84 FR 58453, 84 FR 66442, 84 FR 66444, 85 FR 4764). They have submitted evidence showing that the vision in the better eye continues to meet the requirement specified at § 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past 2 years indicates each applicant continues to meet the vision exemption requirements. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

In accordance with 49 U.S.C. 31136(e) and 31315(b), the following groups of drivers received renewed exemptions in the month of December and are discussed below. As of December 3, 2021, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following 140 individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (64 FR 40404, 64 FR 66962, 65 FR 20245, 65 FR 57230, 65 FR 66286, 66 FR 13825, 66 FR 30502, 66 FR 41654, 66 FR 53826, 66 FR 63289, 66 FR 66966, 67 FR 57266, 67 FR 68719, 67 FR 76439, 68 FR 2629, 68 FR 10298, 68 FR 10301, 68 FR 13360, 68 FR 19596, 68 FR 19598, 68 FR 33570, 68 FR 44837, 68 FR 64944, 68 FR 69434, 69 FR 17263, 69 FR 31447, 69 FR 52741, 69 FR 71100, 70 FR 7545, 70 FR 12265, 70 FR 16886, 70 FR 17504, 70 FR 25878, 70 FR 30997, 70 FR 30999, 70 FR 41811, 70 FR 46567, 70 FR 48797, 70 FR 61493, 70 FR 67776, 70 FR 74102, 71 FR 27033, 71 FR 53489, 71 FR 63379, 72 FR 180, 72 FR 1050, 72 FR 1051, 72 FR 1053, 72 FR 7812, 72 FR 9397, 72 FR 11426, 72 FR 12666, 72 FR 18726, 72 FR 25831, 72 FR 27624, 72 FR 28093, 72 FR 39879, 72 FR 52419, 72 FR 54971, 72 FR 58362, 72 FR 62896, 72 FR 64273, 72 FR 67344, 73 FR 35197, 73 FR 36955, 73 FR 48275, 73 FR 51336, 73 FR 51689, 73 FR 63047, 73 FR 76440, 73 FR 78423, 74 FR 6689, 74 FR 8302, 74 FR 11991, 74 FR 15586, 74 FR 20253, 74 FR 20523, 74 FR 23472, 74 FR 34395, 74 FR 37295, 74 FR 41971, 74 FR 43217, 74 FR 43221, 74 FR 48343, 74 FR 49069, 74 FR 57551, 74 FR 57553, 74 FR 62632, 75 FR 36779, 75 FR 39725, 75 FR 44051, 75 FR 52062, 75 FR 61833, 75 FR 66423, 75 FR 69737, 75 FR 72863, 75 FR 77942, 75 FR 79083, 75 FR 80887, 76 FR 1499, 76 FR 2190, 76 FR 5425, 76 FR 7894, 76 FR 9859, 76 FR 11215, 76 FR 12216, 76 FR 17483, 76 FR 18824, 76 FR 20078, 76 FR 21796, 76 FR 25762, 76 FR 25766, 76 FR 29024, 76 FR 29026, 76 FR 32017, 76 FR 34136, 76 FR 37169, 76 FR 37885, 76 FR 40445, 76 FR 44652, 76 FR 49528, 76 FR 50318, 76 FR 53708, 76 FR 53710, 76 FR 54530, 76 FR 55463, 76 FR 55465, 76 FR 61143, 76 FR 62143, 76 FR 66123, 76 FR 67246, 76 FR 70212, 76 FR 70215, 77 FR 23799, 77 FR 33558, 77 FR 38384, 77 FR 41879, 77 FR 46153, 77 FR 52389, 77 FR 52391, 77 FR 56262, 77 FR 70534, 77 FR 74273, 77 FR 74731, 77 FR 74733, 77 FR 74734, 77 FR 76167, 78 FR 8689, 78 FR 9772, 78 FR 10251, 78 FR 12811, 78 FR 12815, 78 FR 12822, 78 FR 14410, 78 FR 16762, 78 FR 18667, 78 FR 20376, 78 FR 20379, 78 FR 22596, 78 FR 22602, 78 FR 24798, 78 FR 26106, 78 FR 27281, 78 FR 30954, 78 FR 32708, 78 FR 34141, 78 FR 34143, 78 FR 37270, 78 FR 41188, 78 FR 41975, 78 FR 46407, 78 FR 47818, 78 FR 52602, 78 FR 56986, 78 FR 56993, 78 FR 63307, 78 FR 64280, 78 FR 77782, 78 FR 78477, 79 FR 4531, 79 FR 24298, 79 FR 27365, 79 FR 27681, 79 FR 35218, 79 FR 38649, 79 FR 38661, 79 FR 46153, 79 FR 46300, 79 FR 51642, 79 FR 51643, 79 FR 64001, 79 FR 65760, 79 FR 69985, 79 FR 73687, 79 FR 74168, 80 FR 2473, 80 FR 3305, 80 FR 3308, 80 FR 6162, 80 FR 7678, 80 FR 8751, 80 FR 8927, 80 FR 9304, 80 FR 12248, 80 FR 12251, 80 FR 14220, 80 FR 14223, 80 FR 15863, 80 FR 16500, 80 FR 16502, 80 FR 18693, 80 FR 18696, 80 FR 20562, 80 FR 22773, 80 FR 25766, 80 FR 26139, 80 FR 26320, 80 FR 29149, 80 FR 29152, 80 FR 29154, 80 FR 31636, 80 FR 31640, 80 FR 33007, 80 FR 33011, 80 FR 35699, 80 FR 36395, 80 FR 37718, 80 FR 41548, 80 FR 44188, 80 FR 45573, 80 FR 48402, 80 FR 48404, 80 FR 48409, 80 FR 48411, 80 FR 48413, 80 FR 49302, 80 FR 50917, 80 FR 53383, 80 FR 59225, 80 FR 59230, 80 FR 62161, 80 FR 63869, 80 FR 67472, 81 FR 1284, 81 FR 1474, 81 FR 11642, 81 FR 21647, 81 FR 28138, 81 FR 45214, 81 FR 48493, 81 FR 66726, 81 FR 71173, 81 FR 72664, 81 FR 80161, 81 FR 81230, 81 FR 86063, 81 FR 90050, 81 FR 94013, 81 FR 96165, 81 FR 96180, 81 FR 96196, 82 FR 12683, 82 FR 13043, 82 FR 13048, 82 FR 13187, 82 FR 15277, 82 FR 18818, 82 FR 18949, 82 FR 18954, 82 FR 20962, 82 FR 22379, 82 FR 23712, 82 FR 24430, 82 FR 28734, 82 FR 32919, 82 FR 33542, 82 FR 34564, 82 FR 35043, 82 FR 35050, 82 FR 37499, 82 FR 37504, 82 FR 43647, 82 FR 47295, 82 FR 47296, 82 FR 47309, 82 FR 47312, 83 FR 2289, 83 FR 2306, 83 FR 3861, 83 FR 4537, 83 FR 18644, 83 FR 28332, 83 FR 28335, 83 FR 28342, 83 FR 34661, 83 FR 34667, 83 FR 40638, 83 FR 40648, 83 FR 53724, 83 FR 53727, 83 FR 53732, 83 FR 56140, 83 FR 56902, 84 FR 2309, 84 FR 2311, 84 FR 2314, 84 FR 2323, 84 FR 2326, 84 FR 2328, 84 FR 10389, 84 FR 11859, 84 FR 12665, 84 FR 16320, 84 FR 16333, 84 FR 16336, 84 FR 21393, 84 FR 21397, 84 FR 21401, 84 FR 23629, 84 FR 27685, 84 FR 27688, 84 FR 47047, 84 FR 47050, 84 FR 47057, 84 FR 52160, 84 FR 52166, 84 FR 58448, 84 FR 58450, 84 FR 58453, 84 FR 66442, 84 FR 66444, 85 FR 4764):

Brian K. Aldridge (OH)
Michael T. Allen (NV)
Darrell G. Anthony (TX)
Clarton D. Avis (KY)
Eleazar R. Balli (TX)
Donald A. Becker (MI)
Linda L. Billings (NV)
Robert W. Blankenship (CA)
Keith A. Bliss (NY)
Christopher W. Brim (TN)
Justin C. Bruchman (WI)
David A. Buchanan (SC)
Timothy V. Burke (CO)
Garry D. Burkholder (PA)
Robert J. Burns (KY)
Nathan J. Bute (IN)
Ricky D. Cain (NM)
Clifford D. Carpenter (MO)
Robert A. Casson (KY)
Todd A. Chapman (NC)
Stephen M. Cook (PA)
David A. Cooper (WV)
Gregory L. Cooper (PA)
Peter D. Costas (NY)
Timothy J. Curran (CA)
Brian W. Curtis (IL)
Marvin R. Daly (SC)
Terry L. Daneau (NH)
Erik R. Davis (GA)
Mark P. Davis (ME)
Chris M. DeJong (NM)
Nicholas M. Deschepper (SD)
Phyllis A. Dodson (IN)
Ronald W. Doskocil (TX)
Sonya M. Duff (IN)
Brian G. Dvorak (IL)
David L. Ellis (OK)
Larry E. Emanuel (FL)
David L. Erickson (SD)
Jonathan G. Estabrook (MA)
John F. Ferguson (PA)
Saul E. Fierro (AZ)
Bobby C. Floyd (TN)
Kevin K. Friedel (NY)
Claudia E. Gerez-Betancourt (TX)
Mark E. Gessner (FL)
Anthony A. Gibson (IL)
Nirmal S. Gill (CA)
Jonathen M. Gilligan (NY)
Robert A. Goerl, Jr. (PA)
Elias Gomez, Jr. (TX)
Efrain Gonzalez (UT)
Ismael Gonzalez (NJ)

Juan O. Gonzalez (TX)
Luis Gonzalez Marin (NJ)
James P. Greene (NY)
Marc C. Grooms (MO)
Richard G. Gruber (SC)
Juan M. Guerrero (TX)
Gary R. Gutschow (WI)
Bradley O. Hart (UT)
Benny D. Hatton, Jr. (NY)
Dean R. Hawley (NC)
Harry P. Henning (PA)
Michael A. Hershberger (OH)
Daniel W. Hodge (TN)
Ronald Holshouser (MO)
Lloyd M. Hoover (PA)
John R. Horst (PA)
James O. Howard (CA)
Mearl C. Kennedy (OH)
Cody A. Keys (OK)
Scott A. Lambertson (MN)
Carmelo A. Lana (NJ)
Anthony D. Lang (NH)
Keith A. Lang (TX)
Robert T. Lantry (MA)
Herbert S. Lear (PA)
Edward J. Lewis (UT)
Robert N. Lewis (OH)
Bruce A. Lloyd (MA)
Scott A. MacPherson (MA)
Alex P. Makhanov (WA)
Joseph L. Mast (OR)
David S. Mayo (VA)
Jason L. McBride (MI)
Steven J. McLain (TN)
Joseph McTear (TX)
Clarence M. Miles (OK)
Rodney M. Mimbs (GA)
Derrick P. Moore (MN)
Dennis L. Morgan (WA)
Charles J. Morman (FL)
Richard N. Moyer, Jr. (PA)
William F. Nickel, V (OR)
Kevin J. O'Donnell (IL)
Wayne E. Page (NC)
Harold L. Pearsall (PA)
Luis M. Perez-Francisco (NJ)
Richard E. Perry (CA)
James R. Petre (MD)
Lonnie D. Prejean (TX)
Phillip M. Pridgen, Sr. (MD)
Joseph J. Pudlik (IL)
Matias P. Quintanilla (CA)
Enoc Ramos III (TX)
Alonzo K. Rawls (NJ)
Rickey H. Reeder (TN)
Franklin P. Reigle III (MD)
Kevin L. Riddle (FL)
Julio Rivera (FL)
Alvaro F. Rodriguez (TX)
Roger D. Rogers (PA)
Andrew H. Rusk (IL)
Daniel C. Sagert (WI)
Andrew R. Sampson (MD)
Christopher J. Schmidt (WI)
Richard D. Shryock (MO)
Ernesto Silva (NM)
Manjinder Singh (WA)
James E. Smith (FL)
James L. Stacy (AR)
Larry D. Steiner (MN)
Joseph D. Stenberg (MT)
Greg C. Stilson (WY)
Benjamin A. Stone (VA)
David T. Tann (NC)
Timothy R. Tedford (IL)
Michael J. Thane (OH)
Tommy Thomas (CA)
John J. Tilton (NH)
Daniel L. Troop (MI)
Arnulfo J. Valenzuela (TX)
Stephen W. Verrette (MI)
Daniel E. Watkins (FL)
Marcus R. Watkins (TX)
Paul B. Williams (NY)
Thomas W. Workman (IL)
John C. Young (VA)
Bradford C. Zipse (WI)

The drivers were included in docket numbers FMCSA–1999–5748, FMCSA–2000–7006, FMCSA–2000–7918, FMCSA–2001–9561, FMCSA–2001–10578, FMCSA–2002–12844, FMCSA–2002–13411, FMCSA–2003–14223, FMCSA–2003–14504, FMCSA–2004–17195, FMCSA–2005–20560, FMCSA–2005–21254, FMCSA–2005–21711, FMCSA–2006–26066, FMCSA–2007–25246, FMCSA–2007–27333, FMCSA–2007–27897, FMCSA–2007–29019, FMCSA–2008–0106, FMCSA–2008–0266, FMCSA–2009–0154, FMCSA–2009–0206, FMCSA–2010–0161, FMCSA–2010–0287, FMCSA–2010–0354, FMCSA–2010–0372, FMCSA–2010–0385, FMCSA–2011–0057, FMCSA–2011–0092, FMCSA–2011–0124, FMCSA–2011–0140, FMCSA–2011–0141, FMCSA–2011–0142, FMCSA–2011–0189, FMCSA–2012–0040, FMCSA–2012–0161, FMCSA–2012–0337, FMCSA–2012–0338, FMCSA–2013–0021, FMCSA–2013–0022, FMCSA–2013–0025, FMCSA–2013–0027, FMCSA–2013–0028, FMCSA–2013–0029, FMCSA–2013–0030, FMCSA–2013–0165, FMCSA–2014–0005, FMCSA–2014–0010, FMCSA–2014–0298, FMCSA–2014–0300, FMCSA–2014–0301, FMCSA–2014–0302, FMCSA–2014–0304, FMCSA–2014–0305, FMCSA–2015–0048, FMCSA–2015–0049, FMCSA–2015–0052, FMCSA–2015–0055, FMCSA–2015–0056, FMCSA–2015–0071, FMCSA–2015–0347, FMCSA–2016–0025, FMCSA–2016–0030, FMCSA–2016–0210, FMCSA–2016–0212, FMCSA–2016–0213, FMCSA–2017–0016, FMCSA–2017–0017, FMCSA–2017–0018, FMCSA–2017–0019, FMCSA–2017–0020, FMCSA–2017–0022, FMCSA–2017–0023, FMCSA–2018–0010, FMCSA–2018–0013, FMCSA–2018–0015, FMCSA–2018–0018, FMCSA–2018–0207, FMCSA–2018–0209, FMCSA–2019–0005, FMCSA–2019–0006, FMCSA–2019–0008, FMCSA–2019–0009, FMCSA–2019–0014, and FMCSA–2019–0015. Their exemptions are applicable as of December 3, 2021 and will expire on December 3, 2023.

As of December 5, 2021, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following individual has satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (76 FR 64169, 76 FR 75943, 78 FR 65032, 80 FR 67481, 83 FR 2306, 85 FR 4764):

Kevin G. Clem (SD)

The driver was included in docket number FMCSA–2011–16690. The exemption is applicable as of December 5, 2021 and will expire on December 5, 2023.

As of December 6, 2021, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following four individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (70 FR 57353, 70 FR 72689, 72 FR 62897, 74 FR 60021, 76 FR 70210, 78 FR 66099, 80 FR 67481, 83 FR 2306, 85 FR 4764):

Thomas C. Meadows (NC)
David A. Morris (TX)
Richard P. Stanley (MA)
Scott A. Tetter (IL)

The drivers were included in docket number FMCSA–2005–22194. Their exemptions are applicable as of December 6, 2021 and will expire on December 6, 2023.

As of December 15, 2021, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following two individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (80 FR 70060, 81 FR 16265, 83 FR 2306, 85 FR 4764):

Kelly K. Kremer (OR); and Alton R. Young (MS)

The drivers were included in docket number FMCSA–2015–0072. Their exemptions are applicable as of December 15, 2021 and will expire on December 15, 2023.

As of December 17, 2021, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following individual has satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (78 FR 62935, 78 FR 76395, 80 FR 67481, 83 FR 2306, 85 FR 4764):

Henry D. Smith (NC)

The driver was included in docket number FMCSA–2013–0166. The exemption is applicable as of December

17, 2021 and will expire on December 17, 2023.

As of December 24, 2021, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following three individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (78 FR 63302, 78 FR 64274, 78 FR 77778, 78 FR 77780, 80 FR 67481, 83 FR 2306, 85 FR 4764):

Thomas G. Gholston (MS); Chad A. Miller (IA); and Janusz K. Wis (IL)

The drivers were included in docket numbers FMCSA–2013–0168 and FMCSA–2013–0169. Their exemptions are applicable as of December 24, 2021 and will expire on December 24, 2023.

As of December 27, 2021, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following five individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (64 FR 27027, 64 FR 51568, 66 FR 53826, 66 FR 63289, 66 FR 66966, 67 FR 10471, 67 FR 19798, 68 FR 64944, 68 FR 69434, 69 FR 19611, 70 FR 53412, 70 FR 57353, 70 FR 67776, 70 FR 72689, 70 FR 74102, 74 FR 60021, 76 FR 75942, 78 FR 67452, 80 FR 67481, 83 FR 2306, 85 FR 4764):

Elmer E. Gockley (PA)
Randall B. Laminack (TX)
Robert W. Lantis (MT)
Eldon Miles (IN)
DeWayne Washington (NC)

The drivers were included in docket numbers FMCSA–1999–5578, FMCSA–2001–10578, FMCSA–2002–11426, and FMCSA–2005–22194. Their exemptions are applicable as of December 27, 2021 and will expire on December 27, 2023.

V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) Each driver must undergo an annual physical examination (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a certified medical examiner (ME), as defined by § 390.5, who attests that the driver is otherwise physically qualified under § 391.41, (2) each driver must provide a copy of the ophthalmologist's or optometrist's report to the ME at the time of the annual medical examination, and (3) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file or keep a copy of his/her driver's qualification if he/her is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption, (2) the exemption has resulted in a lower level of safety than was maintained before it was granted, or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VI. Conclusion

Based upon its evaluation of the 156 exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the vision requirement in§ 391.41(b)(10), subject to the requirements cited above. In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for two years unless revoked earlier by FMCSA.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2021–23603 Filed 10–28–21; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–1999–6253]

Petition for Extension of Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on October 15, 2021, the Utah Transit Authority (UTA) petitioned the Federal Railroad Administration (FRA) for a modification and an extension of a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR parts 210, 217, 218, 219, 220, 221, 222, 223, 225, 228, 229, 231, 234, 238, 239, 240, 242, and 243. The relevant FRA Docket Number is FRA–1999–6253.

UTA, operator of the rail fixed guideway public transit system TRAX in Salt Lake City, Utah, seeks to extend and expand the terms and conditions of its current shared use waiver of compliance. TRAX is operated with temporal separation on track owned by UTA and shared partially with Utah Railway Company and Savage Bingham & Garfield Railroad Company freight trains dispatched by UTA.

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 at *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Communications received by December 13, 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), the U.S. Department of Transportation (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. 2021–23520 Filed 10–28–21; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Docket Number FRA–2021–0099]

Petition for Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on October 13, 2021, the Lake Superior Railroad Museum (LSRM)

petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR 223.11, *Requirements for existing locomotives*. FRA assigned the petition Docket Number FRA–2021–0099.

Specifically, LSRM requests relief from glazing regulations for two diesel locomotives, EMC 4211 and GN 192, with noncompliant glazing.[1] The two locomotives are to be used in excursion service on the 26-mile line of the North Shore Scenic Railroad (between Duluth and Two Harbors, Minnesota) and on 1,500 feet of joint track with Canadian National (at Two Harbors). LSRM states that it is a non-profit corporation and replacing the glazing would cause a financial hardship.

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 at *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Communications received by December 13, 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), the U.S. Department of Transportation (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. 2021–23518 Filed 10–28–21; 8:45 am]

BILLING CODE 4910–06–P

[1] EMC 4211 was most recently granted relief by letter dated January 8, 2015 (*see* Docket Number FRA–2002–23490). GN 192 was most recently granted relief by letter dated October 8, 2014 (*see* Docket Number FRA–1999–6072). The relief for both locomotives has expired.

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2019–0011]

Deepwater Port License Application: SPOT Terminal Services LLC

AGENCY: Maritime Administration, U.S. Department of Transportation.

ACTION: Notice of availability; Notice of public meeting and request for comments.

SUMMARY: The Maritime Administration (MARAD) and the U.S. Coast Guard (USCG) announce the availability of the Supplemental Draft Environmental Impact Statement (SDEIS) for the SPOT Terminal Services LLC (SPOT) Deepwater port license application for the export of oil from the United States to nations abroad. A SDEIS was prepared to ensure meaningful engagement of identified Limited English Proficient (LEP) persons in the environmental impact review process. To provide the most current information developed through the environmental review process, the SDEIS responds to comments received on the Draft Environmental Impact Statement (DEIS). Additionally, MARAD and USCG announce a virtual public meeting for the SDEIS.

DATES: MARAD and USCG will hold one virtual public meeting in connection with the SPOT SDEIS. The virtual public meeting will be held remotely due to the nationwide impacts of the existing public health emergency under Section 319 of the Public Health Service Act in response to Coronavirus Disease 2019 (COVID–19). Further, the President's declaration of a national emergency due to the COVID–19 outbreak, and state and local actions in response to COVID–19, have impacted the public's ability to assemble and provide feedback on the SPOT deepwater port license application through in-person public meetings. The public meeting will be held virtually, on November 16, 2021, from 6:00 p.m. to 8:00 p.m. Central Standard Time (CST). The public meeting may end later than the stated time, depending on the number of persons who wish to make a comment on the record. Anyone that is interested in attending the virtual public meeting or speaking during the virtual public meeting must register. Registration information is provided in the Virtual Public Meeting and Registration sections of this Notice. Additionally, materials submitted in response to this request for comments on the SDEIS must be submitted to the *www.regulations.gov* website or the Federal Docket Management Facility as detailed in the **ADDRESSES** section below no later than 45 days after the Environmental Protection Agency (EPA) publishes its notice of availability of the SDEIS for the SPOT Deepwater Port License Application in the **Federal Register**.

ADDRESSES: The SPOT Deepwater Port License Application, comments, supporting information and the SDEIS are available for viewing at the *Regulations.gov* website: *http://www.regulations.gov* under docket number MARAD–2019–0011. The Final EIS (FEIS), when published, will be announced and be available at the *Regulations.gov* website.

The public docket for the SPOT Deepwater Port License Application is maintained by the U.S. Department of Transportation, Docket Management Facility, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. Comments on the SDEIS may be submitted to this address and must include the docket number for this project, which is MARAD–2019–0011. The Federal Docket Management Facility's telephone number is 202–366–9317 or 202–366–9826, the fax number is 202–493–2251.

We encourage you to submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* If you submit your comments electronically, it is not necessary to also submit a hard copy by mail. If you cannot submit material using *http://www.regulations.gov,* please contact either Mr. Matthew Layman, USCG, or Dr. Efrain Lopez, MARAD, as listed in the following **FOR FURTHER INFORMATION CONTACT** section of this document. This section provides alternate instructions for submitting written comments. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

FOR FURTHER INFORMATION CONTACT: Mr. Matthew Layman, U.S. Coast Guard,

telephone: 202–372–1421, email: *Matthew.D.Layman@uscg.mil,* or Dr. Efrain Lopez, Maritime Administration, telephone: 202–366–9761, email: *frain.Lopez@dot.gov.* For questions regarding viewing the Docket, call Docket Operations, telephone: 202–366–9317 or 202–366–9826.

SUPPLEMENTARY INFORMATION: A Notice of Application that summarized the SPOT Deepwater Port License Application was published in the **Federal Register** on March 4, 2019 (84 FR 7413). A Notice of Intent to Prepare an Environmental Impact Statement (EIS) and Notice of Public Meetings was published in the **Federal Register** on March 7, 2019 (84 FR 8401). This Notice of Availability incorporates the aforementioned **Federal Register** Notices by reference. The application describes a project that would be located approximately 27.2 to 30.8 nautical miles off the coast of Brazoria County, Texas.

Publication of this notice begins a 45-day comment period, requests public participation in the environmental impact review process, provides information on how to participate in the environmental impact review process, and announces a virtual public meeting.

Virtual Public Meeting

The public meeting will be held virtually, on November 16, 2021, from 6:00 p.m. to 8:00 p.m. Central Standard Time (CST). The virtual platform of choice is Zoom. We encourage you to visit the informational virtual open house website (*www.SPOTNEPAProcess.com*) and to attend the virtual public meeting to learn about, and comment on, the proposed SPOT deepwater port. You will have the opportunity to verbally submit comments during the virtual public meeting on the scope and significance of the issues related to the proposed deepwater port that should be addressed in the SDEIS.

Registration

Speaker and attendee registration are available online at *www.SPOTNEPAProcess.com.* Speakers at the virtual public meeting will be recognized in the following order: elected officials, public agencies, individuals, or groups in the sign-up order and then anyone else who wishes to speak. In order to allow everyone a chance to speak at a virtual public meeting, we may limit speaker time, extend the meeting hours, or both. You must identify yourself and any organization you represent by name. Speakers' transcribed remarks will be included in the public docket. You may also submit written material for inclusion in the public docket. Written material must include the author's name. We ask attendees to respect the meeting procedures in order to ensure a constructive information-gathering session. The presiding officer will use his/her discretion to conduct the meeting in an orderly manner.

Public meetings are intended to be accessible to all participants. Individuals who require special assistance such as sign language interpretation, non-English language translation services or other reasonable accommodations, please notify the USCG or MARAD (see **FOR FURTHER INFORMATION CONTACT**) at least 7 business days in advance of the virtual public meeting. Include your contact information as well as information about your specific needs.

Request for Comments

We request public comment on this SDEIS. All comments will be accepted. The virtual public meeting is not the only opportunity you have to comment on the SPOT deepwater port license application. In addition to, or in place of, attending a virtual meeting, you may submit comments directly to the Federal Docket Management Facility during the public comment period (see **DATES**). We will consider all comments and material received during the 45-day public comment period.

Public comment submissions should include:

- Docket number MARAD–2019–0011.
- Your name and address.

Submit comments or material using only one of the following methods:

- Electronically (preferred for processing) to the Federal Docket Management System (FDMS) website: *http://www.regulations.gov* under docket number MARAD–2019–0011.
- By mail to the Federal Docket Management Facility (MARAD–2019–0011), U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.
- By fax to the Federal Docket Management Facility at 202–493–2251. Faxed, mailed or hand delivered submissions must be unbound, no larger than 8½ by 11 inches and suitable for copying and electronic scanning. The format of electronic submissions should also be no larger than 8½ by 11 inches. If you mail your submission and want to know when it reaches the Federal Docket Management Facility, please include a stamped, self-addressed postcard or envelope.

Regardless of the method used for submitting comments, all submissions will be posted, without change, to the Federal Docket Management Facility website (*http://www.regulations.gov*) and will include any personal information you provide. Therefore, submitting this information to the docket makes it public. You may wish to read the Privacy and Use Notice that is available on the Federal Docket Management Facility website and the Department of Transportation Privacy Act Notice that appeared in the **Federal Register** on April 11, 2000 (65 FR 19477), see Privacy Act. You may view docket submissions at the Federal Docket Management Facility or electronically on the Federal Docket Management Facility website.

Background

On January 31, 2019, MARAD and USCG received a license application from SPOT for all Federal authorizations required for a license to construct, own, and operate a deepwater port for the export of oil. The proposed deepwater port would be located in Federal waters approximately 27.2 to 30.8 nautical miles off the coast of Brazoria County, Texas. Texas was designated as the Adjacent Coastal State for the SPOT license application.

The Federal agencies involved held a public scoping meeting in connection with the evaluation of the SPOT license application. The public scoping meeting was held in Lake Jackson, Texas on March 20, 2019. The transcript of the scoping meeting is included on the public docket located at *https://www.regulations.gov/document/MARAD-2019-0011-0019.* The Federal agencies also held a Draft EIS public comment meeting to receive comments on the Draft EIS. The public comment meeting was held in Lake Jackson, Texas on February 26, 2020. Publication of that notice began a 45-day public comment period, which began on February 7, 2020 and ended on March 23, 2020. A second 30-day public comment period due to COVID began on May 1, 2021 and ended on May 31, 2021. The transcripts of the DEIS public comment meetings are also included on the public docket at *https://www.regulations.gov/document/MARAD-2019-0011-0019-1192.*

The purpose of the SDEIS is to provide language translation for Limited English Proficiency (LEP) persons in the Project vicinity. This action serves as required public engagement with Environmental Justice (EJ) communities and LEP persons. The SDEIS is currently available for public review at the Federal docket website:

www.regulations.gov under docket number MARAD–2019–0011.

Summary of the License Application

SPOT is proposing to construct, own, and operate a deepwater port terminal in the Gulf of Mexico to export domestically produced crude oil. Use of the deepwater port would include the loading of various grades of crude oil at flow rates of up to 85,000 barrels per hour (bph). The SPOT deepwater port would allow for up to two (2) Very Large Crude Carriers (VLCCs) or other crude oil carriers to moor at single point mooring (SPM) buoys and connect with the deepwater port via floating connecting crude oil hoses and a floating vapor recovery hose. The maximum frequency of loading VLCCs or other crude oil carriers would be 2 million barrels per day, 365 days per year.

The proposed SPOT Deepwater Port (DWP) would be located in Federal waters of the Gulf of Mexico, in Galveston Area Outer Continental Shelf lease blocks 463 and A–59, approximately 27.2 to 30.8 nautical miles off the coast of Brazoria County, Texas, in water depths of approximately 115 feet. Onshore components of the proposed Project would be located in both Brazoria and Harris counties.

The overall project would consist of both onshore and offshore components. The onshore components would consist of:

- Modifications to the existing Enterprise Crude Houston (ECHO) Terminal, including four electric motor-driven mainline crude oil pumps, four electric motor-driven booster crude oil pumps, and one measurement skid to support delivery of crude oil to the proposed Oyster Creek Terminal;
- One 50.1-mile, 36-inch-diameter ECHO to Oyster Creek Pipeline;
- One pipeline interconnection from the existing Rancho II 36-inch-diameter pipeline to the ECHO to Oyster Creek Pipeline (Rancho II Junction);
- A new Oyster Creek Terminal on approximately 140 acres of land, including six electric motor-driven mainline crude oil pumps with the capacity to push crude oil to the offshore pipelines at a rate of up to 85,000 bph, four electric motor-driven booster crude oil pumps, seven aboveground storage tanks (each with a capacity of 685,000 barrels [600,000 barrels of working storage]) for a total onshore storage capacity of approximately 4.8 million barrels (4.2 million barrels working storage) of crude oil, metering equipment, two permanent and one portable vapor combustion units, and a firewater system;
- Two collocated 12.2-mile, 36-inch-diameter Oyster Creek to Shore Pipelines; and
- Ancillary facilities for the onshore pipelines, including ten mainline valves, of which six would be along the ECHO to Oyster Creek Pipeline and four along the Oyster Creek to Shore Pipelines, pig launchers for the ECHO to Oyster Creek Pipeline, and pig launchers and receivers for the Oyster Creek to Shore Pipelines.

The offshore and marine components would consist of:

- Two collocated, bi-directional, 46.9-mile, 36-inch-diameter crude oil offshore pipelines for crude oil delivery from the Oyster Creek Terminal to the platform;
- One fixed offshore platform with eight piles, four decks, and three vapor combustion units;
- Two SPM buoys to concurrently moor two VLCCs or other crude oil carriers with capacities between 120,000 and 320,000 deadweight tonnage for loading up to 365 days per year, including floating crude oil and vapor recovery hoses;
- Four pipeline end manifolds (PLEMs)—two per SPM buoy—to provide the interconnection between the SPOT DWP and the SPM buoys;
- Four 0.66-nautical mile, 30-inch-diameter pipelines (two per PLEM) to deliver crude oil from the platform to the PLEMs;
- Four 0.66-nautical mile, 16-inch diameter vapor recovery pipelines (two per PLEM) to connect the VLCC or other crude oil carrier to the three vapor combustion units on the platform.
- Three service vessel moorings, located in the southwest corner of Galveston Area lease block 463; and
- An anchorage area in Galveston Area lease block A–59, which would not contain any infrastructure.

The purpose of this notice is to announce the availability of the SDEIS that was prepared to ensure meaningful engagement of identified LEP persons in the environmental impact review process. Additionally, MARAD and USCG announce a virtual public meeting for the SDEIS.

Privacy Act

Regardless of the method used for submitting comments or materials, all submissions will be posted, without change, to the *http://www.regulations.gov* website and will include any personal information you provide. Therefore, submitting this information to the docket makes it public. You may wish to read the Privacy and Security Notice and the User Notice that are available at *https://www.federalregister.gov/documents/2005/03/24/05–5823/establishment-of-a-new-system-of-records-notice-for-the-federal-docket-management-system*. The Privacy Act notice regarding the Federal Docket Management System is available in the March 24, 2005 issue of the **Federal Register** (70 FR 15086).

(Authority: 33 U.S.C. 1501 *et seq.,* 49 CFR 1.93(h)).

By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.

Secretary, Maritime Administration.

[FR Doc. 2021–23016 Filed 10–28–21; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket Number NHTSA–2020–0101]

Agency Information Collection Activities; Notice and Request for Comment; Reporting of Information and Documents About Potential Defects

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice and request for public comments on a reinstatement with modification of a previously approved collection of information.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice announces that the Information Collection Request (ICR) summarized below will be submitted to the Office of Management and Budget (OMB) for review and approval. The ICR describes the nature of the information collection and its expected burden. The National Highway Traffic Safety Administration (NHTSA) invites public comments about our intention to request Office of Management and Budget (OMB) approval for an extension of a currently approved information collection for reporting of information and documents about potential defects. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on December 29, 2020. No comments were received.

DATES: Comments must be received on or before November 29, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection, including suggestions for reducing burden, should

be submitted to the Office of Management and Budget at *www.reginfo.gov/public/do/PRAMain*. To find this particular information collection, select ''Currently under Review—Open for Public Comment'' or use the search function.

FOR FURTHER INFORMATION CONTACT: For additional information or access to background documents, contact, Jeff Quandt, Trends Analysis Division (NEF–108), Room W48–312, National Highway Traffic Safety Administration, 1200 New Jersey Ave., Washington, DC 20590. Telephone: (202) 366–5207. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501 *et seq.*), a Federal agency must receive approval from the Office of Management and Budget (OMB) before it collects certain information from the public, and a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. In compliance with these requirements, this notice announces that the following information collection request will be submitted OMB.

A **Federal Register** notice with a 60-day comment period soliciting public comments on the following information collection was published on December 29, 2020 (85 FR 85848). No comments were received.

Title: Reporting of Information and Documents about Potential Defects.

OMB Control Number: 2127–0616.

Form Number: 2020–28766.

Type of Request: Reinstatement with modification of a previously approved information collection.

Type of Review Requested: Regular.

Length of Approval Requested: 3 years from date of approval.

Summary of the Collection of Information: This notice requests comment on NHTSA's intention to seek approval from OMB to reinstate with modification a previously approved collection of information, OMB No. 2127–0616, covering requirements in 49 CFR 579, *Reporting of Information and Communications about Potential Defects*. part 579 implements, and addresses with more specificity, requirements from the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act (Pub. L. 106–414), which was enacted on November 1, 2000, and are codified at 49 U.S.C. 30166.

The purpose of part 579 is to enhance motor vehicle safety by specifying information and documents that manufacturers of motor vehicles and motor vehicle equipment must provide to NHTSA with respect to possible safety-related defects and non-compliances in their products, including the reporting of safety recalls and other safety campaigns the manufacturers conduct outside the United States. Under Part 579, there are three categories of reporting requirements: (1) Requirements at § 579.5 to submit notices, bulletins, customer satisfaction campaigns, consumer advisories, and other communications (found in Subpart A of Part 579); (2) requirements at § 579.11 to submit information related to safety recalls and other safety campaigns in foreign countries (found in Subpart B of part 579); and (3) requirements at §§ 579.21–28 to submit Early Warning Information (found in Subpart C of part 579). The Early Warning Reporting (EWR) requirements (49 U.S.C. 30166(m); 49 CFR part 579, subpart C) specify that manufacturers of motor vehicles and motor vehicle equipment must submit to NHTSA information, periodically or upon NHTSA's request, that includes specified claims for deaths and serious injuries, property damage data, communications from customers and others, and other information that assists NHTSA in identifying potential safety-related defects. The intent of this information collection is to provide early warning of such potential safety-related defects to NHTSA.

Description of the Need for the Information and Proposed Use of the Information: The information required under 49 U.S.C. 30166 and 49 CFR part 579 is used by NHTSA to promptly identify potential safety-related defects in motor vehicles and motor vehicle equipment in the United States. When a trend in incidents arising from a potentially safety-related defect is discovered, NHTSA relies on this information, along with other agency data, to determine whether to open a defect investigation.

Affected Public: Manufacturers of motor vehicles and motor vehicle equipment.

Estimated Number of Respondents: NHTSA receives Part 579 submissions from approximately 337 manufacturers per year. Therefore, we estimate that there will be a total of 337 respondents to this information collection per year.

Estimated Total Annual Burden Hours: When this approved information collection was last renewed in June 2017, NHTSA estimated the annual burden associated with this collection to be 49,243 burden hours. NHTSA is updating these estimates to better align with the current volume of submissions and to include reporting requirements for common green tires and follow-up sequences (per § 579.28(l)), which were inadvertently omitted from the previous information collection request. NHTSA now estimates that the annual burden hours associated with this collection are 53,810 hours.

NHTSA estimated the burdens associated with this collection by calculating the burden associated with submitting information under each subpart of Part 579. In addition to these burdens, NHTSA also estimates that manufacturers will incur computer maintenance burden hours, which are estimated on a per manufacturer basis.

Requirements Under Part 579, Subpart A

The first component of this collection request covers the requirements found in Part 579 Subpart A, § 579.5, Notices, bulletins, customer satisfaction campaigns, consumer advisories, and other communications. Section 579.5 requires manufactures to furnish (1) a copy of all notices, bulletins, and other communications sent to more than one manufacturer, distributor, dealer, lessor, lessee, owner, or purchaser, in the United States, regarding any defect in its vehicles or items of equipment (including any failure or malfunction beyond normal deterioration in use, or any failure of performance, or any flaw or unintended deviation from design specifications), whether or not such defect is safety-related and (2) a copy of each communication relating to a customer satisfaction campaign, consumer advisory, recall, or other safety activity involving the repair or replacement of motor vehicles or equipment, that the manufacturer issued to, or made available to, more than one dealer, distributor, lessor, lessee, other manufacturer, owner, or purchaser, in the United States. Manufacturers are required to submit these documents monthly. Section 579.5 does not require manufacturers to create these documents. Instead, only copies of these documents must be submitted to NHTSA, and manufacturers must index these communications and email them to NHTSA within 5 working days after the end of the month in which they were issued. Therefore, the burden hours are only those associated with collecting the documents and submitting copies to NHTSA.

NHTSA estimates that it receives approximately 24,884 notices a year. We estimate that it takes about 5 minutes to collect, index, and send each notice to NHTSA. Therefore, we estimate that it takes 2,074 hours for manufacturers to submit notices as required under

Section 579.5 (24,884 notices × 5 minutes = 124,420 minutes or 2,074 hours).

To calculate the labor cost associated with submitting Section 579.5 notices, bulletins, customer satisfaction campaigns, consumer advisories and other communications that are sent to more than one dealer or owner, NHTSA looked at wage estimates for the type of personnel submitting the documents. While some manufacturers employ clerical staff to collect and submit the documents, others use technical computer support staff to complete the task. Because we do not know what percent of the work is completed by clerical or technical computer support staff, NHTSA estimates the total labor costs associated with these burden hours by looking at the average wage for the higher paid technical computer support staff. The Bureau of Labor Statistics (BLS) estimates that the average hourly wage for Computer Support Specialists (BLS Occupation code 15–1230) in the Motor Vehicle Manufacturing Industry is $31.39.[1] The Bureau of Labor Statistics estimates that private industry workers' wages represent 70.2% of total labor compensation costs.[2] Therefore, NHTSA estimates the hourly labor costs to be $44.72 for Computer Support Specialists. The labor cost per submission is estimated to be $3.73 ($44.72 × 5 minutes). NHTSA estimates the total labor cost associated with the 2,074 burden hours for § 579.5 submissions to be $92,817.32 ($3.73 × 24,884 submissions). Table 1 provides a summary of the burden estimates using the average annual submission count for monthly reports submitted pursuant to § 579.5 and the estimated burden hours and labor costs associated with those submissions.

TABLE 1—BURDEN ESTIMATES FOR § 579.5 SUBMISSIONS

Average annual § 579.5 submissions	Estimated burden per submission	Average hourly labor cost	Labor cost per submission	Total burden hours	Total labor costs
24,884	5 minutes	$44.72	$3.73	2,074	$92,817.32 or $92,817

Requirements Under Part 579, Subpart B (Foreign Reporting)

The second component of this information collection request covers the requirements found in Part 579 Subpart B, ''Reporting of Safety Recalls and Other Safety Campaigns in Foreign Countries.'' Pursuant to § 579.11, whenever a manufacturer determines to conduct a safety recall or other safety campaign in a foreign country, or whenever a foreign government has determined that a safety recall or other safety campaign must be conducted, covering a motor vehicle, item of motor vehicle equipment, or tire that is identical or substantially similar to a vehicle, item of equipment, or tire sold or offered for sale in the United States, the manufacturer must report to NHTSA not later than 5 working days after the manufacturer makes such determination or receives written notification of the foreign government's determination. Section 579.11(e) also requires each manufacturer of motor vehicles to submit, not later than November 1 of each year, a document that identifies foreign products and their domestic counterparts.

In order to provide the information required for foreign safety campaigns, manufacturers must (1) determine whether vehicles or equipment that are covered by a foreign safety recall or other safety campaign are identical or substantially similar to vehicles or equipment sold in the United States, (2) prepare and submit reports of these campaigns to the agency, and (3) where a determination or notice has been made in a language other than English, translate the determination or notice into English before transmitting it to the agency.

NHTSA estimates that there is no burden associated with determining whether an individual safety recall covers a foreign motor vehicle or item of motor vehicle equipment that is identical or substantially similar to those sold in the United States because manufacturers can simply consult the list that they are required to submit each year. Therefore, the only burden associated with making the determination of whether a foreign safety recall or other safety campaign is required to be reported to NHTSA is the burden associated with creating the annual list. NHTSA continues to estimate that it takes approximately 9 hours per manufacturer to develop and submit the list. The 9 hours are comprised of 8 attorney hours and 1 hour for IT work. NHTSA receives these lists from 101 manufacturers, on average, resulting in 909 burden hours (101 vehicle manufacturers × 8 hours for attorney support = 808 hours) + (101 vehicle manufacturers × 1 hour for IT support = 101 hours).

NHTSA estimates that preparing and submitting each foreign defect report (foreign recall campaign) requires 1 hour of clerical staff and that translation of determinations into English requires 2 hours of technical staff (note: This assumes that all foreign campaign reports require translation, which is unlikely). Between 2016 and 2018, NHTSA received a yearly average of 227 foreign recall reports. NHTSA estimates that in each of the next three years, NHTSA will receive, on average, 227 foreign recall reports. NHTSA estimates that each report will take 3 hours (1 hour to prepare by a clerical employee and 2 hours for translation). Therefore, NHTSA estimates that the burden hours associated with submitting these reports will be 681 hours (3 hours per report × 227 reports).

Therefore, NHTSA estimates the total annual burden hours for reporting foreign safety campaigns and substantially similar vehicles/equipment is 1,590 hours (909 hours for submitting annual lists + 681 hours for submitting foreign recall and safety campaign reports). This is an increase of 444 burden hours from our previous estimate (1,590 hours for current estimate—1,146 hours for previous estimate). Table 2 provides a summary of the estimated burden hours for Part 579 Subpart B submissions.

[1] May 2019 National Industry-Specific Occupational Employment and Wage Estimates, NAICS 336100—Motor Vehicle Manufacturing, U.S. Bureau of Labor Statistics, *https://www.bls.gov/oes/current/naics4_336100.htm#15-0000*. Last Accessed June 17, 2020.

[2] Employer Costs for Employee Compensation, U.S. Bureau of Labor Statistics, *https://www.bls.gov/news.release/ecec.t01.htm*. Last Accessed July 30, 2020.

TABLE 2—BURDEN HOUR ESTIMATES FOR FOREIGN REPORTING

Submission type	Annual number of submissions	Burden hours per report	Total burden hours
Foreign Recall/Safety-Related Campaign Report	227	1 hour clerical + 2 hours translation = 3 hours	681
Annual List	101	8 hours attorney + 1 hour IT = 9 hours	909
Total			1,590

To calculate the labor cost associated with Part 579 foreign reporting submissions, NHTSA looked at wage estimates for the type of personnel submitting the documents. As stated above, NHTSA estimates that submitting annual lists under § 579.11(e) will involve 8 hours of attorney time and 1 hour of IT work. The Bureau of Labor Statistics (BLS) estimates that the average hourly wage for Lawyers (BLS Occupation code 23–1000) in the Motor Vehicle Manufacturing Industry is $95.85 [3] and the average hourly wage for Computer Support Specialists (BLS Occupation code 15–1230) in the Motor Vehicle Manufacturing Industry is $31.39.[4] The Bureau of Labor Statistics estimates that private industry workers, wages represent 70.2% of total labor compensation costs.[5] Therefore, NHTSA estimates the hourly labor costs to be $136.54 for Lawyers and $44.72 for Computer Support Specialists. NHTSA estimates the total labor cost associated with submitting one annual list to be $1,137.04 ($136.54 per hour × 8 attorney hours + $44.72 per hour × 1 IT hour) and $114,841.04 or $114,841 for all 101 annual lists NHTSA estimates will be submitted annually.

NHTSA estimates that submitting each foreign recall or safety campaign report involves 1 hour of clerical work and 2 hours of translation work. The Bureau of Labor Statistics (BLS) estimates that the average hourly wage for Office Clerks (BLS Occupation code 43–9061) in the Motor Vehicle Manufacturing Industry is $20.74 [6] and the average hourly wage for Interpreters and Translators (BLS Occupation code 27–3091) is $27.40.[7] The Bureau of Labor Statistics estimates that private industry workers' wages represent 70.2% of total labor compensation costs.[8] Therefore, NHTSA estimates the hourly labor costs to be $29.54 for Office Clerks and $39.03 for Interpreters and Translators. NHTSA estimates the total labor cost associated with submitting one foreign recall or safety campaign report to be $107.60 ($29.54 per hour × 1 Clerical hour + $39.03 per hour × 2 Translator hours) and $24,425.20 or $24,425 for all 227 foreign recall or safety campaign reports NHTSA estimates will be submitted annually.

Table 3 provides a summary of the labor costs associated with the foreign reporting requirements in Part 579, Subpart B. NHTSA estimates that the total labor costs associated with the annual list requirement and the requirement to report foreign recalls and safety campaigns is $139,266 ($114,841 + $24,425).

TABLE 3—ANNUAL LABOR COST ESTIMATES FOR FOREIGN REPORTING

Submission type and labor category	Hours per submission	Hourly labor cost	Labor cost per submission	Number of submissions	Total labor cost
Annual List-Lawyer	8	$136.54	$1,092.32	101	$110,324.32
Annual List-Computer Specialist	1	44.72	44.72	101	4,516.72
Totals for Annual List	9		1,137.04		114,841.04 or 114,841
—Foreign Recall/Safety-Related Campaign Report-Clerical.	1	29.54	29.54	227	6,705.58
—Foreign Recall/Safety-Related Campaign Report-Translator.	2	39.03	78.06	227	17,719.62
Totals for Foreign Recall/Safety Campaign Report	3		107.60		24,425.20 or 24,425
Total Labor Costs for Part 579 Subpart B Requirements.					139,266.24 or 139,266

[3] May 2019 National Industry-Specific Occupational Employment and Wage Estimates NAICS 336100—Motor Vehicle Manufacturing, U.S. Bureau of Labor Statistics, *https://www.bls.gov/oes/current/naics4_336100.htm#23-0000*. Last accessed July 31, 2020.

[4] *https://www.bls.gov/oes/current/naics4_336100.htm#15-0000*. Last accessed July 31, 2020.

[5] Employer Costs for Employee Compensation, U.S. Bureau of Labor Statistics, *https://www.bls.gov/news.release/ecec.t01.htm*. Last accessed July 31, 2020.

[6] May 2019 National Industry-Specific Occupational Employment and Wage Estimates NAICS 336100—Motor Vehicle Manufacturing, U.S. Bureau of Labor Statistics, *https://www.bls.gov/oes/current/naics4_336100.htm#43-0000*. Last Accessed June 17, 2020.

[7] 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*. Last Accessed June 17, 2020.

[8] Employer Costs for Employee Compensation, U.S. Bureau of Labor Statistics, *https://www.bls.gov/news.release/ecec.t01.htm*. Last Accessed July 31, 2020.

Requirements Under Part 579, Subpart C (Reporting of Early Warning Information (EWR))

The third component of this information collection covers the requirements found in Part 579 Subpart C, ''Reporting of Early Warning Information.'' Besides production information, there are five major categories requiring reporting of incidents or claims in Subpart C, with the specific requirements and applicability of those categories varying by vehicle and equipment type and, in some circumstances, manufacturer volume. Sections 579.21–27 require manufacturers to submit the following: (1) Production information; (2) reports on incidents involving death or injury in the United States that are identified in claims or notices alleging that the death or injury was caused by a possible defect; (3) reports on incidents identified in a claim against a manufacturer that involve one or more deaths in a foreign country and involve a vehicle or item of equipment that is identical or substantially similar to a vehicle or item of equipment that is offered for sale in the United States; (4) separate reports on the number of property damage claims, consumer complaints, warranty claims, and field reports that involve a specified system or event; (5) copies of field reports; and, for manufacturers of tires, (6) a list of common green tires (applicable to only tire manufacturers). Section 579.28(l) allows NHTSA to request additional related information to help identify a defect related to motor vehicle safety. The regulation specifies the time frame for reporting for each category. Foreign recalls of substantially similar vehicles and manufacturer communications are required to be submitted monthly, substantially similar vehicle listings are required annually, and all other report types are required to be submitted on a quarterly basis.

Quarterly Reporting

Manufacturers are required to report specific information to NHTSA on a quarterly basis (*e.g.,* 4 times per calendar year). Manufacturers are required to submit production information,[9] non-dealer field reports, aggregate submissions, and death and injury submissions on a quarterly basis. Estimates of the burden hours and reporting costs are based on:

- The number of manufacturers reporting;
- The frequency of required reports;
- The number of hours required per report; and
- The cost of personnel to report.

The number of hours for reporting ranges from 1 hour for trailer manufacturers to 8 hours for light vehicle manufacturers (Table 4). Quarterly reporting burden hours are calculated by multiplying hours used to report for a given category by the number of manufacturers for the category and by the four times per year quarterly reporting. Using these methods and the average number of manufacturers who report annually, we estimate the annual burden hours for quarterly reporting of production information at 5,216 hours as detailed below in Table 4.

NHTSA assumes that 50 percent of the total burden hours are utilized by technical personnel while clerical staff consumes the remaining 50 percent. In other words, the hourly wage rate for each quarterly report is split evenly between technical and clerical personnel and a weighted hourly rate is developed from this assumption. Therefore, using the BLS total hourly compensation rates discussed above of $44.72 for a Computer Support Specialist and $29.54 for an Office Clerk, the weighted hourly rate is $37.13 (Technical Mean Hourly Wage of $44.72 × 0.5 + Clerical Mean Hourly Wage of $29.54 × 0.5). The estimated reporting costs are calculated as follows:

$$(M \times T_p \times \$37.13 = \text{quarterly cost of reporting}) \times 4 = \text{annual cost of reporting}^*$$

*M = Manufacturers reporting data in the category; T_p = Reporting time for the category; $37.13 = Reporting labor cost compensation rate; 4 = Quarterly reports per year

For example, the estimated reporting cost for light vehicles is $42,773.76 (36 manufacturers × 8 hours × $37.13 compensation rate × 4 quarters), and the total annual labor costs associated with quarterly reporting are estimated to be $193,670. Table 4 includes the estimated burden hours and reporting costs for production information, non-dealer field reports, aggregate submissions, and death and injury submissions, as well as the quarterly and annual labor costs associated with reporting.

TABLE 4—ESTIMATED MANUFACTURER ANNUAL BURDEN HOURS AND LABOR COSTS FOR QUARTERLY REPORTING

Vehicle/equipment category	Avg. No. of manufacturers	Quarterly hours to report per manufacturer	Blended hourly comp. rate	Quarterly labor costs per manufacturer	Annual burden hours for reporting	Annual labor costs
Light Vehicles	36	8	$37.13	$297.04	1,152	$42,773.76
Medium-Heavy Vehicles	39	5	37.13	185.65	780	28,961.40
Trailers	96	1	37.13	37.13	384	14,257.92
Motorcycles	15	2	37.13	74.26	120	4,455.60
Emergency Vehicles	8	5	37.13	185.65	160	5,940.80
Buses	33	5	37.13	185.65	660	24,505.80
Tires	32	5	37.13	185.65	640	23,763.20
Child Restraints	42	1	37.13	37.13	168	6,237.84
Vehicle Equipment	36	8	37.13	297.04	1,152	42,773.76
Totals		40			5,216	193,670.08 or 193,670

[9] Low volume and equipment manufacturers are not required to submit production information.

Early Warning Reporting (EWR) Field Data Submissions [10]

Table 5 provides an average annual submission count for each category submitted per the requirements of 49 CFR part 579, subpart C: reports on incidents identified in claims or notices involving death or injury in the United States; reports on incidents involving one or more deaths in a foreign country identified in claims involving a vehicle or item of equipment that is identical or substantially similar to a vehicle or item of equipment that is offered for sale in the United States; separate reports on the number of property damage claims, consumer complaints, warranty claims, and field reports that involve a specified system or event; copies of field reports; and, for manufacturers of tires; a list of common green tires; and additional follow-up information per 579.28(l) related to injury and fatality claims or comprehensive inquiries. Each reporting category has specific requirements and types of reports that need to be submitted and we state ''N/A'' where there is no requirement for that reporting category.

TABLE 5—ANNUAL AVERAGE OF EWR SUBMISSIONS BY MANUFACTURERS

[2016—2018]

Category of claims	*Light vehicles*	*Heavy, med vehicles*	*Trailers*	*Motorcycles*	*Emergency vehicles*	*Buses*	*Tires*	*Child restraints*	*Equipment mfr.*	Totals
Incidents Involving Injury or Fatality in U.S.	11,124	39	30	133	8	33	58	453	9	11,887
Incidents Involving Fatality in Foreign Country	146	6	5	2	0	1	3	167	0	330
Reports on Number of Claims Involving Specific System or Event	10,261	666	91	40	0	0	1,154	NA	NA	12,212
Mfr. Field Reports	66,722	16,639	20	1,301	0	0	NA	3,727	NA	88,409
Common Green Tire Reporting	NA	NA	NA	NA	NA	NA	112	NA	NA	112
Average Number of Follow-Up Sequences per 579.28(l)	148	10	3	5	1	1	3	17	2	190
Totals:	88,401	17,360	149	1,481	9	35	1,330	4,364	11	113,140

The above updated submission totals represent an 12% increase from the previously approved information collection. Submission totals for each category have risen with an average of 11,887 injury and fatality claims in the United States (previously 9,804 claims), 330 foreign death claims (previously 101 claims), 12,212 claims involving specific system or event (previously 11,481 claims), 88,409 manufacturer field reports (previously 79,297 field reports), 112 common green tire reports, and 190 injury and fatality or comprehensive inquiry follow-up sequences per 579.28(l), totaling 113,140 submissions on average (previously estimated at 100,683 submissions).

The agency estimates that an average of 5 minutes is required for a manufacturer to process each report, except for foreign death claims and follow-up responses. We estimate foreign death claims and follow-up responses per § 579.28(l) require an average of 15 minutes to process. Multiplying the total average number of minutes by the number of submissions NHTSA receives in each reporting category yields the burden hour estimates found below in Table 6. Our previous estimates of Early Warning associated burden hours totaled 8,407, and we now update that total to 9,515 burden hours, a 13.2% increase, associated with the above noted claim categories.

TABLE 6—ANNUAL MANUFACTURER BURDEN HOUR ESTIMATES FOR EWR SUBMISSIONS

Category of claims	Annual average of EWR submissions	Average time to process each report (min)	Estimated annual burden hours
Incidents Involving Injury or Fatality in U.S.	11,887	5	990.58
Incidents Involving Fatality in Foreign Country	330	15	82.50
Reports on Number of Claims Involving Specific System or Event	12,212	5	1,017.67
Mfr. Field Reports	88,409	5	7,367.42
Common Green Tire Reporting	112	5	9.33
Average Number of Follow-Up Sequences per 579.28(l)	190	15	47.5
Totals	113,140 Submissions		9,515

[10] Field data includes incidents identified in claims or notices involving deaths or injuries and consumer complaint, field report, property damage claim and warranty claim data.

Thus, the total estimated annual manufacturer burden hours for Sections 579.21–28 (EWR submissions and quarterly reporting) are 14,731 hours (5,216 (Table 4) + 9,515 (Table 6).

We have also constructed various estimates of the average five minutes of labor among the various occupations depending on the type of claim that was reviewed. Table 7 shows the estimated time allocations that it will take an individual to review each type of claim (in minutes) and the weighted hourly rate for individuals involved.

TABLE 7—ESTIMATED MANUFACTURER TIME ALLOCATION BY CLAIM TYPE AND WEIGHTED HOURLY RATE

Claim type	Estimated time (in minutes) to review a claim						
	Lawyer (rate: $136.54 [11])	Engineer (rate $63.03 [12])	IT (rate: $66.82 [13])	Technical (rate: $44.72 [14])	Clerical (rate: $29.54 [15])	Total time	Weighted hourly rate
Incidents Involving Injury or Fatality in U.S.	3	0	0	0	2	5	$93.74
Incidents Involving Fatality in Foreign Country	3	10	0	0	2	15	73.27
Reports on Number of Claims Involving Specific System or Event	0	0	0	3	2	5	38.65
Mfr. Field Reports	0	0	0	3	2	5	38.65
Green Tire Events	0	0	0	0	5	5	29.54
Average Number of Follow-Up Sequences per 579.28(l)	3	10	0	0	2	15	73.27

The total labor costs for claims documents were obtained using the following formula:

$K \times T \times W$ = Costs for claim type *

* K = Claims submitted by industry; T = Estimated time spent on a claim; W = Weighted Hourly Rate.

Table 8 shows the annual labor costs of reporting EWR information to NHTSA.

TABLE 8—ESTIMATED EWR ANNUAL LABOR COSTS BY CATEGORY

Category of claims	Annual average of EWR submissions	Average time to process each report (min)	Weighted hourly rate	Estimated labor cost per submission	Estimated annual labor cost
Incidents Involving Injury or Fatality in U.S.	11,887	5	$93.74	$7.81	$92,857.28
Incidents Involving Fatality in Foreign Country	330	15	73.27	18.32	6,044.78
Reports on Number of Claims Involving Specific System or Event	12,212	5	38.65	3.22	39,332.82
Mfr. Field Reports	88,409	5	38.65	3.22	284,750.65
Common Green Tire Reporting	112	5	29.54	2.46	275.71
Average Number of Follow-Up Sequences per 579.28(l)	190	15	73.27	18.32	3,480.33
Totals	113,140	.....	.....	.....	426,741.56 or 426,742

Computer Maintenance Burden

In addition to the burden associated with submitting documents under each subpart of Part 579, NHTSA also estimates that manufacturers will incur computer maintenance burden hours associated with the information collection requirements. The estimated manufacturer burden hours associated with aggregate data submissions for consumer complaints, warranty claims, and dealer field reports are included in reporting and computer maintenance hours. The burden hours for computer maintenance are calculated by multiplying the hours of computer use (for a given category) by the number of manufacturers reporting in a category. NHTSA estimates that light vehicle manufacturers will spend approximately 347 hours per year on computer maintenance and that other vehicle manufacturers will spend about 25% as much time as light vehicle manufacturers on computer maintenance. Therefore, NHTSA estimates that medium-heavy truck, trailer, motorcycle manufacturers, emergency vehicle, and bus manufacturers will each spend approximately 86.5 hours on computer maintenance each year. NHTSA estimates that tire manufacturers and child restraint manufacturers will also spend 86.5 hours on computer maintenance per year. Therefore, NHTSA estimates the total burden for computer maintenance to be 35,415 hours per year (based on there being an estimated 36 light vehicle manufacturers, 39 medium-heavy vehicle manufacturers, 96 trailer

[11] May 2019 National Industry-Specific Wage Estimates,—Motor Vehicle Manufacturing, U.S. Bureau of Labor Statistics, Lawyers (Code 23–1000), $95.85, *https://www.bls.gov/oes/current/naics4_336100.htm#23-0000,* divided by 70.2% for compensation rate, *https://www.bls.gov/news.release/ecec.t01.htm.*

[12] May 2019 National Industry-Specific Wage Estimates—Motor Vehicle Manufacturing, U.S. Bureau of Labor Statistics, Engineers (Code 17–2000), $44.25, *https://www.bls.gov/oes/current/naics4_336100.htm#17-0000,* divided by 70.2% for compensation rate, *https://www.bls.gov/news.release/ecec.t01.htm.*

[13] May 2019 National Occupational Employment and Wage Estimates, U.S. Bureau of Labor Statistics, Computer and Information Analysts (Code 15–1210), $46.91, *https://www.bls.gov/oes/current/oes_nat.htm#15-0000,* divided by 70.2% for compensation rate, *https://www.bls.gov/news.release/ecec.t01.htm.*

[14] May 2019 National Industry-Specific Wage Estimates—Motor Vehicle Manufacturing, U.S. Bureau of Labor Statistics, Computer Support Analyst (Code 15–1230), $31.39. *https://www.bls.gov/oes/current/naics4_336100.htm#15-0000,* divided by 70.2% for compensation rate, *https://www.bls.gov/news.release/ecec.t01.htm.*

[15] May 2019 National Industry-Specific Wage Estimates—Motor Vehicle Manufacturing, U.S. Bureau of Labor Statistics, Office Clerks (Code 43–9061), $20.74, *https://www.bls.gov/oes/current/naics4_336100.htm#43-0000,* divided by 70.2% for compensation rate, *https://www.bls.gov/news.release/ecec.t01.htm.*

manufacturers, 15 motorcycle manufacturers, 8 emergency vehicle manufacturers, 33 bus manufacturers, 32 tire manufacturers, and 42 child restraint manufactures).

To calculate the labor cost associated with computer maintenance hours, NHTSA looked at wage estimates for the type of personnel submitting the documents. The Bureau of Labor Statistics (BLS) estimates that the average hourly wage for Computer Support Specialists (BLS Occupation code 15–1230) in the Motor Vehicle Manufacturing Industry is $31.39.[16] The Bureau of Labor Statistics estimates that private industry workers' wages represent 70.2% of total labor compensation costs.[17] Therefore, NHTSA estimates the hourly labor costs to be $44.72 for Computer Support Specialists. For the estimated total of 35,415 annual computer maintenance burden hours, NHTSA estimates the associated labor costs will be approximately $1,583,736. Table 9 shows the annual estimated burden hours for computer maintenance by vehicle/equipment category and the estimated labor costs associated with those burden hours.

TABLE 9—ESTIMATED MANUFACTURER ANNUAL BURDEN HOURS FOR COMPUTER MAINTENANCE FOR REPORTING

Vehicle/equipment category	Avg. No. of manufacturers	Hours for computer maintenance per manufacturer	Average hourly labor cost	Annual burden hours for computer maintenance	Total labor costs
Light Vehicles	36	347	$44.72	12,492	$558,642.24
Medium-Heavy Vehicles	39	86.5	44.72	3,373.5	150,862.92
Trailers	96	86.5	44.72	8,304	371,352.88
Motorcycles	15	86.5	44.72	1,297.5	58,024.20
Emergency Vehicles	8	86.5	44.72	692	30,946.24
Buses	33	86.5	44.72	2,854.5	127,653.24
Tires	32	86.5	44.72	2,768	123,784.96
Child Restraints	42	86.5	44.72	3,633	162,467.76
Totals				35,414.5; 35,415	1,583,736.44; 1,583,736

Based on the foregoing, we estimate the burden hours for industry to comply with the current Part 579 reporting requirements (EWR requirements, foreign campaign requirements and Part 579.5 requirements) to be 53,810 hours per year. The total annual burden hours for this information collection consisting of manufacturer communications under Section 579.5 (Subpart A), foreign reporting (Subpart B), EWR submissions and reporting (Subpart C), and computer maintenance is outlined in Table 9 below.

TABLE 9—TOTAL MANUFACTURER BURDEN HOURS FOR THIS COLLECTION

Reporting type	Annual burden hours
Subpart A: Manufacturer Communications § 579.5 (Table 1)	2,074
Subpart B: Foreign Reporting (Table 2)	1,590
Subpart C: EWR Submissions and Quarterly Reporting (Tables 4 & 6)	14,731
Computer Maintenance	35,415
Total	53,810

The burden estimates represent an overall increase in burden hours of 4,567 hours. The increase in burden hours is due to increases in the number of submissions and modifying this request to include reporting for common green tires and additional information requested by NHTSA per Section 579.28(l) that were left out of the previous information collection request. The wage estimates have been adjusted to reflect the latest available rates from the Bureau of Labor Statistics.

Estimated Total Annual Burden Cost: NHTSA estimates the collection requires no additional costs to the respondents beyond the labor costs associated with the burden hours to collect and submit the reports to NHTSA and the labor hours and associated labor costs for computer maintenance.

Public Comments Invited: You are asked to comment on any aspects of this information collection, including (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; 49 CFR 1.49; and DOT Order 1351.29.

Stephen A. Ridella,

Director, Office of Defects Investigation.

[FR Doc. 2021–23248 Filed 10–28–21; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2017–0163]

Pipeline Safety: Request for Special Permit; Colorado Interstate Gas Company, LLC

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice.

SUMMARY: PHMSA is publishing this notice to solicit public comments on a request for special permit received from the Colorado Interstate Gas Company,

[16] *https://www.bls.gov/oes/current/naics4_336100.htm#15-0000.*

[17] Employer Costs for Employee Compensation, U.S. Bureau of Labor Statistics, *https://www.bls.gov/news.release/ecec.t01.htm.* Last Accessed July 31, 2020.

LLC (CIG). The special permit request is seeking relief from compliance with certain requirements in the Federal pipeline safety regulations. At the conclusion of the 30-day comment period, PHMSA will review the comments received from this notice as part of its evaluation to grant or deny the special permit request.

DATES: Submit any comments regarding this special permit request by November 29, 2021

ADDRESSES: Comments should reference the docket number for this special permit request and may be submitted in the following ways:

• *E-Gov Website: http://www.Regulations.gov*. This site allows the public to enter comments on any **Federal Register** notice issued by any agency.

•*Fax:* 1–202–493–2251.

• *Mail:* Docket Management System: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

• *Hand Delivery:* Docket Management System: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Instructions: You should identify the docket number for the special permit request you are commenting on at the beginning of your comments. If you submit your comments by mail, please submit two (2) copies. To receive confirmation that PHMSA has received your comments, please include a self-addressed stamped postcard. Internet users may submit comments at *http://www.Regulations.gov*.

Note: There is a privacy statement published on *http://www.Regulations.gov*. Comments, including any personal information provided, are posted without changes or edits to *http://www.Regulations.gov*.

Confidential Business Information: Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this notice, it is important that you clearly designate the submitted comments as CBI. Pursuant to 49 Code of Federal Regulations (CFR) § 190.343, you may ask PHMSA to give confidential treatment to information you give to the agency by taking the following steps: (1) Mark each page of the original document submission containing CBI as ''Confidential''; (2) send PHMSA, along with the original document, a second copy of the original document with the CBI deleted; and (3) explain why the information you are submitting is CBI. Unless you are notified otherwise, PHMSA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this notice. Submissions containing CBI should be sent to Kay McIver, DOT, PHMSA–PHP–80, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Any commentary PHMSA receives that is not specifically designated as CBI will be placed in the public docket for this matter.

FOR FURTHER INFORMATION CONTACT:

General: Ms. Kay McIver by telephone at 202–366–0113, or by email at *kay.mciver@dot.gov*.

Technical: Mr. Steve Nanney by telephone at 713–272–2855, or by email at *steve.nanney@dot.gov*.

SUPPLEMENTARY INFORMATION: PHMSA received a special permit request from CIG, a subsidiary of Kinder Morgan, Inc., seeking a waiver from the requirements of 49 CFR 192.611(a) and (d): Change in class location: Confirmation or revision of maximum allowable operating pressure, and 49 CFR 192.619(a): Maximum allowable operating pressure: Steel or plastic pipelines. This special permit is being requested in lieu of pipe replacement, pressure reduction, or new pressure tests for two (2) special permit segments totaling 963.12 feet (approximately 0.182 miles) of pipeline. The CIG pipeline special permit segments consist of the following:

• Weld County, Colorado—142.00 feet of 22-inch diameter Line 5A Pipeline, Class 1 to 3 location change, operates at a maximum allowable operating pressure (MAOP) of 850 pounds per square inch gauge (psig) and was constructed in 1956.

• Weld County, Colorado—821.12 feet of 24-inch diameter Line 250A Pipeline, Class 1 to 3 location change, operates at a MAOP of 1,200 psig and was constructed in 2008.

The special permit request, proposed special permit with conditions, and Draft Environmental Assessment (DEA) for the above listed CIG pipeline segments are available for review and public comments in Docket No. PHMSA–2017–0163. PHMSA invites interested persons to review and submit comments on the special permit request and DEA in the docket. Please include any comments on potential safety and environmental impacts that may result if the special permit is granted. Comments may include relevant data.

Before issuing a decision on the special permit request, PHMSA will evaluate all comments received on or before the comments closing date. Comments received after the closing date will be evaluated, if it is possible to do so without incurring additional expense or delay. PHMSA will consider each relevant comment it receives in making its decision to grant or deny this special permit request.

Issued in Washington, DC on August 13, 2021, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Associate Administrator for Pipeline Safety.

[FR Doc. 2021–23543 Filed 10–28–21; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Submission for OMB Review; Supervisory Guidance on Stress Testing for Banking Organizations With Total Consolidated Assets of More Than $10 Billion

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC).

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection as required by the Paperwork Reduction Act of 1995 (PRA). In accordance with the requirements of the PRA, the OCC 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 OCC is soliciting comment concerning renewal of its information collection titled, ''Supervisory Guidance on Stress Testing for Banking Organizations with Total Consolidated Assets of More Than $10 Billion.'' The OCC also is giving notice that it has sent the collection to OMB for review.

DATES: Comments must be submitted on or before November 29, 2021.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, 1557–0312, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''1557–0312'' 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.

Written comments and recommendations for the proposed information collection should also 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.

You may review comments and other related materials that pertain to this information collection following the close of the 30-day comment period for this notice by the method set forth in the next bullet. On July 13, 2021, the OCC published a 60-day notice for this information collection, 86 FR 36866.

- *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Hover over the ''Information Collection Review'' tab and click on ''Information Collection Review'' dropdown. 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 ''1557–0312'' or ''Supervisory Guidance on Stress Testing for Banking Organizations with Total Consolidated Assets of More Than $10 Billion.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.
- For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, (202) 649–5490, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the OMB for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. The OCC asks OMB to extend its approval of the information collection in this notice.

Title: Supervisory Guidance on Stress Testing for Banking Organizations with Total Consolidated Assets of More Than $10 Billion.

OMB Control No.: 1557–0312.

Description: On May 17, 2012, the OCC, along with the Federal Deposit Insurance Corporation (FDIC) and the Board of Governors of the Federal Reserve (FRB), published guidance in the **Federal Register** on the use of stress testing as a means to better understand the range of a banking organization's [1] potential risk exposures.[2] The OCC is now seeking to renew the information collection associated with that guidance.

The guidance provides an overview of how a banking organization should structure its stress testing activities to ensure that those activities fit into the banking organization's overall risk management. The purpose of the guidance is to outline broad principles for a satisfactory stress testing framework and describe how stress testing should be used. While the guidance is not intended to provide detailed instructions for conducting stress testing for any particular risk or business area, it does describe several types of stress testing activities and how they may be most appropriately used by banking organizations. The guidance also does not explicitly address the stress testing requirements imposed upon certain banking organizations by section 165(i) of the Dodd-Frank Wall Street Reform and Consumer Protection Act.[3]

Type of Review: Regular.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 62.

Estimated annual burden: 16,120 hours.

On July 13, 2021, the OCC published a notice for 60 days of comment concerning this collection, 86 FR 36866. No comments were received. Comments continue to be solicited on:

(a) Whether the collections of information are necessary for the proper performance of the OCC's functions, including whether the information has practical utility;

(b) The accuracy of the OCC's estimates of the burden of the information collections, 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.

Patrick T. Tierney,

Assistant Director, Bank Advisory, Office of the Comptroller of the Currency.

[FR Doc. 2021–23517 Filed 10–28–21; 8:45 am]

BILLING CODE 4810–33–P

[1] For purposes of this guidance, the term ''banking organization'' means national banks, federal savings associations, and federal branches and agencies supervised by the OCC; state member banks, bank holding companies, savings and loan holding companies, and all other institutions for which the Federal Reserve is the primary federal supervisor; and state nonmember banks, and all other institutions for which the FDIC is the primary federal supervisor.

[2] 77 FR 29458 (May 17, 2012).

[3] Public Law 111–203, 124 Stat. 1376 (2010), as revised by the Economic Growth, Regulatory Relief, and Consumer Protection Act, Public Law 115–174, 132 Stat. 1296–1368 (2018), and codified at 12 U.S.C. 5365(i)(2).

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Requirements; Information Collection Renewal; Comment Request; OCC Guidelines Establishing Standards for Recovery Planning by Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection as required by the Paperwork Reduction Act of 1995 (PRA). In accordance with the requirements of the PRA, the OCC 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 OCC is soliciting comment concerning the renewal of its information collection titled, ''OCC Guidelines Establishing Standards for Recovery Planning by Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches.''

DATES: You should submit written comments by December 28, 2021.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, Attention: 1557–0333, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''1557–0333'' 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 method set forth in the next bullet. Following the close of this notice's 60-day comment period, the OCC will publish a second notice with a 30-day comment period:

- *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Hover over the ''Information Collection Review'' dropdown. 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 ''1557–0333'' or ''OCC Guidelines Establishing Standards for Recovery Planning by Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches.''

Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.

- For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, OCC Clearance Officer, (202) 649–5490, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of title 44 requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the OCC is publishing notice of the renewal of the information collection set forth in this document.

Title: OCC Guidelines Establishing Standards for Recovery Planning by Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches.

OMB Control No.: 1557–0333.

Abstract: In 2015, the OCC issued guidelines applicable to each insured national bank, insured Federal savings association, and insured Federal branch of a foreign bank (together, banks) with average total consolidated assets equal to or greater than $50 billion (covered banks). The guidelines stated that each covered bank should develop and maintain a recovery plan that is appropriate for its individual size, risk profile, activities, and complexity, including the complexity of its organizational and legal entity structure, in order to be able to respond quickly to and recover from the financial effects of severe stress. The guidelines established standards for this recovery planning.

The OCC issued a final rule in 2018 which increased the average total consolidated assets threshold for applying the recovery planning guidelines to a bank from $50 billion to $250 billion and decreased from 18 months to 12 months the time within which a bank should comply with the recovery planning guidelines after the bank first becomes subject to the guidelines.[1]

Overview of covered bank. A recovery plan should describe the covered bank's overall organizational and legal entity structure, including its material entities, critical operations, core business lines, and core management information systems. The plan should describe interconnections and interdependencies (1) across business lines within the covered bank, (2) with affiliates in a bank holding company structure, (3) between a covered bank and its foreign subsidiaries, and (4) with critical third parties.

Triggers. A covered bank's recovery plan should identify triggers that appropriately reflect the bank's particular vulnerabilities.

Options for recovery. A recovery plan should identify a wide range of credible options that a covered bank could undertake to restore financial strength and viability, thereby allowing the bank to continue to operate as a going concern and to avoid liquidation or resolution. A recovery plan should explain how the covered bank would carry out each option and describe the timing required for carrying out each

[1] 83 FR 66604 (December 27, 2018).

option. The recovery plan should specifically identify the recovery options that require regulatory or legal approval.

Impact assessments. For each recovery option, a covered bank should assess and describe how the option would affect the covered bank. This impact assessment and description should specify the procedures the covered bank would use to maintain the financial strength and viability of its material entities, critical operations, and core business lines for each recovery option. For each option, the recovery plan's impact assessment should address the following: (1) The effect on the covered bank's capital, liquidity, funding, and profitability, (2) the effect on the covered bank's material entities, critical operations, and core business lines, including reputational impact, and (3) any legal or market impediment or regulatory requirement that must be addressed or satisfied in order to implement the option.

Escalation procedures. A recovery plan should clearly outline the process for escalating decision-making to the covered bank's senior management, board of directors (board), or appropriate board committee in response to the breach of any trigger. The recovery plan should also identify the departments and persons responsible for executing the decisions of senior management, the board, or an appropriate board committee.

Management reports. A recovery plan should require reports that provide senior management, the board, or an appropriate board committee with sufficient data and information to make timely decisions regarding the appropriate actions necessary to respond to the breach of a trigger.

Communication procedures. A recovery plan should provide that the covered bank notify the OCC of any significant breach of a trigger and any action taken or to be taken in response to such breach and should explain the process for deciding when a breach of a trigger is significant. A recovery plan also should address when and how the covered bank will notify persons within the organization and other external parties of its action under the recovery plan. The recovery plan should specifically identify how the covered bank will obtain required regulatory or legal approvals.

Other information. A recovery plan should include any other information that the OCC communicates in writing directly to the covered bank regarding the covered bank's recovery plan.

A covered bank should (1) integrate its recovery plan into its risk governance functions and (2) align its recovery plan with its other plans, such as its strategic, operational (including business continuity), contingency, capital (including stress testing), liquidity, and resolution planning. The covered bank's recovery plan also should be specific to that covered bank and coordinated with any recovery and resolution planning efforts by the bank's holding company.

A covered bank's recovery plan should address the responsibilities of the bank's management and board with respect to the plan. Specifically, management should review the recovery plan at least annually and in response to a material event. It should revise the plan as necessary to reflect material changes in the covered bank's size, risk profile, activities, and complexity, as well as changes in external threats. This review should evaluate the organizational structure and its effectiveness in facilitating a recovery. The board is responsible for overseeing the covered bank's recovery planning process. The board of a covered bank or an appropriate board committee should review and approve the recovery plan at least annually, and as needed to address significant changes made by management.

The OCC believes that a large, complex institution should undertake recovery planning in order to be able to respond quickly to and recover from the financial effects of severe stress on the institution. The process of developing and maintaining a recovery plan also should cause a covered bank's management and its board to enhance their focus on risk governance with a view toward lessening the negative impact of future events. OCC examiners will assess the appropriateness and adequacy of the covered bank's ongoing recovery planning process as part of the agency's regular supervisory activities.

Type of Review: Extension, without change, of a currently approved collection.

Affected Public: Businesses or other for-profit; individuals.

Total Number of Respondents: 8.

Total Burden per Respondent: 7,543 hours.

Total Burden for Collection: 60,344 hours.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Patrick T. Tierney,

Assistant Director, Bank Advisory, Office of the Comptroller of the Currency.

[FR Doc. 2021–23519 Filed 10–28–21; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form SS–4 and SS–4PR

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form SS–4, Application for Employer Identification Number, and Form SS–4PR, Solicitud de Numero de Indentificacion Patronal (EIN).

DATES: Written comments should be received on or before December 28, 2021 to be assured of consideration.

ADDRESSES: Direct all written comments to Paul Adams, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Sara Covington, at (737) 800–6149, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Sara.L.Covington@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: SS–4, Application for Employer Identification Number, and Form SS–4PR, Solicitud de Numero de Identification Patronal (EIN).

OMB Number: 1545–0003.

Form Number: Forms SS–4 and SS–4PR.

Abstract: Taxpayers who are required to have an identification number for use on any return, statement, or other document must prepare and file Form SS–4 or Form SS–4PR (Puerto Rico only) to obtain a number. The information is used by the Internal Revenue Service and the Social Security Administration in tax administration and by the Bureau of the Census for business statistics.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, not-for-profit institutions, farms, federal government, and state, local or tribal governments.

Estimated Number of Respondents: 5,965,735.

Estimated Time per Respondent: .33 mins.

Estimated Total Annual Burden Hours: 3,340,812.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information 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.

Approved: October 25, 2021.

Sara L. Covington,

IRS Tax Analyst.

[FR Doc. 2021–23574 Filed 10–28–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Excise Tax Relating to Gain or Other Income Realized by Any Person on Receipt of Greenmail.

DATES: Written comments should be received on or before December 28, 2021 to be assured of consideration.

ADDRESSES: Direct all written comments to Paul Adams, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Sara Covington, at (737)800–6149, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Sara.L.Covington@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Excise Tax Relating to Gain or Other Income Realized By Any Person on Receipt of Greenmail.

OMB Number: 1545–1049.

Regulation Project Number: TD 8379 (final).

Form Number: 8725.

Abstract: The regulations provide rules relating to the manner and method of reporting and paying the nondeductible 50 percent excise tax imposed by section 5881 of the Internal Revenue Code with respect to the receipt of greenmail. The reporting requirements will be used to verify that the excise tax imposed under section 5881 is properly reported and timely paid. Form 8725 is used by persons who receive ''greenmail'' to compute and pay the excise tax on greenmail imposed under Internal Revenue Code section 5881. IRS uses the information to verify that the correct amount of tax has been reported.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and business or other for-profit organizations.

Estimated Number of Responses: 12.

Estimated Time per Response: 7 hours, 37 minutes.

Estimated Total Annual Burden Hours: 92.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments will be of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on 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.

Approved: October 25, 2021.

Sara L. Covington,

IRS Tax Analyst.

[FR Doc. 2021–23576 Filed 10–28–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4461, 4461–A, 4461–B, and 4461–C

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 4461, Application for Approval of Standardized or Nonstandardized Pre-Approved Defined Contribution Plans; Form 4461–A, Application for Approval of Master or Prototype or Volume Submitter Defined Benefit Plan; and, Form 4461–B, Application for Approval of Standardized or Nonstandardized Pre-Approved Plans, and Form 4461–C, Application for Approval of Standardized or Nonstandardized 403(b) Pre-Approved Plans.

DATES: Written comments should be received on or before December 28, 2021 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to Paul Adams, (737) 800–6149, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *paul.d.adams@irs.gov.*

SUPPLEMENTARY INFORMATION:

Titles: Form 4461, Application for Approval of Standardized or Nonstandardized Pre-Approved Defined Contribution Plans; Form 4461–A, Application for Approval of Master or Prototype or Volume Submitter Defined Benefit Plan; Form 4461–B, Application for Approval of Standardized or Nonstandardized Pre-Approved Plans; and, Form 4461–C, Application for Approval of Standardized or Nonstandardized 403(b) Pre-Approved Plans.

OMB Number: 1545–0169.

Form Numbers: Forms 4461, 4461–A, 4461–B, and 4461–C.

Abstract: The IRS uses these forms to determine from the information submitted whether the provider or mass submitter of a pre-approved defined contribution plan qualifies under section 401(a) of the Internal Revenue Code for plan approval. The application is also used to apply for approval of their employee benefit plans of standardized or nonstandardized pre-approved plans under section 403(b) and their related trust as exempt from Federal income tax under Code section 501(a).

Current Actions: There are changes to the forms and burden estimates.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 3,380.

Estimated Time per Respondent: 10 hours, 58 minutes.

Estimated Total Annual Burden Hours: 37,092.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information 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.

Approved: October 25, 2021.

Paul Adams,

Senior Tax Analyst.

[FR Doc. 2021–23575 Filed 10–28–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Proposed Collection; Comment Request; Solicitation of Proposal Information for Award of Public Contracts

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to comment on the proposed information collections listed below, in accordance with the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before December 28, 2021.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, by emailing *OfficeoftheProcurementExecutive@treasury.gov.* Please refer to Office of Management and Budget (OMB) control number 1505–0081.

FOR FURTHER INFORMATION CONTACT: For questions related to these programs, please contact Steven Kvalevog by emailing *OfficeoftheProcurementExecutive@treasury.gov,* or calling (202) 441–5171. Additionally, you can view the information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Title: Solicitation of Proposal Information for Award of Public Contracts.

OMB Control Number: 1505–0081.

Type of Review: Extension of a currently approved collection.

Description: Treasury Bureaus and the Office of the Procurement Executive collect information when inviting firms to submit proposals for public contracts for supplies and services. The information collection is necessary for compliance with the Federal Property and Administrative Services Act (41 U.S.C. 251 *et seq.*), the Federal Acquisition Regulation (FAR) (48 CFR chapter 1) and applicable acquisition regulations. Information requested of offerors is specific to each procurement solicitation, and is required for Treasury to properly evaluate the capabilities and experience of potential contractors who desire to provide the supplies or services to be acquired.

Forms: None.

Affected Public: Businesses and other for-profits.

Estimated Number of Respondents: 23,781.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 23,781.

Estimated Time per Response: 9 hours.

Estimated Total Annual Burden Hours: 214,029.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services required to provide information.

Authority: 44 U.S.C. 3501 et seq.

Dated: October 26, 2021.

Spencer W. Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2021–23604 Filed 10–28–21; 8:45 am]

BILLING CODE 4810–AK–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0208]

Agency Information Collection Activity: VA Form 6298, Architect-Engineer Fee Proposal and VA Form 10101, Contractor Production Report

AGENCY: Office of Acquisition and Logistics, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Office of Acquisition and Logistics (OAL), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 28, 2021.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Bogdan Vaga, Office of Acquisition & Logistics, Procurement Policy & Warrant Management Services (003A2A), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *Bogdan.Vaga@va.gov.* Please refer to ''OMB Control No. 2900–0208'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0208'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA. With respect to the following collection of information, OAL invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of OAL's functions, including whether the information will have practical utility; (2) the accuracy of OAL's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Department of Veterans Affairs Acquisition Regulation (VAAR) VA Form 6298, Architect-Engineer Fee Proposal and VA Form 10101, Contractor Production Report.

OMB Control Number: 2900–0208.

Type of Review: Extension of a currently approved collection.

Abstract: The Department of Veterans Affairs, Office of Construction and Facilities Management (CFM), manages a multi-million-dollar construction program that involves the design and construction of medical centers, and other VA facilities including building improvements and conversions. The actual construction work is contracted out to private construction firms. The use of VA Form 6298, Architect-Engineer Fee Proposal is mandatory for obtaining the proposal and supporting cost or pricing data from the contractor and subcontractor in the negotiation of all architect-engineer contracts for design services when the contract price is estimated to be $50,000 or more. It is also used in obtaining proposals and supporting cost or pricing data for architect engineer services for research study, seismic study, master planning study, construction management and other related services contracts. VA Form 10101, Contractor Production Report, is used to record the data necessary to ensure the contractor provides sufficient labor and materials to accomplish the contract work. Contractors are required to guarantee the performance of the work necessary to complete the project. VAAR 852.236–79 details what needs to be addressed by the contractor on the Contractor Production Report. Failure to receive information from the Contractor Production Report could result in a claim for non-performance and construction delays against the Government if the Government were unable to collect this information to administer the contract.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 5,341 hours.

Estimated Average Burden per Respondent: 264 minutes.

Frequency of Response: More than quarterly.

Estimated Number of Respondents: 335.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2021–23577 Filed 10–28–21; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0829]

Agency Information Collection Activity: Income and Asset Statement in Support of Claim for Pension or Parents' DIC (VA Form 21P–0969)

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Refer to ''OMB Control No. 2900–0829.''

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0829'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 38 U.S.C. 1503, 38 U.S.C. 1543, and 38 U.S.C. 1315.

Title: Income and Asset Statement in Support of Claim for Pension or Parents' DIC (VA Form 21P–0969).

OMB Control Number: 2900–0829.

Type of Review: Extension of a currently approved collection.

Abstract: Under the authority of 38 U.S.C. 1503, 38 U.S.C. 1315, and 38 U.S.C. 1543, VA Form 21P–0969 will be used by claimants for VA Pension or Parents' Dependency and Indemnity Compensation (DIC) to provide information pertaining to income and assets to establish entitlement to Pension or Parents' DIC. This form will be completed only by those claimants who had income other than Social Security benefits during the calendar year before claiming benefits or who disposed of assets or have significant assets which may affect their entitlement to needs-based benefits.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 86 FR 161 on August 24, 2021, page 47372.

Affected Public: Individuals and households.

Estimated Annual Burden: 31,250 hours.

Estimated Average Burden per Respondent: 25 minutes.

Frequency of Response: Once.

Estimated Number of Respondents: 75,000.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2021–23579 Filed 10–28–21; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0740]

Agency Information Collection Activity Under OMB Review: Request for Substitution of Claimant Upon Death of Claimant (VA Form 21P–0847)

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Refer to ''OMB Control No. 2900–0740.''

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0740'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 38 U.S.C. 5121A.

Title: Request for Substitution of Claimant Upon Death of Claimant.

OMB Control Number: 2900–0740.

Type of Review: Extension Without Change of a Previously Approved Collection.

Abstract: VA Form 21P–0847 is used to allow claimants to request substitution for a claimant, who passed away, prior to VA processing a claim to completion. This is only allowed when a claimant dies while a claim or appeal for any benefit under a law administered by the VA is pending. The substitute claimant would be eligible to receive accrued benefits due a deceased claimant under Section 5121(a). No changes have been made to this form.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 86 FR 156 on August 17, 2021, pages 46095.

Affected Public: Individuals or Households.

Estimated Annual Burden: 1,667 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: Once.

Estimated Number of Respondents: 20,000.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2021–23578 Filed 10–28–21; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0503]

Agency Information Collection Activity Under OMB Review: Veterans Mortgage Life Insurance Change of Address Statement

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA

submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Refer to ''OMB Control No. 2900–0503.''

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0503'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501–21.

Title: Veterans Mortgage Life Insurance Change of Address Statement (VA Form 29–0563).

OMB Control Number: 2900–0503.

Type of Review: Revision of a currently approved collection.

Abstract: The Veterans Mortgage Life Insurance Change of Address Statement solicits information needed to inquire about a veteran's continued ownership of the property issued under Veterans Mortgage Life Insurance when an address change for the veteran is received. The information obtained is used in determining whether continued Veterans Mortgage Life Insurance coverage is applicable since the law granting this insurance provides that coverage terminates if the veteran no longer owns the property. The information requested is required by law, 38 U.S.C. 2106. This form expired due to high volume of work and staffing changes.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 86 FR 160 on August 23, 2021, page 47203.

Affected Public: Individuals and Households.

Estimated Annual Burden: 8 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 100.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2021–23580 Filed 10–28–21; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 86 Friday,

No. 207 October 29, 2021

Part II

Department of Labor

Wage and Hour Division

29 CFR Parts 10 and 531

Tip Regulations Under the Fair Labor Standards Act (FLSA); Partial Withdrawal; Final Rule

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 10

Wage and Hour Division

29 CFR Part 531

RIN 1235–AA21

Tip Regulations Under the Fair Labor Standards Act (FLSA); Partial Withdrawal

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Final rule.

SUMMARY: In this final rule, the Department of Labor (Department) finalizes its proposal to withdraw one portion of the Tip Regulations Under the Fair Labor Standards Act (FLSA) (2020 Tip final rule) and finalize its proposed revisions related to the determination of when a tipped employee is employed in dual jobs under the Fair Labor Standards Act of 1938 (FLSA or the Act). Specifically, the Department is amending its regulations to clarify that an employer may only take a tip credit when its tipped employees perform work that is part of the employee's tipped occupation. Work that is part of the tipped occupation includes work that produces tips as well as work that directly supports tip-producing work, provided the directly supporting work is not performed for a substantial amount of time.

DATES: As of December 28, 2021 the Department is withdrawing the revision of 29 CFR 531.56(e) (in amendatory instruction 11), published December 30, 2020, at 85 FR 86756, delayed until April 30, 2021, on February 26, 2021, at 86 FR 11632, and further delayed until December 31, 2021, on April 29, 2021, at 86 FR 22597. This final rule is effective December 28, 2021.

FOR FURTHER INFORMATION CONTACT: Amy DeBisschop, Director, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Copies of this rule may be obtained in alternative formats (Large Print, Braille, Audio Tape or Disc), upon request, by calling (202) 693–0675 (this is not a toll-free number). TTY/TDD callers may dial toll-free 1–877–889–5627 to obtain information or request materials in alternative formats.

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/agencies/whd/contact/local-offices* for a nationwide listing of WHD district and area offices.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

Section 6(a) of the FLSA requires covered employers to pay nonexempt employees a minimum wage of at least $7.25 per hour. *See* 29 U.S.C. 206(a). Section 3(m)(2)(A) allows an employer to satisfy a portion of its minimum wage obligation to a ''tipped employee'' by taking a partial credit, known as a ''tip credit,'' toward the minimum wage based on the amount of tips an employee receives provided that the employer meets certain requirements. *See* 29 U.S.C. 203(m)(2)(A). An employer that elects to take a tip credit must pay the tipped employee a direct cash wage of at least $2.13 per hour. Provided that the employer meets certain requirements, the employer may then take a credit against its wage obligation for the difference, up to $5.12 per hour, if the employees' tips are sufficient to fulfill the remainder of the minimum wage.

Section 3(t) defines ''tipped employee'' as ''any employee engaged in an occupation in which he customarily and regularly receives more than $30 a month in tips.'' 29 U.S.C. 203(t). Congress left ''occupation,'' and what it means to be ''engaged in an occupation,'' in section 3(t) undefined. Thus, Congress delegated to the Department the authority to determine what it means to be ''engaged in an occupation'' that customarily and regularly receives tips. *See* Fair Labor Standards Amendments of 1966, Public Law 89–601, sec. 101, sec. 602, 80 Stat. 830, 830, 844 (1966).

Since 1967, the Department's dual jobs regulation has recognized that an employee may be employed both in a tipped occupation and in a non-tipped occupation, providing that in such a ''dual jobs'' situation, the employee is a ''tipped employee'' for purposes of section 3(t) only while the employee is employed in the tipped occupation, and that an employer may only take a tip credit against its minimum wage obligations for the time the employee spends in that tipped occupation. *See* 32 FR 13580–81; 29 CFR 531.56(e). At the same time, the Department's regulation also recognized that an employee employed in a tipped occupation may perform related duties that are not ''themselves . . . directed toward producing tips,'' thus distinguishing between employees who have dual jobs and tipped employees who perform ''related duties'' that do not ''themselves'' produce tips.

For several decades, the Department issued guidance interpreting the dual jobs regulation as it applies to employees who perform both tipped and non-tipped duties, first through a series of Wage and Hour Division (WHD) opinion letters, and then through WHD's Field Operations Handbook (FOH). The 1988 FOH provision stated that the dual jobs regulation at § 531.56(e) ''permits the taking of the tip credit for time spent in duties related to the tipped occupation, even though such duties are not by themselves directed toward producing tips (*i.e.,* maintenance and preparatory or closing activities),'' if those duties are ''incidental'' and ''generally assigned'' to tipped employees. *Id.* at 30d00(e). To illustrate the types of related, non-tip-producing duties for which employers could take a tip credit, the FOH listed ''a waiter/waitress, who spends some time cleaning and setting tables, making coffee, and occasionally washing dishes or glasses,'' the same examples included in § 531.56(e). *Id.* But ''where the facts indicate that specific employees are routinely assigned to maintenance, or that tipped employees spend a substantial amount of time (in excess of 20 percent) performing general preparation work or maintenance, no tip credit may be taken for the time spent in such duties.'' Consistent with WHD's interpretations elsewhere in the FLSA, the FOH defined a ''substantial'' amount of time spent performing general preparation or maintenance work as being ''in excess of 20 percent,'' creating a substantial but limited tolerance for this work. *Id.* This guidance (80/20 guidance) recognized that if a tipped employee performs too much related, non-tipped work, the employee is no longer engaged in a tipped occupation. A number of courts deferred to the guidance.[1]

In 2018, the Department rescinded the 80/20 guidance. In 2018 and 2019, the Department issued new subregulatory guidance providing that the Department would no longer prohibit an employer from taking a tip credit for the time a tipped employee performs related, non-tipped duties, as long as those duties are

[1] Both the Eighth Circuit and the Ninth Circuit deferred to the Department's dual jobs regulations and 80/20 guidance in the FOH. *See Marsh* v. *J. Alexander's LLC,* 905 F.3d 610, 632 (9th Cir. 2018) (en banc); *Fast* v. *Applebee's Int'l, Inc.,* 638 F.3d 872, 879 (8th Cir. 2011).

performed contemporaneously with, or for a reasonable time immediately before or after, tipped duties. *See* WHD Opinion Letter FLSA2018–27 (Nov. 8, 2018); Field Assistance Bulletin (FAB) 2019–2 (Feb. 15, 2019); FOH 30d00(f) (2018–2019 guidance). The Department explained that, in addition to the examples listed in § 531.56(e), it would use the Occupational Information Network (O*NET) to determine whether a tipped employee's non-tipped duties are related to their tipped occupation. Most courts that have considered the 2018–2019 guidance, including one court of appeals, have declined to defer to the Department's interpretation of the dual jobs regulation in this guidance. *See, e.g., Rafferty* v. *Denny's, Inc.,* No. 20–13715, 2021 WL 4189698 (11th Cir. Sept. 15, 2021).

The 2020 Tip final rule would have codified the Department's 2018–2019 guidance, although it would have used O*NET as a guide rather than as a definitive tool for determining work related to a tipped occupation. *See* 85 FR 86756, 86772 (Dec. 30, 2020). Even though, as noted above, multiple circuit courts had deferred to the Department's 80/20 guidance, the Department opined that this guidance ''was difficult for employers to administer and led to confusion, in part because employers lacked guidance to determine whether a particular non-tipped duty is 'related' to the tip-producing occupation.'' *Id.* at 86767. This final rule was published with an effective date of March 1, 2021, *see id.* at 86756; however, the Department extended the effective date for this part of the rule until December 31, 2021, *see* 86 FR 11632, 86 FR 15811, and proposed to withdraw and re-propose the dual jobs provision of the 2020 Tip final rule on June 23, 2021, *see* 86 FR 32818.

In its reproposal, the Department proposed to amend its dual jobs regulation to clarify that an employee is only engaged in a tipped occupation under 29 U.S.C. 203(t) when the employee either performs work that produces tips, or performs work that directly supports the tip-producing work, provided that the directly supporting work is not performed for a substantial amount of time. *See* 86 FR 32818. The Department's proposal defined work that ''directly supports'' tip-producing work as work that assists a tipped employee to perform the work for which the employee receives tips. The proposed regulatory text also explained that an employee has performed work that directly supports tip-producing work for a substantial amount of time if the tipped employee's directly supporting work either (1) exceeds, in the aggregate, 20 percent of the employee's hours worked during the workweek or (2) is performed for a continuous period of time exceeding 30 minutes.

This final rule withdraws that part of the 2020 rule amending the Department's dual jobs regulation at § 531.56(e) and updates that same regulation to incorporate the changes it proposed in its 2021 NPRM in § 531.56(e) and (f), with slight modifications. In finalizing this rule, the Department has taken into consideration the need to ensure that workers do not receive a reduced direct cash wage when they are not engaged in a tipped occupation, as well as the practical concerns of employers who must apply this rule in varied workplaces. The final rule amends § 531.56 to define when an employee is performing the work of a tipped occupation, and is therefore engaged in a tipped occupation for purposes of section 3(t) of the FLSA. The Department has clarified and modified some of the definitions in the final rule from the proposal in order to ensure that this rule is broadly protective of tipped employees, and that the test set forth in the rule is one that employers can comply with and that the Department can administer.

As the Department stated above, the goal of this final rule is to protect tipped employees, while also providing clarity and flexibility to employers to address the variable situations that arise in tipped occupations. The Department finalizes its test providing that work performed for which a tipped employee receives tips is part of the tipped occupation, as well as a non-substantial amount of work that assists the tip-producing work. The final rule recognizes that when a tipped employee performs a substantial amount of directly supporting work that does not itself produce tips they cease to be engaged in a tipped occupation. An employer cannot take a tip credit when a tipped employee performs work that is not part of the tipped occupation.

However, the Department recognizes that a tipped employee's tip-producing services to customers are multi-faceted. In response to comments about the administrability of the Department's proposal, the Department has modified the rule's definitions. In the final rule, the Department clarifies that its definition of *tip-producing work* was intended to be broadly construed to encompass any work performed by a tipped employee that provides service to customers for which the tipped employee receives tips and provides more examples illustrating the scope of this term. The final rule also amends the definition of *directly supporting work* to explain that this category includes work that is performed by the tipped employee in preparation for or otherwise assists in the provision of tip-producing customer service work, and also provides more examples illustrating the scope of this term. The final rule also modifies the definition of *work that is not part of the tipped occupation* to reflect the changes to these two definitional categories. Additionally, the final rule modifies the 30-minute limitation in order to treat it uniformly with the 20 percent tolerance.

Consistent with its revisions to § 531.56(e) and (f), the Department also amends the portions of its regulations that address the payment of tipped employees under Executive Order 13658, Establishing a Minimum Wage for Contractors, to incorporate the Department's explanation of when an employee performing non-tipped work is still engaged in a tipped occupation.

The Department estimates this final rule could result in costs to employers, consisting of rule familiarization costs, adjustment costs, and managerial costs. The Department also expects that this rule could result in transfers from employers to employees in the form of increased wages. For more information on the economic impacts of this rule, please see Section V.

The Office of Information and Regulatory Affairs designated this rule as a 'major rule,' as defined by 5 U.S.C. 804(2), under the Congressional Review Act (5 U.S.C. 801 *et seq.*).

II. Background

A. FLSA Provisions on Tips and Tipped Employees

Section 6(a) of the FLSA requires covered employers to pay nonexempt employees a minimum wage of at least $7.25 per hour. *See* 29 U.S.C. 206(a). Under section 3(m)(2)(A) an employer may satisfy a portion of its minimum wage obligation to any ''tipped employee'' by taking a partial credit, referred to as a ''tip credit,'' toward the minimum wage based on tips an employee receives, provided that the employer meets certain requirements. *See* 29 U.S.C. 203(m)(2)(A). An employer that elects to take a tip credit must pay the tipped employee a direct cash wage of at least $2.13 per hour. The employer may then take a credit against its wage obligation for the difference, up to $5.12 per hour, if the employees' tips are sufficient to fulfill the remainder of the minimum wage among other criteria.

Section 3(t) defines ''tipped employee'' as ''any employee engaged in

an occupation in which he customarily and regularly receives more than $30 a month in tips.'' 29 U.S.C. 203(t). The legislative history accompanying the 1974 amendments to the FLSA's tip provisions identified tipped occupations to include ''waiters, bellhops, waitresses, countermen, busboys, service bartenders, etc.'' S. Rep. No. 93–690, at 43 (Feb. 22, 1974). On the other hand, the legislative history identified ''janitors, dishwashers, chefs, [and] laundry room attendants'' as occupations in which employees do not customarily and regularly receive tips within the meaning of section 3(t). *See id.* Since the 1974 Amendments, the Department's guidance documents have identified a number of additional occupations, including barbacks and certain sushi chefs, as tipped occupations. *See, e.g.,* Field Operations Handbook (FOH) 30d04(b). However, Congress left ''occupation,'' and what it means to be ''engaged in an occupation,'' in section 3(t) undefined. Thus, Congress delegated to the Department the authority to determine what it means to be ''engaged in an occupation'' that customarily and regularly receives tips. *See* Fair Labor Standards Amendments of 1966, Public Law 89–601, sec. 101, sec. 602, 80 Stat. 830, 830, 844 (1966).

B. The Department's ''Dual Jobs'' Regulation

The Department promulgated its initial tip regulations in 1967, the year after Congress first created the tip credit provision. *See* 32 FR 13575 (Sept. 28, 1967); Public Law 89–601, sec. 101(a), 80 Stat. 830 (1966). As part of this rulemaking, the Department promulgated a ''dual jobs'' regulation recognizing that an employee may be employed both in a tipped occupation and in a non-tipped occupation, providing that in such a ''dual jobs'' situation, the employee is a ''tipped employee'' for purposes of section 3(t) only while the employee is employed in the tipped occupation, and that an employer may only take a tip credit against its minimum wage obligations for the time the employee spends in that tipped occupation. *See* 32 FR 13580–81; 29 CFR 531.56(e). At the same time, the regulation also recognizes that an employee in a tipped occupation may perform related duties that are not ''themselves . . . directed toward producing tips.'' It uses the example of a server who ''spends part of her time'' performing non-tipped duties, such as ''cleaning and setting tables, toasting bread, making coffee and occasionally washing dishes or glasses.'' 29 CFR 531.56(e). In that example, where the tipped employee performs non-tipped duties related to the tipped occupation for a limited amount of time, the employee is still engaged in the tipped occupation of a server, for which the employer may take a tip credit, rather than working part of the time in a non-tipped occupation. *See id.* Section 531.56(e) thus distinguishes between employees who have dual jobs and tipped employees who perform ''related duties'' that are not themselves directed toward producing tips.

C. The Department's Dual Jobs Guidance

Over the past several decades, the Department has issued guidance interpreting the dual jobs regulation as it applies to employees who perform both tipped and non-tipped duties. The Department first addressed this issue through a series of Wage and Hour Division (WHD) opinion letters. In a 1979 opinion letter, the Department considered whether a restaurant employer could take a tip credit for time servers spent preparing vegetables for use in the salad bar before the establishment was open to the public. *See* WHD Opinion Letter FLSA–895 (Aug. 8, 1979) (''1979 Opinion Letter''). Citing the dual jobs regulation and the legislative history distinguishing between tipped occupations, such as servers, and non-tipped occupations, such as chefs, the Department concluded that ''salad preparation activities are essentially the activities performed by chefs,'' and therefore ''no tip credit may be taken for the time spent in preparing vegetables for the salad bar.'' *Id.*

A 1980 opinion letter addressed a situation in which tipped restaurant servers performed various non-tipped duties including cleaning and resetting tables, cleaning and stocking the server station, and vacuuming the dining room carpet after the restaurant was closed. *See* WHD Opinion Letter WH–502 (Mar. 28, 1980) (''1980 Opinion Letter''). The Department reiterated language from the dual jobs regulation distinguishing between employees who spend ''part of [their] time'' performing ''related duties in an occupation that is a tipped occupation'' that do not produce tips and ''where there is a clear dividing line between the types of duties performed by a tipped employee, such as between maintenance duties and waitress duties.'' *Id.* Because in the circumstance presented the non-tipped duties were ''assigned generally to the waitress/waiter staff,'' the Department found them to be related to the employees' tipped occupation. The letter suggested, however, that the employer would not be permitted to take the tip credit if ''specific employees were routinely assigned, for example, maintenance-type work such as floor vacuuming.'' *Id.*

In 1985, the Department issued an opinion letter addressing non-tipped duties both unrelated and related to the tipped occupation of server. *See* WHD Opinion Letter FLSA–854 (Dec. 20, 1985) (''1985 Opinion Letter''). First, the letter concluded (as had the 1979 Opinion Letter) that ''salad preparation activities are essentially the activities performed by chefs,'' not servers, and therefore ''no tip credit may be taken for the time spent in preparing vegetables for the salad bar.'' *Id.* Second, the letter explained, building on statements in the 1980 Opinion Letter, that although a ''tip credit could be taken for non-salad bar preparatory work or after-hours clean-up if such duties are incidental to the [servers'] regular duties and are assigned generally to the [server] staff,'' if ''specific employees are routinely assigned to maintenance-type work or . . . tipped employees spend a substantial amount of time in performing general preparation work or maintenance, we would not approve a tip credit for hours spent in such activities.'' *Id.* Under the circumstances described by the employer seeking an opinion—specifically, ''one waiter or waitress is assigned to perform . . . preparatory activities,'' including setting tables and ensuring that restaurant supplies are stocked, and those activities ''constitute[] 30% to 40% of the employee's workday''—a tip credit was not permissible as to the time the employee spent performing those activities. *Id.*

WHD's FOH is an ''operations manual'' that makes available to WHD staff, as well as the public, policies ''established through changes in legislation, regulations, significant court decisions, and the decisions and opinions of the WHD Administrator.'' In 1988, WHD revised its FOH to add section 30d00(e), which distilled and refined the policies established in the 1979, 1980, and 1985 Opinion Letters. *See* WHD FOH Revision 563. According to the 1988 FOH entry, the dual jobs regulation at § 531.56(e) ''permits the taking of the tip credit for time spent in duties related to the tipped occupation, even though such duties are not by themselves directed toward producing tips (*i.e.,* maintenance and preparatory or closing activities),'' if those duties are ''incidental'' and ''generally assigned'' to tipped employees. *Id.* at 30d00(e). To illustrate the types of related, non-tip-producing duties for which employers could take a tip credit, the FOH listed ''a waiter/waitress, who spends some

time cleaning and setting tables, making coffee, and occasionally washing dishes or glasses,'' the same examples included in § 531.56(e). *Id.* But ''where the facts indicate that specific employees are routinely assigned to maintenance, or that tipped employees spend a substantial amount of time (in excess of 20 percent) performing general preparation work or maintenance, no tip credit may be taken for the time spent in such duties.'' Consistent with WHD's interpretations elsewhere in the FLSA, the FOH defined a ''substantial'' amount of time spent performing general preparation or maintenance work as being ''in excess of 20 percent,'' creating a significant but limited tolerance for this work. *Id.* This guidance recognized that if a tipped employee performs too much related, non-tipped work, the employee is no longer engaged in a tipped occupation.

WHD did not revisit its 80/20 guidance until more than 20 years later, when it briefly superseded its 80/20 guidance in favor of guidance that placed no limitation on the amount of duties related to a tip-producing occupation that may be performed by a tipped employee, ''as long as they are performed contemporaneously with the duties involving direct service to customers or for a reasonable time immediately before or after performing such direct-service duties.'' *See* WHD Opinion Letter FLSA2009–23 (dated Jan. 16, 2009, withdrawn Mar. 2, 2009). This guidance further stated that the Department ''believe[d] that guidance [was] necessary for an employer to determine on the front end which duties are related and unrelated to a tip-producing occupation . . . .'' *Id.* Accordingly, it stated that the Department would consider certain duties listed in O*NET for a particular occupation to be related to the tip-producing occupation. *See id.* The guidance cited *Pellon* v. *Bus. Representation Int'l, Inc.,* 291 F. App'x 310 (11th Cir. 2008) (unpublished), *aff'g* 528 F. Supp. 2d 1306 (S.D. Fla. 2007), in which the district court granted summary judgment to the employer based in part on the infeasibility of determining whether the employees spent more than 20 percent of their work time on such duties; significantly, however, the court believed such a determination was unnecessary because the employees had not shown that their non-tipped work exceeded that threshold. *See* 528 F. Supp. 2d at 1313–15. However, WHD later withdrew this guidance on March 2, 2009, and reverted to and followed the 80/20 approach for most of the next decade. *See* WHD Opinion Letter FLSA2009–23 (dated Jan. 16, 2009, withdrawn Mar. 2, 2009); WHD Opinion Letter FLSA2018–27 (Nov. 8, 2018).

Between 2009 and 2018, both the Eighth Circuit and the Ninth Circuit deferred to the Department's dual jobs regulations and 80/20 guidance in the FOH. *See Marsh* v. *J. Alexander's LLC,* 905 F.3d 610, 632 (9th Cir. 2018) (en banc); *Fast* v. *Applebee's Int'l, Inc.,* 638 F.3d 872, 879 (8th Cir. 2011). Both courts of appeal concluded that the Department's dual jobs regulation at 531.56(e) appropriately interprets section 3(t) of the FLSA which ''does not define when an employee is 'engaged in an [tipped] occupation.' '' *Applebee's,* 638 F.3d at 876, 879; *see also Marsh,* 905 F.3d at 623. Both courts further held that the Department's 80/20 guidance was a reasonable interpretation of the dual jobs regulation. *See Marsh,* 905 F.3d at 625 (''The DOL's interpretation is consistent with nearly four decades of interpretive guidance and with the statute and the regulation itself.''); *Applebee's,* 638 F.3d at 881 (''The 20 percent threshold used by the DOL in its Handbook is not inconsistent with § 531.56(e) and is a reasonable interpretation of the terms 'part of [the] time' and 'occasionally' used in that regulation.'').

In November 2018, WHD reinstated the January 16, 2009, opinion letter rescinding the 80/20 guidance and articulating a new test. *See* WHD Opinion Letter FLSA2018–27 (Nov. 8, 2018). Shortly thereafter, WHD issued FAB No. 2019–2, announcing that its FOH had been updated to reflect the guidance contained in the reinstated opinion letter. *See* FAB No. 2019–2 (Feb. 15, 2019), *see also* WHD FOH Revision 767 (Feb. 15, 2019). WHD explained that it would no longer prohibit an employer from taking a tip credit for the time an employee performed related, non-tipped duties as long as those duties were performed contemporaneously with, or for a reasonable time immediately before or after, tipped duties. *See* WHD Opinion Letter FLSA2018–27 (Nov. 8, 2018), *see also* FOH 30d00(f)(3). WHD also explained that it would use O*NET, a database of worker attributes and job characteristics and source of descriptive occupational information,[2] to determine whether a tipped employee's non-tipped duties were related to the employee's tipped occupation. *See id.*

[2] O*NET is developed under the sponsorship of the Department's Employment and Training Administration through a grant to the North Carolina Department of Commerce. *See https://www.onetcenter.org/overview.html.*

The Eleventh Circuit recently considered the 2018 Opinion Letter and 2019 FAB and declined to grant deference to the Department's interpretation of the dual jobs regulation in this guidance. *See Rafferty* v. *Denny's, Inc.,* No. 20–13715, 2021 WL 4189698 at *18 (11th Cir. Sept. 15, 2021). The Court determined that the Department's interpretation of the dual jobs regulation in this guidance was not a reasonable one, concluding that ''the removal of any limit on the time a tipped employee may perform [related] non-tipped duties flatly contradicts . . . the ceiling on related duties'' imposed by the regulation's use of the terms ''occasional'' and ''part of the time.'' *Id.* at *15. The Court also criticized the 2018–2019 guidance's use of O*NET to define related duties, concluding that it risked creating ''a fox-guarding-the-henhouse situation'' whereby employers could ''effectively render . . . untipped duties 'related,' '' by ''requiring tipped employees to perform'' them, ''whether [such] duties are, in fact, related or not to their tipped duties.'' *Id.* Pointing to statements in the NPRM for the 2020 Tip final rule and the NPRM for this final rule in which the Department noted that the removal of time limits on related work could lead to a loss of earnings for tipped employees, the Court also concluded that the 2018–2019 guidance ''tramples the reasons for the dual-jobs regulation's existence and is inconsistent with the FLSA's policy of promoting fair conditions for workers.'' *Id.* at *16.

The Eleventh Circuit went on to conclude that a 20 percent limitation on the amount of related non-tipped duties that an employee can perform and still be considered a tipped employee was a reasonable interpretation of the dual jobs regulation and section 3(t) of the FLSA. *Id.* at *18. After reviewing section 3(t), the court stated ''we must construe the dual-jobs regulation to ensure that the reduced direct wage for tipped employees is available to employers only when employees are actually engaged in a tipped occupation that will allow them to earn the remainder of at least the minimum wage.'' *Id.* The court further concluded that ''[t]he plain language of [the definition of a tipped employee in 3(t)] tells us that for the employer to qualify to take the tip credit, the employee's job must, by tradition *and in reality,* be one where she consistently earns tips.'' *Id.* (emphasis added). The Court also concluded that a 20 percent threshold ''aligns with the general meaning'' of ''infrequently'' in the dual jobs regulation; noted that ''the Department

often invokes a'' 20 percent limitation in ''distinguishing substantial and nonsubstantial work in different contexts within the FLSA''; and noted that a 20 percent limitation on related duties ''is consistent with [30] years of DOL interpretation of the dual jobs regulation—through administrations of both political parties.''

A large number of district courts have also considered and declined to defer to the 2018–2019 guidance. Among other concerns, these courts have noted that the guidance: (1) Does not clearly define what it means to perform related, non-tipped duties ''contemporaneously with, or for a reasonable time immediately before or after, tipped duties,'' thus inserting ''new uncertainty and ambiguity into the analysis,'' *see, e.g., Flores* v. *HMS Host Corp.,* No. 18–3312, 2019 WL 5454647 at *6 (D. Md. Oct. 23, 2019), and companion case *Storch* v. *HMS Host Corp.,* No. 18–3322; (2) is potentially in conflict with language in 29 CFR 531.56(e) limiting the tip credit to related, non-tipped duties performed ''occasionally'' and ''part of [the] time,'' *see Belt* v. *P.F. Chang's China Bistro, Inc.,* 401 F. Supp. 3d 512, 533 (E.D. Pa. 2019); and (3) potentially ''runs contrary to the remedial purpose of the FLSA—to ensure a fair minimum wage,'' *see Berger* v. *Perry's Steakhouse of Illinois,* 430 F. Supp. 3d 397 (N.D. Ill. 2019).[3] In addition, some courts have also expressed doubts about whether it is reasonable to rely on O*NET to determine related duties. *See O'Neal,* 2020 WL 210801, at *7 (employer practices of requiring non-tipped employees to perform certain duties would then be reflected in O*NET, allowing employers to influence the definitions).[4] After declining to defer to the Department's 2018–2019 guidance, many of these district courts have, like the Eleventh Circuit, independently concluded that the 80/20 approach is reasonable, and applied a 20 percent tolerance to the cases before them.[5]

D. The 2020 Tip Final Rule

The NPRM for the 2020 Tip final rule (2019 NPRM) proposed to codify the Department's 2018–2019 guidance regarding when an employer can continue to take a tip credit for a tipped employee who performs related, non-tipped duties. *See* 84 FR 53956, 53963 (Oct. 8, 2019). Although, as noted above, multiple circuit courts had deferred to the Department's 80/20 guidance, the Department opined in its 2019 NPRM that this guidance ''was difficult for employers to administer and led to confusion, in part because employers lacked guidance to determine whether a particular non-tipped duty is 'related' to the tip-producing occupation.'' *Id.* Some employer representatives raised similar criticism in their comments on the 2019 NPRM.

The 2020 Tip final rule amended § 531.56(e) to largely reflect the Department's guidance issued in 2018 and 2019 that addressed whether and to what extent an employer can take a tip credit for a tipped employee who is performing non-tipped duties related to the tipped occupation. *See* 85 FR 86771. The 2020 Tip final rule reiterated the Department's conclusion from the 2019 NPRM that its prior 80/20 guidance was difficult to administer ''in part because the guidance did not explain how employers could determine whether a particular non-tipped duty is 'related' to the tip-producing occupation and in part because the monitoring surrounding the 80/20 approach on individual duties was onerous for employers.'' *Id.* at 86767. The 2020 Tip final rule provided, consistent with the Department's 2018–2019 guidance, that '' an employer may take a tip credit for all non-tipped duties an employee performs that meet two requirements. First, the duties must be related to the employee's tipped occupation; second, the employee must perform the related duties contemporaneously with the tip-producing activities or within a reasonable time immediately before or after the tipped activities.'' *Id.* at 86767.

Rather than using O*NET as a definitive list of related duties, the final rule adopted O*NET as a source of guidance for determining when a tipped employee's non-tipped duties are related to their tipped occupation. Under the 2020 Tip final rule, a non-tipped duty is presumed to be related to a tip-producing occupation if it is listed as a task of the tip-producing occupation in O*NET. *See id.* at 86771. The 2020 Tip final rule included a qualitative discussion of the potential economic impacts of the rule's revisions to the dual jobs regulations but ''[did] not quantify them due to lack of data and the wide range of possible responses by market actors that [could not] be predicted with specificity.'' *Id.* at 86776. The Department noted that one commenter, the Economic Policy Institute (EPI), provided a quantitative estimate of the economic impact of this portion of the rule but concluded that its estimate was not reliable. *See id.* at 86785. The 2020 Tip final rule was published with an effective date of March 1, 2021, *see id.* at 86756; however, the Department extended the effective date for this part of the rule until December 31, 2021, 86 FR 22597.

E. Legal Challenge to the 2020 Tip Final Rule

On January 19, 2021, while the 2020 Tip final rule was pending, Attorneys General from eight states and the District of Columbia (''AG Coalition'') filed a complaint in the United States District Court for the Eastern District of Pennsylvania, in which they argued that the Department violated the Administrative Procedure Act in promulgating the 2020 Tip final rule, including that portion amending the dual jobs regulations. (*Pennsylvania* complaint or *Pennsylvania* litigation).[6] The *Pennsylvania* complaint alleges that this portion of the 2020 Tip final rule is contrary to the FLSA. Specifically, the complaint alleges that the rule's elimination of the 20 percent limitation on the amount of time that tipped employees can perform related, non-tipped work contravenes the FLSA's definition of a tipped employee: An employee ''engaged in an occupation in which [they] customarily and regularly'' receive tips, 29 U.S.C. 203(t).[7] According to the complaint, ''when employees 'spend more than 20 percent

[3] *See also Roberson* v. *Tex. Roadhouse Mgmt. Corp.,* No. 19–628, 2020 WL 7265860 (W.D. Ky. Dec. 10, 2020); *Rorie* v. *WSP2,* 485 F. Supp. 3d 1037 (W.D. Ark. 2020); *Williams* v. *Bob Evans Restaurants,* No. 18–1353, 2020 WL 4692504 (W.D. Pa. Aug. 13, 2020); *Esry* v. *OTB Acquisition,* No. 18–255, 2020 WL 3269003 (E.D. Ark. June 17, 2020); *Reynolds* v. *Chesapeake & Del. Brewing Holdings,* No. 19–2184, 2020 WL 2404904 (E.D. Pa. May 12, 2020); *Sicklesmith* v. *Hershey Ent. & Resorts Co.,* 440 F. Supp. 3d 391 (M.D. Pa. 2020); *O'Neal* v. *Denn-Ohio,* No. 19–280, 2020 WL 210801 (N.D. Ohio Jan. 14, 2020); *Spencer* v. *Macado's,* 399 F. Supp. 3d 545 (W.D. Va. 2019); *Esry* v. *P.F. Chang's China Bistro,* 373 F. Supp. 3d 1205 (E.D. Ark. 2019); *Cope* v. *Let's Eat Out,* 354 F. Supp. 3d 976 (W.D. Mo. 2019).

One district court has followed the guidance. *See Shaffer* v. *Perry's Restaurants, Ltd.,* No. 16–1193, 2019 WL 2098116 (W.D. Tex. Apr. 24, 2019)

[4] District courts have also declined to defer to the 2018–19 guidance on the grounds that it did not reflect the Department's ''fair and considered judgment,'' because the Department did not provide a compelling justification for changing policies after 30 years of enforcing the 80/20 guidance. *See e.g., Williams,* 2020 WL 4692504, at *10; *O'Neal,* 2020 WL 210801, at *7; *see also* 85 FR 86771 (noting that the 2020 Tip final rule addressed this criticism by explaining through the notice-and-comment rulemaking process its reasoning for replacing the 80/20 approach with an updated related duties test).

[5] *See, e.g., Rorie,* 485 F. Supp. 3d at 1042; *Sicklesmith,* 440 F. Supp. 3d at 404–05; *Belt,* 401 F. Supp. 3d at 536–37; *Esry* v. *P.F. Chang's,* 373 F. Supp. 3d at 1211; *Berger,* 430 F. Supp. 3d at 412; *Cope,* 354 F. Supp. 3d at 987; *Spencer,* 399 F. Supp. 3d at 554; *Roberson,* 2020 WL 7265860, at *7–*8; *Williams,* 2020 WL 4692504, at *10; *Esry* v. *OTB Acquisition,* 2020 WL 3269003, at *1; *Reynolds,* 2020 WL 2404904, at *6.

[6] *See* Compl., *Pennsylvania* v. *Scalia,* No. 2:21–cv–00258 (E.D. Pa. Jan. 19, 2021).

[7] *Id.,* ¶¶ 87–89.

of their time performing untipped related work' they are no longer 'engaged in an occupation in which [they] customarily and regularly receive[] . . . tips.' '' [8]

The complaint also alleges that this portion of the 2020 Tip final rule is arbitrary and capricious for several reasons. First, the complaint alleges that the 2020 Tip final rule's new test for when an employer can continue to take a tip credit for a tipped employee who performs related, non-tipped duties relied on ''ill-defined'' terms—''contemporaneously with'' and ''a reasonable time immediately before or after tipped duties'' [9]—which some district courts have also found to be unclear when construing the 2018–2019 guidance.[10] According to the complaint, the 2020 Tip final rule failed to ''provide any guidance as to when—or whether—a worker could be deemed a dual employee during a shift or how long before or after a shift constitutes a 'reasonable time.' '' [11] The complaint also alleges that the Department failed to offer a valid justification for replacing the 80/20 guidance with a new test for when an employer can take a tip credit for related, non-tipped duties. The complaint disputes the Department's conclusion in the 2020 Tip final rule that its former 80/20 guidance was difficult to administer, noting that courts consistently applied and, in many cases, deferred to the 80/20 guidance.[12] The complaint argues that the 2020 Tip final rule's new test, in contrast, will invite ''a flood of new litigation'' due to its ''murkiness'' and its reliance on ''ill-defined'' terms.[13]

The complaint further alleges that the rule's use of O*NET to define ''related duties'' is ''itself'' arbitrary and capricious because O*NET ''seeks to describe the work world as it is, not as it should be'' and ''does not objectively evaluate whether a task is actually related to a given occupation.'' [14] According to the complaint, the use of O*NET to define related, non-tipped duties ''dramatically expand[ed] the universe of duties that can be performed by tipped workers,'' thereby authorizing employer ''conduct that has been prohibited under the FLSA for decades.'' [15] Lastly, the complaint alleges that the Department ''failed to consider or quantify the effect'' that this portion of the rule ''would have on workers and their families'' in the rule's economic analysis and ''disregarded'' the data and analysis provided by a commenter on the NPRM for the 2020 Tip final rule, the EPI.[16] The complaint claims that these asserted flaws in the Department's economic analysis are evidence of a ''lack of reasoned decision-making.'' [17]

F. Delay and Partial Withdrawal of the 2020 Tip Final Rule

On February 26, 2021, the Department delayed the effective date of the 2020 Tip final rule until April 30, 2021, to provide the Department additional opportunity to review and consider the questions of law, policy, and fact raised by the rule, as contemplated by the Regulatory Freeze Memorandum and OMB Memorandum M–21–14. *See* 86 FR 11632. On March 25, 2021, the Department proposed to further delay the effective date of three portions [18] of the 2020 Tip final rule, including the portion of the rule that amended the Department's dual jobs regulations to address the FLSA tip credit's application to tipped employees who perform tipped and non-tipped duties, until December 31, 2021. *See* 86 FR 15811. The Department received comments on the merits of the delay and on the merits of the 2020 Tip final rule itself. On April 29, 2021, the Department finalized the proposed partial delay. *See* 86 FR 22597.

Delaying the effective date of the dual jobs provision of the 2020 Tip final rule provided the Department the opportunity to consider whether § 531.56(e) of the 2020 Tip final rule accurately identifies when a tipped employee who is performing non-tipped duties is still engaged in a tipped occupation, such that an employer can continue to take a tip credit for the time the tipped employee spends on such non-tipped work, and whether the 2020 Tip final rule adequately considered the possible costs, benefits, and transfers between employers and employees related to the adoption of the standard articulated therein. It also allowed the Department to further evaluate the legal concerns with this portion of the rule that were raised in the *Pennsylvania* complaint.

G. The Department's Proposal

The Department proposed in the Dual Jobs NPRM to withdraw and repropose the portion of the 2020 Tip final rule related to the determination of when a tipped employee is employed in dual jobs. *See* 86 FR 32818. Specifically, the Department proposed to amend its regulations at § 531.56 to clarify that an employee is only *engaged in a tipped occupation* pursuant to 29 U.S.C. 203(t) when the employee performs *work that is part of the tipped occupation* and that an employer may only take a tip credit when tipped employees perform work that is part of the tipped occupation. The Department proposed to define work that is part of the tipped occupation as work that produces tips, or performs work that directly supports the *tip-producing work,* provided that the directly supporting work is not performed for a substantial amount of time. The NPRM explained that ''it is important to provide a clear limitation on the amount of non-tipped work that tipped employees perform in support of their tip-producing work, because if a tipped employee engages in a substantial amount of such non-tipped work, that work is no longer incidental to the tipped work, and thus, the employee is no longer employed in a tipped occupation.'' *See* 86 FR 32820.

The Department explained that an employee has performed work that directly supports tip-producing work for a *substantial amount of time* if that directly supporting work either (1) exceeds, in the aggregate, 20 percent of the employee's hours worked during the workweek, or (2) is performed for a continuous period of time exceeding 30 minutes. The Department further proposed that if a tipped employee spends more than 20 percent of their workweek performing directly supporting work, the employer cannot take a tip credit for any time that exceeds 20 percent of the workweek. Additionally, the Department proposed that if a tipped employee spends a continuous, or uninterrupted, period of time performing directly supporting work that exceeds 30 minutes, the employer cannot take a tip credit for the entire period of time that was spent on such directly supporting work. The Department also proposed to clarify that an employer cannot take a tip credit for any time that a tipped employee spends performing *work that is not part of the tipped occupation,* defined as any work

[8] *Id.* ¶ 87 (citing *Belt,* 401 F. Supp. 3d at 526).

[9] *Id.* ¶ 128.

[10] *See, e.g., Belt,* 401 F. Supp. 3d at 533; *Flores,* 2019 WL 5454647, at *6.

[11] Compl. ¶ 131, *Pennsylvania* (No. 2:21–cv–00258); *see also id.* ¶ 129 (''The Department never provides a precise definition of 'contemporaneous,' simply stating that it means 'during the same time as' before making the caveat that it 'does not necessarily mean that the employee must perform tipped and non-tipped duties at the exact same moment in time.' '')

[12] *See id.* ¶ 127; *see also id.* ¶ 41 (noting that many courts awarded *Auer* deference to the 80/20 guidance).

[13] *Id.* ¶¶ 127–28.

[14] *Id.* ¶ 115.

[15] *Id.* ¶¶ 114–15.

[16] *Id.* at § I(C)(i), ¶¶ 108–9.

[17] *Id.* ¶ 105.

[18] The Department withdrew the two delayed portions of the 2020 Tip final rule addressing civil money penalties and finalized changes to those portions on September 24, 2021. *See* 86 FR 52973.

that does not generate tips and does not directly support tip-producing work.

Finally, the Department proposed to amend the provisions of the Executive Order 13568 regulation, which address the hourly minimum wage paid by contractors to workers performing work on or in connection with covered Federal contracts, to reflect the proposed revisions made to § 531.56.

The 60-day comment period for the NPRM ended on August 23, 2021. The Department received over 1,860 comments from various constituencies including tipped employees, small business owners, worker advocacy groups, employer and industry associations, non-profit organizations, law firms, attorneys general, and other interested members of the public. All timely received comments may be viewed on the *regulations.gov* website, docket ID WHD–2019–0004. The Department has considered the timely submitted comments addressing the proposed changes and discusses significant comments below.

The Department also received some comments on issues that are beyond the scope of this rulemaking. These include, for example, comments suggesting that the FLSA should be amended to eliminate the tip credit or comments asking the Department to add new recordkeeping requirements. The Department does not address those issues in this final rule.

III. Final Regulatory Revisions

Having considered the comments, the Department finalizes its proposal with some modifications. The sections below respond to commenter feedback on specific aspects of the rule, and address the regulatory revisions adopted in the final rule.

A. Overview

As discussed above, the Department received over 1,860 comments on the Dual Jobs NPRM. Commenters representing employees, including the National Employment Lawyers Association (NELA), National Employment Law Project (NELP), National Women's Law Center (NWLC), the Center for Law and Social Policy (CLASP), Restaurant Opportunity Center United (ROC), Texas RioGrande Legal Aid, Community Legal Services (CLS) of Philadelphia, William E. Morris Institute for Justice, Institute for Women's Policy Research (IWPR), Women's Law Project (WLP), Fish Potter Bolaños, Leadership Conference on Civil and Human Rights, NETWORK Lobby for Catholic Social Justice, and the Economic Policy Institute (EPI), generally supported the proposal. Chairman of the Committee on Education of Labor Bobby Scott and Representatives Alma Adams, Mark Takano, Suzanne Bonamici, and Pramila Jayapal (''Scott letter''), Attorneys General from eight states and the District of Columbia (''AG Coalition''), and hundreds of tipped workers, some service industry managers and small business owners, and many other members of the public also supported the proposal. NWLC stated that it ''appreciate[d] the Department's efforts to ensure that the rules it promulgates and administers protect tipped workers' wages to the maximum extent possible in keeping with its charge to improve working conditions and to 'foster, promote, and develop the welfare of the wage earners . . . of the United States.' '' Other commenters noted that because ''the Department routinely identifies significant wage violations in industries with large concentrations of tipped workers . . . [s]trengthening protections for people working in tipped jobs should thus be a priority for the Department'' and that the proposed rule ''takes important steps to do so.''

Commenters representing employers, including the National Federation of Independent Businesses (NFIB), Restaurant Law Center and National Restaurant Association (RLC/NRA), Center for Workplace Compliance (CWC), Littler Mendelson's Workplace Policy Institute (WPI), the Florida Restaurant and Lodging Association (FRLA), Hospitality Maine, Missouri Restaurant Association (MRA), the Central Florida Compensation and Benefits Association (CFCBA), the American Hotel and Lodging Association (AHLA), the National Retail Federation and the National Council of Chain Restaurants (NRF/NCCR), Franchise Business Services (FBS), Landry's, Seyfarth Shaw, and the Chamber of Commerce, as well as many, but not all, the hundreds of individual restaurant and small business owners who commented, and Representative Gregory Murphy, however, generally urged the Department to allow the 2020 Tip final rule go into effect instead of adopting the new test proposed in the NPRM. These commenters argued that the 2020 Tip final rule ''set forth a clear, workable standard'' for employers, and that it is ''more practical to implement.'' In particular, these commenters argued that the Department's proposal would oblige employers to carefully distinguish between and monitor the time employees spend performing tip-producing work and directly supporting work, and that doing so would be impracticable and burdensome. Many commenters representing employers noted the impact of the COVID–19 pandemic on the service industry, and opposed new regulations while the pandemic is ongoing. *See* AHLA; NRA/RLC; WPI.

The Department also received many comments from individual tipped employees. Many individual commenters who worked as tipped employees stated that their employers frequently required them to perform non-tipped, directly supporting work and were paid as little as $2.13 for that time, despite being unable to earn tips while performing such work. For example, one commenter who worked as a server described an employer sending other staff home and ''hav[ing] the servers (myself included as a server) finish washing the floors [because] we, as servers, are making a fraction of what the kitchen and dishwashers get paid.'' Another individual stated ''at my job me and my fellow servers are required to clean and break down the entire restaurant . . . . This process can take hours even after the last c[u]stomer has left the building. It's quite clear that restaurants are abusing the ability to push extra labor on the ones th[e] corporation only has to pay their pocket change on.'' Likewise, ROC quoted one of their members as saying ''The sub-minimum [tipped] wage already allows owners to get away with not paying their employees and having guests make up the difference, but why does that extend to the parts of the shift where the guest isn't picking up the slack?'' CLS of Philadelphia, which provides legal assistance to low-income workers, described representing workers who were employed as bussers in a restaurant but for over half of their day they performed work for which they did not receive tips, such as cleaning the restaurant, washing dishes, and preparing food, and ''for many days, the little they received in tips did not even bring their hourly rate for their tipped work up to the minimum wage.''

In part because tipped employees can receive as little as $2.13 per hour in direct cash wages, they are among the most vulnerable workers that the Department protects. As NELP commented, ''Tipped work is precarious work; workers' take-home pay fluctuates widely depending on the seasons, the weather, the shift they are given, and the generosity of customers.'' The median hourly wages, including tips, for servers, bartenders, bussers, and bartender helpers is $12.03 or less.[19]

[19] Bureau of Labor Statistics, May 2020 National Occupational Employment and Wage Estimates, *https://www.bls.gov/oes/current/oes_nat.htm.* The

Other tipped workers earn similarly low wages.[20] Like their employers, tipped employees have also been adversely affected by the COVID–19 pandemic, *see, e.g.,* NELP, NWLC, and ROC and other commenters stated that the pandemic led to ''shifts in employer and consumer behavior'' that has led to some tipped employees being asked to perform significantly more work for which they do not receive tips, despite being paid the reduced direct cash wage.

In finalizing this rule, the Department has taken into consideration the need to ensure that workers do not receive a reduced direct cash wage when they are not engaged in a tipped occupation, as well as the practical concerns of employers. The final rule clarifies some of the definitions from the proposal in order to ensure that this rule is functional, broadly protective of tipped workers, and that the test set forth in the rule is one that employers can comply with and that the Department can administer. The Department believes that the final rule protects tipped employees by limiting the amount of non-tipped work that employers can shift to tipped workers while still relying on tips to cover their minimum wage obligations, while also providing clarity to employers to address the variable situations that arise in tipped occupations.

B. § 531.56(e)—Dual Jobs

The Department proposed that § 531.56(e) would retain the longstanding regulatory dual jobs language which provides that when an individual is employed in a tipped occupation and a non-tipped occupation, the tip credit is available only for the hours the employee spends working in the tipped occupation. The Department also proposed to make this section gender-neutral by using terms such as ''server'' and ''maintenance person.''

The Department received only one comment regarding proposed § 531.56(e), from the AG Coalition, which supported the Department's proposal to make its longstanding regulatory dual jobs language more inclusive by making it gender-neutral.[21] Accordingly, the Department finalizes the revisions to § 531.56(e) as proposed.[22]

C. Engaged in a Tipped Occupation—§ 531.56(f).

In § 531.56(f), the Department proposed that ''[a]n employee is engaged in a tipped occupation when the employee performs work that is part of the tipped occupation'' and that ''[a]n employer may only take a tip credit for work performed by a tipped employee that is part of the employee's tipped occupation.'' The Department finalizes this language as proposed.

Few commenters opined specifically on the premise that an employee must be performing the work of a tipped occupation to be engaged in a tipped occupation, and therefore as a ''tipped employee'' for whom the employer may take a tip credit. RLC/NRA asserted, however, that the Department's proposal ''furthers no legitimate statutory purpose under the FLSA'' because if ''a worker receives at least the minimum required cash wage'' plus sufficient tips to bring their hourly earnings above the minimum wage ''over the course of the workweek . . . the employee has . . . received wages in compliance with the FLSA's minimum wage.''

As explained above, Congress delegated to the Department the authority to define what it means to be ''engaged in an occupation'' in which an employee customarily and regularly receives tips within the meaning of section 3(t) of the FLSA. In turn, section 3(t) defines what it means to be a ''tipped employee'' for whom an employer may take a tip credit under section 3(m). When Congress created the tip credit provision in the 1966 amendments to the FLSA, it left the terms ''occupation'' and ''engaged in an occupation'' in section 3(t) undefined. The 1966 amendments also authorized the Secretary ''to promulgate necessary rules, regulations, or orders with regard to the amendments.'' Public Law 89–601, sec. 602, 80 Stat. at 844; *see Long Island Care at Home, Ltd.* v. *Coke,* 551 U.S. 158, 165 (2007) (interpreting effectively identical authorizing language in amendments made to the FLSA in 1974 as ''provid[ing] the Department with the power to fill . . . gaps through rules and regulations.'').

Under the Department's interpretation of section 3(t) in § 531.56(f) of the final rule, an employee must be performing the work of a tipped occupation in order to be ''engaged in'' a tipped occupation, and therefore to be a tipped employee for whom an employee may take a tip credit under FLSA section 3(m)(2)(A). The Department rejects the RLC/NRA's argument that so long as tipped employees receive enough in direct cash wages and tips to equal the Federal minimum wage, the statutory requirement has been met. This circular logic fails to acknowledge that an employer is permitted to take a tip credit only when an employee is engaged in a tipped occupation, that is, when the employee is actually performing work that is part of the tipped occupation.

Section 531.56(f) adopted in this final rule affects only whether and when an employer may take a tip credit against its minimum wage obligations for an employee performing non-tipped work. The provision does not impact long-established understandings of what occupations are and are not ''customarily and regularly'' tipped occupations. *See, e.g.,* S. Rep. No. 93–690, at 43 (Feb. 22, 1974); Field Operations Handbook (FOH) 30d04(b).

D. Defining Work That Is and Is Not Part of a Tipped Occupation—§§ 531.56(f)(1)–(3), (5)

The Department proposed to define work that is part of a tipped occupation to encompass tip-producing work and work that directly supports tip-producing work, provided that the directly supporting work is not performed for a substantial amount of time. The Department proposed to define tip-producing work broadly to mean ''[a]ny work for which employees receive tips.'' The Department proposed to define directly-supporting work—which is part of the tipped occupation so long as it is not performed for a substantial amount of time—to mean ''work that assists a tipped employee to perform the work for which the employee receives tips.'' Finally, the Department proposed to define work that is not part of the tipped occupation as that work that is neither tip-producing nor directly supporting. In the NPRM, the Department also proposed examples of each type of work.

median hourly wage, including tips, for waiters and waitresses is $11.42, while bartenders earn $12.03 and dining room and cafeteria attendants and bartender helpers earn $12.03. The Department believes that median earnings data is most appropriate because mean data is more likely to be skewed towards high earners.

[20] According to the BLS National Occupational and Employment Wage Estimates, maids and housekeeping cleaners earn $12.61 per hour; baggage porters and bellhops earn $13.00; parking attendants earn $13.02, and manicurist and pedicurists earn $13.41. *https://www.bls.gov/oes/current/oes_nat.htm.*

[21] The Department's revisions to § 531.56(e) are also consistent with general practice for Federal government publications. For example, guidance from the Office of the Federal Register advises agencies to avoid using gender-specific job titles. *See* Office of the Federal Register, Drafting Legal Documents: Principles of Clear Writing § 18 (last reviewed March 2021).

[22] As discussed below, NRA/RLC argued that ''the dual jobs concept,'' in which ''an employee performs two clearly distinct and separate jobs,'' a tipped job and a non-tipped job, ''has no relevance to the restaurant industry.'' However, it did not make any comments on the Department's proposed revisions to § 531.56(e).

1. Comments

Many commenters generally supported the Department's proposed definitions of work that is and is not part of a tipped occupation. *See* NELP; NWLC; ROC. The Scott letter stated that ''there must be a clear standard for when an employee is no longer engaged in a tipped occupation. Without such a limitation, Congress's intent to only make a tip credit available for employees engaged in a tipped occupation would be circumvented.'' The AG Coalition stated that, in defining the work that is part of a tipped occupation, the Department ''aims to establish a clearer test for employers to determine when they can take the tip credit.''

Many commenters who worked as tipped employees shared their experiences with performing a substantial amount of non-tipped work when they did not have the opportunity to receive tips during this time. These workers described being required to perform non-tipped work for substantial amounts of time, such as filling condiments and sweeping an assigned section of the restaurant for 30–45 minutes before and after the restaurant is open, rolling silverware for an hour after a long shift, or moving chairs to and from an outdoor patio for an hour before and an hour after service.

For example, one commenter described working as a server spending ''2–3 hours of my shift setting up the dining room and bar, stocking the kitchen, sweeping, washing bar dishes, doing my own prep work, and then doing it all again at the end of the night,'' and noting that ''I was not making . . . additional tips during this time.'' An individual stated that performing non-tipped, directly supporting works affects the tips that servers can receive, because they cannot provide ''a warm, welcoming experience for the guests,'' when they are ''consumed with sidework.''

NELP commented that ''[w]hile employers are required to top up tipped workers whose tips are not enough to bring them up to the full minimum wage, many employers do not maintain accurate and complete records of tips earned by their tipped employees, and require too much side work while still paying subminimum wages.'' One Fair Wage (OFW) expressed concern that employers ''simultaneously use tips to reduce their wage obligations while also requiring their workers to perform work that does not allow them to earn the tips that subsidize their wages.''

Some employee representatives emphasized that the FLSA authorizes the Department to limit the amount of non-tipped work that an employee can perform and still be considered to be engaged in a tipped occupation, and argued that it in fact authorizes stricter limits on non-tipped work than those proposed in the NPRM. *See* OFW; Fish Potter Bolaños; Network; IWPR. OFW, for instance, argued that while the Department's proposal is permitted by the FLSA, the Department has ''the power to craft a rule that is more protective for workers.'' Specifically, OFW urged the Department to require employers to pay the full minimum wage for any ''side work'' that does not generate tips. Noting that section 3(t) defines a tipped employee as an employee engaged in an occupation in which they customarily and regularly receive tips, OFW argued that a tipped employee ''must be conducting duties that generate tips'' to ''receive tips 'customarily' and 'regularly.'" OFW further noted that ''[t]he tip credit functions only by allowing tipped workers to make up the difference between the subminimum wage [the direct cash wage of at least $2.13] and the regular [full] minimum wage through earning tips from customers''; however, ''[w]hen workers are performing side work their time spent doing such work is by definition not tip-generating work.''

Fish Potter Bolaños, Network, and IWPR also argued that ''the vague definition of 'tipped occupation' in the FLSA could permit a more stringent threshold for the tasks for which an employer can pay a worker just $2.13 an hour.'' Consistent with OFW, these organizations urged the Department ''to revise its proposal to provide that an employer cannot take a tip credit for *any* time during which a tipped worker is not earnings tips''; alternatively, they asked the Department to ''consider reducing the threshold'' for non-tipped, directly supporting work ''to, for example, 5 [percent] or 10 [percent]'' of an employee's workweek.

NWLC also encouraged the Department to consider other alternatives that would clarify ''the amount of non-tipped work for which an employer can pay employees anything less than the full minimum wage.'' For example, NWLC asked the Department to amend its proposal to prohibit employers from claiming a tip credit ''for time when the employer's establishment is not open for service to customers.''

In general, commenters representing employers did not support the Department's proposed definitions of work that is and is not part of the tipped occupation. RLC/NRA and several business owners and managers who submitted similar comments argued that the Department lacks the authority to place any limits on the amount of non-tipped work that a restaurant worker may perform and still be considered to be engaged in a tipped occupation. *See, e.g.,* NRA/RLC (''the dual jobs concept simply has no relevance to the restaurant setting''). According to these commenters, the FLSA ''provides no basis for carving up a tipped restaurant job into tipped and non-tipped segments.'' Rather, ''so long as an employer assigns a tipped employee to perform the core functions of an occupation during a shift . . . that employee does not cease to be engaged in the tipped occupation by virtue of performing side work during a shift[.]'' NRA/RLC; *see also* Seyfarth Shaw.

NRA/RLC asserted that ''most tipped occupations involve a mix of tasks that directly and immediately generate tips and tasks that do not directly and immediately generate tips''; thus, ''[a] server does not cease to be a server'' based on the amount of time they spend on ''non-tipped tasks.'' Some individual restaurant owners also criticized the Department because it did not explain what non-tipped occupation a tipped employee engages in when they perform more than a substantial amount of directly supporting work.

The Department also received many comments from employers raising concerns about the practical application of the definition of work that is part of the tipped occupation, particularly when tipped employees perform work that the commenters stated would be directly supporting work according to the Department's proposal, but that is performed in the course of performing their tip-producing customer service work. Additionally, some commenters stated that tipped employees may perform work that would be considered directly supporting under the Department's proposal when they are also actively engaged in work that would be considered tip-producing. These comments, discussed in more detail in Section E, asserted the Department's proposal would oblige employers to carefully distinguish between and monitor the time employees spend performing tip-producing work and directly supporting work, and that doing so would be difficult and burdensome. *See, e.g.,* AHLA; CWC; Chamber of Commerce; Franchise Business Services; WPI; NFIB; Landry's.

As an alternative to the Department's proposal, some commenters representing employers asked that the Department eliminate the proposed

limits on directly supporting work entirely, and define work that is part of the tipped occupation to include all tip-producing and directly supporting work. *See* Chamber; NFIB. The Chamber of Commerce, for instance, asserted that ''[t]ip-supporting work is tip-supporting work, regardless of how long it occurs, and constitutes a legitimate aspect of a tipped occupation.'' Employer representatives argued that the limits on related duties in the Department's 80/20 guidance led to significant litigation for employers in the past, and that the limitations on directly supporting work in the proposal will lead to more litigation in the future. *See, e.g.,* WPI, Seyfarth.

Seyfarth Shaw and CFCBA urged the Department to create an exception from its proposed limitation on directly supporting work for employees who regularly earn tips that bring their total earnings above the Federal minimum wage. Seyfarth recommended that the Department create a presumption of compliance with the FLSA's minimum wage requirements for employees who earn at least $29.00 per hour in cash wages plus tips. CFCBA stated that employers that are required by State law to or otherwise ''guarantee to bring the tipped employees' average pay, inclusive of tips, for the week up to 25% more than Federal minimum should be exempt from this extra administrative burden'' of ensuring that they pay employees who perform as substantial amount of non-tipped, directly supporting work a direct cash wage equal to the full minimum wage.

In addition, commenters representing employers generally asserted that the Department's proposed test distinguishing between work that is and is not part of the employee's tipped occupation failed to provide clear guidance about the types of work that would fall into each definitional category and as a result would prompt significant litigation over the scope of the terms. *See, e.g.,* AHLA, Chamber, Seyfarth. For example, Seyfarth commented that the proposed rule ''lacks clear guidance defining and distinguishing [the three categories of work],'' and that ''[a]bsent clear guidance as to each category, it will be difficult to reliably structure, schedule, and supervise tipped employees' job duties to ensure that they do not run afoul of the proposed time-based limitations on the amount of 'directly supporting' work that may be performed when the tip credit is claimed.'' RLC/NRA challenged the Department's basis for distinguishing between these categories of work, and commented that WHD does not have any evidentiary support for its conclusion that certain tasks are either tip-producing, directly supporting, or not part of a tipped occupation. A number of groups representing employers, such as the Chamber of Commerce, criticized the proposed rule's test, and particularly its definitions, as being ''administratively unworkable'' and said that the uncertainty would lead to litigation over the scope of the terms used within the test. Groups such as the AG Coalition, on the other hand, commented that because the rule did not identify every tipped occupation, such as delivery drivers and baristas, employers with workers in such ''unidentified tipped occupations'' may believe that DOL's revised regulation does not apply to its employees. The AG Coalition urged the Department to preface the rule, if finalized as proposed, with a disclaimer that the regulatory list of tipped occupations and list of tasks within those occupations under each definitional category are illustrative, not exhaustive.

Commenters that opposed the proposed rule also generally preferred the 2020 rule's use of O*NET to identify duties related to a particular tipped occupation. *See* Seyfarth, CFCBA, WPI. Landry's, for example, argued that DOL should retain the 2020 rule and its use of O*NET because O*NET is a list of tipped duties compiled by surveying employees in the restaurant industry and reflects the tasks that they perform. RLC/NRA similarly argued that DOL's line-drawing between categories of work in the proposed rule was arbitrary compared to O*NET. Seyfarth noted that the 2020 Tip Rule's incorporation of O*NET offers employers an ''objective and consistent *up-front* tool for managing tip credit compliance.'' *See also* AHLA.

Landry's stated that ''[i]f the DOL finds O*NET imperfect, it should convene subject matter experts to refine those duties.'' Similarly, RLC/NRA asserted that ''[t]he Department has never undertaken a factual examination or study of the tasks performed by these occupations[.]'' Employer groups also made various suggestions for alternative ways of using O*NET. CFCBA suggested that DOL ''freeze the responsibilities [on O*NET] that the DOL currently agrees with,'' and proposed that ''[t]he list can be updated since jobs can evolve.'' The Chamber of Commerce suggested that the final rule allow employers and employees to use O*NET as a resource for determining whether work performed by an employee is part of a tipped occupation.

On the other hand, NELP and NWLC argued that the 2020 rule is problematic because it used O*NET as a tool for identifying duties related to a particular tipped occupation. Those groups argued, among other things, that O*NET improperly reflects some duties as tip-producing but for which the full minimum wage should be paid, and endorsed the decision to not use it in the proposed rule. As Texas RioGrande Legal Aid commented, ''the folly of relying on O*NET for determining related duties is graphically illustrated by O*NET's inclusion of bathroom cleaning as a task for servers. Certainly, the DOL should not promulgate rules that *incentivize* restaurants to have servers contemporaneously cleaning bathrooms and carrying food to tables.''

A few commenters challenged what they perceived as the proposed rule's specific assignment of tasks to certain definitional categories. MRA, for example, said that the proposed examples of work that fall within the various categories were ''profoundly unhelpful and internally contradictory,'' and asked ''[i]f nail technicians can clean pedicure baths between customers to avoid customer waits, why cannot servers clean tables, dishes, and glasses to avoid customers having to wait for those items[?]'' Hospitality Maine offered a variation of this argument, noting that the type of work performed by a tipped employee might depend on which *shift* they are working, such as a server toasting bread during a breakfast shift.

Several commenters representing employers, such as WPI, Seyfarth, AHLA, NRF/NCCR, Landry's, and CFCBA, included specific examples of work performed by tipped employees that they believed were not addressed by the proposed rule and in some cases asked the Department to address those scenarios in a final rule. CFCBA noted that the rule might not address evolving occupations and tasks; as CFCBA observed, tasks now performed by servers and bussers, such as verifying that a patron does not have food allergies, are somewhat new in the industry.

Also, in response to the statement in the NPRM that food preparation is not part of a server's tipped occupation but that garnishing a plate can be, commenters identified a number of basic, non-cooking tasks regularly performed by servers in the kitchen, and asked whether those tasks are sufficiently similar to garnishing plates such that they can be considered part of the tip producing work, including toasting bread to accompany prepared eggs, adding dressing to pre-made salads, scooping ice cream to add to a pre-made dessert, ladling pre-made

soup into bowls, placing coffee into the coffee pot for brewing, and assembling bread and chip baskets.

Commenters such as CFCBA, AHLA, RLC/NRA and WPI also expressed confusion about application of the definitions in specific circumstances, including how they would apply to employees such as bussers and barbacks who receive tips from other tipped employees for the customer service support that they provide to them. Hospitality Maine observed that the rule could be read to state that a busser's tip-producing activity might exclude cleaning tables, and asked ''[w]hat is a busser for if not to clean tables and reset them.'' Comments submitted by restaurant owners alleged that the proposed rule would limit employers' ability to take a tip credit for those employees who work in a supporting role because under the proposed rule all of their work would be categorized as directly supporting, rather than tip-producing. Several commenters, including WPI and AHLA, asked how employees in positions that both prepare and serve food, such as counterpersons and certain sushi chefs, would be treated under the proposed rule.

Several commenters, including some that opposed the rule, said that their concerns would be somewhat alleviated and that the Department's test would be strengthened if the Department added more examples of tasks that fall within each of the definitional categories. *See, e.g.,* Seyfarth, CWC, NWLC, Scott letter. The Chamber of Commerce, for example, commented that if the Department finalized the rule, it should broaden and make clearer the distinction between ''tipped work and tip supporting work.'' The commenters said that additional clarification of tasks that fit within each definitional category would reduce the likelihood of litigation over that issue and provide the clarity promised by the Department in the proposed rule. CWC urged the Department to include regulatory language or specific examples in the final rule showing how employers could comply in a more practical way and that would not create a significant disincentive toward use of the tip credit. Seyfarth urged the Department to provide clearer definitions and more specific examples regarding what does and does not constitute tip-producing work, and what constitutes the proposed temporally limited category of work that 'directly supports' tip-producing work, and noted that ''[w]ithout such objective guidance, each employer will, in effect, be forced inappropriately to gamble that courts will accept their interpretations and wage payments based on them.''

2. Discussion of Comments and Explanation of Final Rule Modifications

a. Work That Is Part of the Tipped Occupation—§ 531.56(f)(1).

The Department proposed in § 531.56(f) to clarify that an employer may take a tip credit only for time when the employee performs work that is part of the tipped occupation. Under the Department's proposal, an employee performs the work of their tipped occupation when they either perform work that produces tips, or perform work that directly supports the tip-producing work, provided the directly supporting work is not performed for a substantial amount of time. After careful consideration of all of the comments and the practical realities of work in tipped industries, the Department finalizes this definition as proposed.

Since 1967, the Department has recognized in its dual jobs regulation, § 531.56(e), that an employee may be employed by the same employer in both a tipped occupation and in a non-tipped occupation. A straightforward dual jobs scenario exists when an employee is hired by the same employer to perform more than one job, only one of which is in a tipped occupation—for example, when an employee is employed by the same employer to work both as a server and a maintenance person. A dual jobs scenario also exists when an employee is hired to do one job but is required to do work that is not part of that occupation—for example, when an employee is hired as a server but is required to do building maintenance.

The Department has also recognized another dual jobs scenario, which is the main focus of this rulemaking, in which an employee is hired to work in a tipped occupation but is assigned to perform non-tipped work that directly supports the tipped producing work for such a significant amount of time that the work is no longer incidental to the tipped occupation and thus, the employee is no longer engaged in the tipped occupation. From 1988 to 2018, in recognition of the fact that every tipped occupation usually includes a limited amount of related, non-tipped work, the Department interpreted § 531.56(e) to provide a tolerance whereby employers could continue to take a tip credit for a period of time when a tipped employee performed non-tipped work that was related to the tipped occupation. The Department's 80/20 guidance interpreting § 531.56(e) also recognized, however, that it was necessary to limit the amount of time that an employer could require a tipped employee to perform non-tipped work, because at some point, if a tipped employee performs too much non-tipped work, even if that work is related to the tipped occupation, the work is no longer incidental to the tipped work and thus the employee is no longer engaged in a tipped occupation. As the Department explained in legal briefs defending its 80/20 guidance, particularly where the FLSA permits employers to compensate their tipped employees as little as $2.13 an hour directly, providing protections to ensure that this reduced direct wage is only available to employers when employees are actually engaged in a tipped occupation within the meaning of section 3(t) of the statute is essential to prevent abuse.

Multiple circuit courts have deferred to the 1967 dual jobs regulation and the 80/20 guidance, upholding the Department's determination that an employee is not engaged in a tipped occupation when they perform any non-tipped work that is outside of a tipped occupation or when they perform so much non-tipped work that is typically involved in their occupation that the employee is unable to earn tips for a substantial portion of their time. *See Marsh,* 905 F.3d at 633; *Fast,* 638 F.3d at 879; *see also Rafferty,* 2021 WL 4189698 at *18 (independently affirming the reasonableness of a 20 percent limit on related non-tipped duties). The necessity of limiting employers' ability to take a tip credit to those times when an employee has an opportunity to earn tips was recently affirmed by the Eleventh Circuit, which, as noted in the Background section above, declined to defer to the Department's 2018–2019 guidance and concluded independently that a 20 percent limit on related duties was a reasonable interpretation of the dual jobs regulation and section 3(t). *See Rafferty,* 2021 WL 4189698 at *18. As the court stated, the key is ''to ensure that the reduced direct wage for tipped employees is available to employers only when employees are actually engaged in a tipped occupation'' such that they can ''earn the remainder of at least the minimum wage.'' [23] The Department therefore disagrees with commenters asserting that the FLSA

[23] Some commenters representing employers argued that a circuit split on this issue—referencing the earlier unpublished Eleventh Circuit *Pellon* decision—caused confusion for employers. *See, e.g.,* Seyfarth; Landry's. Any confusion stemming from the unpublished *Pellon* decision should be resolved by the publication of the *Rafferty* decision, which reaches the same conclusion as the Eighth and Ninth Circuits, concluding that a 20 percent limitation on related duties is a reasonable interpretation of § 531.56(e).

precludes the Department from placing limits on the amount of non-tipped work that an employee may perform and still be considered to be engaged in a tipped occupation. *See, e.g.,* NRA/RLC.[24]

As the Department stated in the NPRM, an employer may take a tip credit only for time when an employee performs work that is part of the employee's tipped occupation, because the tip credit provision allows employers to pay reduced direct cash wages based on the assumption that a worker will earn additional money from customer-provided tips. If tipped employees spend a substantial amount of time performing work in which they cannot earn tips, they have ceased to perform the work of a tipped occupation and are therefore not engaged in a tipped occupation. An employer cannot take a tip credit when a tipped employee performs work that is not part of the tipped occupation.

Accordingly, the Department declines to modify its definition of work that is part of a tipped occupation to remove any limitations on directly supporting work whatsoever. The final rule permits an employer to take a tip credit only for time spent performing directly supporting work if it is not performed for a substantial amount of time. The Department believes that this limitation on directly supporting work performed when an employee does not have the ability to earn tips is an essential backstop to prevent abuse of the tip credit.

The Department also disagrees with restaurant commenters' argument that the proposal is flawed because the Department failed to explain what non-tipped occupation tipped employees engage in when they perform a substantial amount of non-tipped, directly supporting work. When an employee performs a substantial amount of non-tipped directly supporting work, it will sometimes be clear that they have become engaged in a well-established non-tipped occupation with a distinct title. This is the case, for example, when a bellhop spends several hours of a shift cleaning the hotel lobby. In such a scenario, the employee has stepped into the occupation of a hotel janitor. Other times, an employee may have performed so much non-tipped work that they have ceased to be engaged in their tipped occupation, but a well-established non-tipped occupational title may not exist to describe the work in which they are engaged. This is the case, for example, when a server spends several hours of a shift rolling silverware. If an employer hires someone solely to roll silverware, there would not be a well-established occupational title to describe that position, but it would defy common sense to suggest that the employee is engaged in an occupation that customarily and regularly receives tips. The Department is determining when an employee is engaged in a tipped occupation and when that employee has ceased to be engaged in the tipped occupation for which they were hired, not identifying which additional occupation the employee is now performing.

Finally, the Department also declines to adopt an exception from its definition of work that is part of the tipped occupation for employers whose tipped employees' average earnings, inclusive of tips, exceed 25 percent of the minimum wage, or a broad presumption of compliance with the FLSA's requirements for highly-tipped employees.[25] The Department does not believe that the statute permits an exception from the wage payment requirements in section 3(m) for employees who earn a significant amount in tips. As noted above, an employer may take a tip credit of no more than $5.12 per hour towards its minimum wage obligation for only tipped employees, defined in section 3(t) as an employees engaged in a tipped occupation. Otherwise, employers must pay the full minimum wage of $7.25 per hour. As explained in this final rule, an employee is not engaged in a tipped occupation when they perform any work outside of a tipped occupation or a substantial amount of directly supporting work, notwithstanding the amount of tips they earn while they are engaged in a tipped occupation. Permitting employers to pay a direct wage of less than $7.25 per hour for an employee who performs work outside of their tipped occupation or performs a substantial amount of directly supporting work would thus be contrary to section 3(t) and the requirements of the FLSA. This is the case regardless of the amount of tips the employee earns when they are engaged in a tipped occupation.

At the same time, the Department also declines to amend the final rule, as requested by some commenters representing employees, to state that an employer cannot take a tip credit for *any* time during which a tipped worker is not earnings tips. As explained above, the Department has long recognized, as far back as the 1967 regulation, that a tipped occupation usually includes a limited amount of related, non-tipped work, and therefore, a tipped employee may still be engaged in a tipped occupation while performing a limited, incidental amount of such work. The Department believes that the final rule provides strong protections that prevent tipped employees from performing more than an incidental amount of non-tipped work.

Finally, the Department also declines to adopt NWLC's recommendation to define work that is part of the tipped occupation to exclude any work an employee performs ''when the employer's establishment is not open for service to customers.'' The Department declines to make such a change, but notes that, as discussed further below, because tipped employees cannot be serving customers when the establishment is not open to customers, they cannot be performing tip-producing work during that time. Therefore, if a tipped employee is performing directly supporting work when the establishment is not open to customers, the employer can only take a tip credit so long as that directly supporting work is not performed for a substantial amount of time.

b. Tip-Producing Work and Directly Supporting Work—§ 531.56(f)(2) and (3)

As explained in more detail below, the Final Rule amends the definitions of *tip producing work* and *directly supporting work* in response to the

[24] The RLC/NRA argued that ''Congress has already spoken to how the law should treat a worker's status as a tipped employee'' in a dual jobs situation, quoting the 1974 Senate Report as saying ''[W]here the employee performs a variety of different jobs, the employee's status as one who 'customarily and regularly receives tips' will be determined on the basis of the employee's activities over the entire workweek.'' *See* S. Rep. No. 93–690, at 43 (Feb. 22, 1974). However, the sentence cited by RLC/NRA addresses which employees can participate in traditional tip pools under (now) section 3(m)(2)(A), not how to determine whether an employee is engaged in a tipped occupation pursuant to section 3(t). The Ninth Circuit rejected the RLC/NRA's precise argument in *Marsh,* noting that ''the legislation accompanying the 1974 report did not make any changes to section 203(t). Further, the report expressly recognized 'the ethical question involved in crediting tips toward the minimum wage' and emphasized that tipped employees 'should have stronger protection to ensure the fair operation' of the tip credit provision. S. Rep. No. 93–690 at 42–43.'' *Marsh,* 905 F.3d at 622.

[25] Some commenters asserted that tipped workers are significantly better off than their non-tipped counterparts. *See* RLC/NRA; Chamber of Commerce; WPI. Although this may be true for some tipped workers at higher-end establishments, the Department does not believe that is the case at all establishments. The Department looked at data from the Current Population Survey and found that in 2020, the median usual weekly earnings (which includes tips) for waiters and waitresses was $514. Comparing that to non-tipped restaurant workers, the median usual weekly earnings of dishwashers was $528 and the median usual weekly earnings of cooks was $510, while chefs and head cooks earned $696. On average, waiters and waitresses do not earn more than non-tipped workers in the same establishment.

comments received to make the definitions clearer and more distinct from each other, to better explain the relationship between customer service and tip-producing work, and to provide more examples of the tasks that fall within each category of work and for additional occupations. In particular, the final rule provides that tip-producing work encompasses all aspects of the customer service for which a tipped employee receives tips. The Department believes that these amendments to the regulatory definitions to explain the relationship between customer service and tip-producing and directly supporting work, as well as the additional examples of the tasks that fall within each category of work, will assist employers and employees to make up-front determinations about the nature of the work. The Department believes that these clarifications should address many of the concerns raised by commenters representing employers about the administrability of the Department's test.

As discussed in greater detail below, the Department modifies the definition of tip-producing work to be ''any work performed by a tipped employee that provides service to customers for which the tipped employee receives tips.'' The final rule also makes clear that the Department intended tip-producing work to encompass all aspects of the service to customers for which the tipped employee receives tips. Therefore, in the proposal's example of ''waiting tables,'' the Department intended to encompass any task logically included within the scope of that tip-producing work. This would include a server serving food and drink, as well as filling water glasses for their table, verifying whether a customer has food allergies, or cleaning a spill on their customer's table. However, the Department does not agree with the assertion made by RLC/NRA that ''[a]ll tasks in a full-service restaurant . . . produce tips.'' A tipped employee must still be performing work for which he or she ''customarily and regularly receives . . . tips.'' 29 U.S.C. 203(t); *see Rafferty,* 2021 WL 4189698 at *18 (''[F]or the employer to qualify to take the tip credit, the employee's job must, by tradition and in reality, be one where she consistently earns tips.''). A server receives tips for waiting on customers' tables, not for cleaning the restaurant. The Department believes that the clarifications to the definition of tip-producing work reflect the necessary nexus between the tipped employee's tip-producing work and the service to customers that reflects that tipped employee's customary and regular work.

After considering comments, the final rule also modifies the definition *directly supporting work* to better distinguish it from tip-producing work, to reflect that this category of work is either performed in preparation of or otherwise assists the tip-producing customer service work. The Department believes that this modification, and the illustrative examples included, provide greater clarity and guidance to employers. The final rule as revised clarifies that ''tip-producing work'' includes all aspects of the work performed by a tipped employee when they are providing service to customers. ''Directly supporting work'' is either performed in preparation of or otherwise assists such tip-producing customer service work. Directly supporting work is the kind of work that is generally more foreseeable to employers and that employers are more likely to specifically assign. Thus, as explained in greater detail below in Section E, the Department believes that the clarified definitions of tip-producing and directly supporting work will address many of the commenters' concerns that it would be impossible to categorize and monitor the many variable tasks that tipped employees perform in the course of providing service to customers under the Department's proposal.

In the proposal, the Department noted that it was particularly concerned with time tipped employees spend performing tasks that do not produce tips, such that the employee was ''no longer earning tips during that time.'' *See* 86 FR 32830. Many of the comments the Department received from tipped workers echoed this concern. Thus, when a tipped employee is not performing tip-producing work, but is instead performing directly supporting work, there are limitations on the amount of time the employee can perform that work because the employee's work is not generating tips. Specifically, employees may not perform directly supporting work for more than 20 percent of the work week or 30 continuous minutes.

The dual jobs test set out in this final rule is not, as RLC/NRA and other commenters asserted, a fixed list of tip-producing and directly supporting duties, but a functional test to determine when a tipped employee is engaged in their tipped occupation because they are performing the work of the tipped occupation, and therefore the employer may take a tip credit against its minimum wage obligations. Employers and employees can determine whether an employee's activity is tip-producing by applying the definition of tip-producing work—that is, as explained below, by asking whether the task is ''work that provides service to customers for which tipped employees receive tips.'' Likewise, employers and employees can determine whether an employee's activity is directly supporting by applying the definition of directly supporting work—that is, as explained below, by asking whether the task ''is either performed in preparation of, or otherwise assists, the tip-producing customer service work.'' If a task is not tip-producing or directly supporting, then it is not part of the tipped occupation.

This functional test applies to all manner of tipped occupations, a feat that would be difficult, if not impossible, to achieve with a fixed list of duties for particular tipped occupations. Moreover, as new duties emerge, this functional test allows for better flexibility and adaptability to categorize those duties than would a fixed list of tip-producing and directly supporting duties. For example, some commenters representing both employers and employees noted that employees are receiving tips for different activities than they typically perform because of changes to restaurant's service models in response to the COVID–19 pandemic. *See* WPI (commenting that ''a more robust 'to go' business'' in restaurants ''is now part of the new normal'' and ''significant tips [are] being received from patrons for 'to go' services, even when the guest receives none of the traditional 'waiter-type' services''); *see also* AHLA; ROC. If the Department were to publish a fixed list of duties, this list could not reflect such changes as they developed; likewise there would inevitably be a delay before a general resource such as O*NET would be updated to accommodate such changes. The Department's functional test, however, means that employers and employees can apply the flexible definitions as needed if and when the landscape of tip-producing work changes. If during the COVID–19 pandemic, a server receives tips from serving customers by taking their phone orders and providing them with carry-out meals, employers can properly categorize those tasks as tip-producing. Similarly, the Department's functional test is sufficiently flexible to capture duties that might arise unexpectedly or infrequently in the course of serving customers, but are tip-producing, such as when a family checking in for vacation asks a bellhop who has carried

their luggage to their hotel room to take their photograph.

The Department appreciates the comments from employers that its dual jobs test should rely on or use O*NET as guidance to determine what work is part of and not part of, or directly supporting of, a particular tipped occupation. However, these commenters misapprehended the nature of the Department's test. As explained above, the dual jobs test set out in the final rule, including the definitional section setting out examples for each category of work for various tipped occupations, is not intended to be a substitute for O*NET's fixed list of duties that tipped employees are required by their employers to perform as part of their work. Rather, the final rule creates a functional test to measure whether a tipped employee is engaged in their tipped occupation, and uses examples to explain the application of that functional test. The Department believes that its revised test allows employers to determine the nature of their tipped employees' work prior to that work being performed, and, as explained above, is also is flexible enough to be applied to new variations on tipped work. As the NPRM noted, O*NET was not created to identify an employer's legal obligations under the FLSA. *See* 86 FR 32825. Further, as groups representing employees also pointed out, O*NET only reflects what tipped employees are required to do by their employers, not the tasks that actually make up part of their tipped occupation, and is consequently not a helpful tool to use in determining whether an employee is engaged in their tipped occupation, even if, as under the 2020 rule, it is only used as a guide. As the Eleventh Circuit noted in *Rafferty* v. *Denny's,* using O*NET to define what duties are part of a tipped occupation risks creating ''a fox-guarding-the-henhouse situation'' whereby employers, by regularly assigning certain non-tipped duties to their tipped workers, could ''effectively render'' such duties part of a tipped occupation, ''whether those duties are, in fact, related or not to their [employees'] tipped duties.'' *See* 2021 WL 4189698 at *18. In addition, unlike the Department's functional test, O*NET does not distinguish between tip-producing and directly supporting duties. For these reasons, the Department believes that its revised test is clearer and more accurate to use than the 2020 rule's dual jobs test and in particular its use of O*NET.

i. Tip-Producing Work—§ 531.56(f)(2) [26]

The NPRM proposed to define *tip-producing work* as ''[a]ny work for which tipped employees receive tips,'' and included a number of examples illustrating the application of this definition to a number of occupations. The proposed rule explained, for example, that ''[a] server's tip-producing work includes waiting tables [and] a bartender's tip-producing work includes making and serving drinks and talking to customers.'' The final rule adopts the definition of tip-producing work as proposed with slight modifications to reflect comments received on the proposed rule and to include additional examples of work that fit within that definitional category.

(a.) Comments

As explained above, the Department received a number of comments about the definition of tip-producing work, arguing that it did not provide enough clarity about the kinds of tip-producing work that are included within the occupations listed as well as other occupations that were not listed, and that it was unclear what tasks were encompassed within the examples of tip-producing work listed in the NPRM. Several commenters representing employers said that the proposed rule's references to types of tip-producing work, such as its reference to ''waiting tables'' as an example of a server's tip-producing work, were vague, and asked the Department in a final rule to set forth specific examples of tasks that are encompassed within those broad categories of work. For example, several commenters noted that the proposal's example of the tip-producing work of a server, waiting tables, was insufficiently clear. *See, e.g.,* Littler (''For example, the Proposed Rule states that 'waiting tables' by a server is tip-producing, but nowhere does it explain what is encompassed by 'waiting tables.' ''); AHLA (''DOL's categorization . . . of servers into a single duty of 'waiting tables' . . . comes with no reference or explanation''). WPI noted, for example, that tasks logically included within the scope of table service includes walking to the kitchen or bar to retrieve prepared food and drink and delivering those items to the customers; filling and refilling drink glasses; attending to customer spills or items dropped on the floor adjacent to customer tables; processing credit card and cash payments; and removing plates, glasses, silverware, or other items on the table during the meal service. NELP proposed that the Department should clarify in a final rule that ''tip producing'' work must ''be customer-facing, to ensure that workers paid a subminimum wage are truly in a position to earn tips that would bring them up to the minimum wage,'' arguing that without such a bright-line clarification, employers could continue to pay its tipped employees $2.13 an hour for work that is not tip-producing.

As noted above, commenters stated that tipped employees may perform work that would be considered directly supporting under the proposal while they are also actively engaged in work that would be considered tip-producing, and expressed concern with the difficulty of categorizing such time. *See* Landry's; WPI; Small Business Administration (SBA) Office of Advocacy. For instance, Landry's noted that bartenders may perform tasks such as cleaning bar glasses and preparing drink garnishes while they are also taking orders from customers. *See also* SBA Advocacy (referring to a bartender serving drinks while cleaning and stocking the bar area).

As also noted above, commenters asked how the definition of tip-producing work applies to tipped employees such as bussers and service bartenders, who do not receive tips directly from customers but from the tipped employees that they support, such as servers. Relatedly, commenters asked the Department to identify tip-producing work for employees such as counterpersons and certain sushi chefs who both prepare and serve food to customers.

(b.) Discussion of Comments and Final Rule Modifications

In response to the comments received, the final rule modifies the definition of *tip-producing work* to clarify that customer service is a necessary predicate to a tipped employee's receipt of tips. The final rule defines *tip-producing work* as ''any work performed by a tipped employee that provides service to customers for which the tipped employee receives tips.'' The Department believes that the final rule's reference to customer service lends additional and important clarification about the types of work that qualify as tip-producing work under this test. Also in response to comments, § 531.56(f)(2)(ii) of the final rule includes more examples of tip-producing work, including for additional occupations, to illustrate the scope and application of this regulatory term. This list of examples is illustrative only and is not exclusive. The final rule also clarifies that the types of tip-

[26] Proposed § 531.56(f)(1)(i).

producing work on the list include all aspects of the service to customers for which the tipped employee receives tips. Although the NPRM listed a number of examples of tip-producing work for several tipped occupations, commenters expressed confusion and concern about the scope of the tasks encompassed in the tip-producing work identified in the proposed rule and also asked for examples of additional tip-producing work for those and additional occupations.

With respect to the scope of the tasks that are included within the category of work identified as tip-producing, the Department notes, as it explained above, that it intended this category of work to be broadly construed to logically include all activity within that category. The final rule thus clarifies that tip-producing work ''includes all aspects of the service to customers for which the tipped employee receives tips.'' The Department agrees with commenters who proposed that the tip-producing work of ''waiting tables,'' which can also be described as ''providing table service,'' encompasses the many different tasks in which the server engages in order to provide the table service, and changes the regulatory text to clarify that a server's tip-producing work ''includes providing table service, such as taking orders, making recommendations, and serving food and drink.'' The Department also agrees with those commenters that suggested that a server's tip-producing activity of waiting tables, or providing table service, generally encompasses the activities included within the scope of that table service: Walking to the kitchen or bar to retrieve prepared food and drink and delivering those items to the customers; filling and refilling drink glasses; attending to customer spills or items dropped on the floor adjacent to customer tables; processing credit card and cash payments; and removing plates, glasses, silverware, or other items on the table during the meal service.

The Department agrees with Seyfarth's comment that in the hospitality industry, tip-producing work for servers, bartenders, and nail technicians is broader than simply serving food and drinks, or performing manicures. Thus, the Department agrees with the assessment that a bartender's tip-producing work of preparing drinks may include generally talking to the customer seated at the bar and ensuring that a patron's favorite game is shown on the bar television, a server's tip-producing work includes bringing a highchair and coloring book for an infant seated at their table, and a nail technician's tip-producing work would include helping their customer pick out a complementary shade of polish, or taking their own customer's payment. In response to comments asking how to categorize the time that a tipped employee spends performing directly supporting work when they are also actively engaged in tip-producing work, such as a bartender who organizes the bar while preparing drinks and chatting with customers, the Department notes that this rule does not limit the amount of time for which an employer may take a tip credit when a tipped employee is performing tip-producing work. Therefore, an employer may take a tip credit when a worker is performing tip-producing work even if the worker is also performing directly supporting work. This situation is in contrast to a tipped employee who performs directly supporting work while there is a lull in service, such as a server who folds napkins while waiting for her last table to pay their bill. In this situation, the server is not actively engaged in tip-producing work, and thus the time is properly categorized as directly supporting.

Moreover, as revised and described herein, the *tip-producing work* of some tipped employees would also include tasks that were identified as *directly supporting work* in the proposed rule, if those tasks are performed as part of service that the tipped employee is providing to a customer. The determination is whether the tipped employee can receive tips because they are performing that task for a customer. For example, a bartender who retrieves a particular beer from the storeroom at the request of a customer sitting at the bar, is performing tip-producing work, even though a bartender who retrieves a case of beer from the storeroom to stock the bar in preparation for serving customers, would be performing directly supporting work, as explained in the NPRM. *See* 86 FR 32829. A server adding a garnish to a plate of food in the kitchen before serving the prepared food to the customer, or wiping down a spill on a customer's table, is performing the tip-producing customer service work of serving tables. In contrast, a server assigned to clean around the beverage station is performing work in preparation of or otherwise assisting tip-producing work and thus is performing directly supporting work.

The Department's longstanding position has been and continues to be that general food preparation, including salad assembly, is not part of the tipped occupation of a server.[27] However, a server's tip-producing table service may include some work performed in the kitchen for their customer akin to garnishing plates before they are taken out of the kitchen and served, such as toasting bread to accompany prepared eggs, adding dressing to pre-made salads, scooping ice cream to add to a pre-made dessert, ladling pre-made soup, placing coffee into the coffee pot for brewing, and assembling bread and chip baskets. The Department does not consider those tasks to be ''food preparation'' that is not part of the tipped occupation of a server when they are performed as part of the customer service work for which the tipped employee receive tips. This work is distinguishable from a server being assigned to perform general food preparation work in the kitchen, such as slicing fruits and vegetables, which is not part of the tipped occupation of a server.

Commenters also asked the Department to explain in the final rule how its definitional tests applied to tipped employees such as bussers, whose tip-producing work is performed in assistance of other tipped employees' work. A busser's tip-producing work includes assisting servers with their customer service work that produces tips, such as providing table service, just as a barback's tip-producing work includes assisting bartenders with their customer work that produces tips, such as making and serving drinks. As revised, the definition of *tip-producing work* clarifies that this category applies to work, such as bussing tables, performed by tipped employees like bussers who do not directly receive tips from customers, because this work provides service to customers for which the tipped employee (*i.e.,* the busser) receives tips, even though they usually receive the tips from other tipped employees (*i.e.,* servers).[28] The tip-producing work of a busser would include, for example, resetting tables during table service in between customers, because this work is not done in preparation of the tip-producing work but *is* the busser's tip-producing work, as compared to the busser's work of setting tables, folding napkins and rolling silverware before the restaurant

[27] *See, e.g.,* 1979 Opinion Letter.

[28] Several commenters commented that the proposed rule's test was flawed because, *e.g.,* it catalogued the same work performed by a server and a busser in different definitional categories (*i.e.,* tip-producing and directly supporting). To the extent that this is true under the revised test, this categorization of tasks merely reflects the unique nature of some tipped employees' tip-producing work, such as bussers and service bartenders, who receive tips from other tipped employees such as servers because they are supporting their customer service, tip-producing work.

is open to customers, which is done in preparation of the tip-producing work of resetting tables during table service.[29] The definition of *tip-producing work* also applies to service bartenders, who are tipped by servers because they prepare drinks for servers to bring to tables and therefore perform customer service work even if their work is not customer facing.[30]

The final rule also expands the list of examples of work that would meet the definition of tip-producing work, including for additional occupations, in response to comments asking for more examples to illustrate the regulatory definition. This list of tasks that are encompassed within the tip-producing activities identified in the regulatory definition is not exhaustive and can be fact-specific. As noted above, the final rule also explains that tip-producing work, including the types of work on that list, includes all aspects of the service to customers for which the tipped employee receives tips. The final rule explains, for example, that a bartender's tip-producing work of making and serving drinks includes the customer-service work of talking to customers at the bar and, if the bar includes food service, serving food to customers. The tip-producing work of a nail technician at a nail salon includes, for example, the customer service work of performing manicures and pedicures but would also include customer service work such as assisting the patron to select the type of service, including the right shade of polish. The tip-producing work of a parking attendant includes, for example, the customer service work of parking and retrieving cars and moving cars in order to retrieve a car at the request of customers. The tip-producing work of a service bartender includes, for example, the customer service work of preparing drinks for table service. The tip-producing work of a hotel housekeeper includes, for example, the customer service work of cleaning hotel rooms. The tip-producing work of a busser includes, for example, assisting servers with their tip-producing work, such as table service, including filling water glasses, clearing dishes from tables, fetching and delivering items to and from tables, and bussing tables, including changing linens and setting tables. The tip-producing work of a hotel bellhop includes, for example, the customer service work of assisting customers with their luggage. All of this work is work that provides service to customers for which tipped employees receive tips. Also in response to comments, the final rule clarifies that the tip-producing work of a tipped employee who both prepares and serves food to customers, such as a counterperson or certain types of sushi chefs, includes all tasks that are performed in order to provide the customer service work of preparing and serving the food.

For these reasons, the Department finalizes the definition of *tip-producing work* with slight modifications and renumbers that provision as § 531.56(f)(2).

ii. Directly Supporting Work—§ 531.56(f)(3)[31]

Proposed § 531.56(f)(1)(ii) addressed work that does not itself generate tips but that supports the tip-producing work of the tipped occupation because it assists a tipped employee to perform the work for which the employee receives tips. The NPRM proposed to define this *directly supporting work* as work that is part of the tipped occupation provided it is not performed for a substantial amount of time, and defined the term as ''work that assists a tipped employee to perform the work for which an employee receives tips.'' The final rule adopts the definition of directly supporting work as proposed with slight modifications to reflect comments received on the proposed rule, clarify the scope of the definition, and to add additional examples of work that fit within that definitional category.

(a.) Comments

Chairman Bobby Scott and several other Members commented that the proposed rule's reference to ''directly supporting'' work was preferable to the ''related duties'' terminology used in previous Departmental dual jobs guidance because ''related duties'' potentially captured work that was only remotely related to the tipped occupation. As with tip-producing work, commenters criticized the proposed rule's definition of directly supporting work as unclear, and asked the Department to either abandon its new test or to make its definitions clearer and easier to use. A few commenters asked the Department to add more examples of work that fell within this definition for additional tipped occupations. MRA asked whether the proposed rule's list of directly supporting work was finite, such as, for example, whether ''slicing and pitting fruits for drinks'' is the only permissible ''side work'' for bartenders.

Commenters also asked the Department how the proposed rule applied to down time, where employees do not have any customers to serve. The CFCBA, for example, provided an example of a server who spends 15 minutes performing directly supporting work before the restaurant opens and then does no work for the next 30 minutes waiting for her first table. MRA similarly asked how the test would apply to periods of time when a tipped employee does not have a customer to serve and is ''sit[ting] or stand[ing] idle.'' *See also* SBA Advocacy (''Small restaurants commented that a typical workday there may include a wave of customers, followed by a slowdown.'').

(b.) Discussion of Comments and Final Rule Modifications

In response to comments, § 531.56(f)(3) of the final rule modifies the proposed rule's definition of *directly supporting work* to clarify the scope of work that fits within this category and adds additional examples to further illustrate the application of the definition. The final rule explains that directly supporting work is work that is part of the tipped occupation, provided it is not performed for a substantial amount of time. As revised, the final rule also explains that directly supporting work is work which is performed by a tipped employee in preparation of, or to otherwise assist tip-producing customer service work, and the examples illustrate this concept. *Directly supporting work* would include, for example, work performed by a tipped employee such as a server or busser in a restaurant before or after table service, such as rolling silverware, setting tables, and stocking the busser station, which is done in preparation of the tip-producing customer service work.

By clarifying in the final rule that the definition of tip-producing work is work that provides service to customers—including all aspects of that service—for which the tipped employee receives tips, and directly supporting work is performed in preparation for that work, it is easier to distinguish between tip-producing and directly supporting work, and it is easier for employers to keep track of work included in the 20 percent and 30-minute limits. As

[29] Further illustrating this point, a housekeeper's work of cleaning a room to get it ready for a customer is not *directly supporting work* done in preparation of the tip-producing work of cleaning hotel rooms for customers, but *is* the tip-producing work, as compared with work that directly supports the room cleaning, such as stocking the housekeeping cart.

[30] As noted above, both bussing and service bartending have long been considered to be occupations that customarily and regularly receive tips, as opposed to cooks or dishwashers, for example. *See* S. Rep. No. 93–690, at 43. This final rule does not disturb these longstanding understandings.

[31] Proposed § 531.56(f)(1)(ii).

explained above, the tip-producing work of some tipped employees may also include tasks that are identified as examples of directly supporting work when those tasks are performed as part of service that the tipped employee is providing to a customer. For example, a bartender who in the course of providing tip-producing service to customers, wipes down the surface of the bar and tables in the bar area where customers are sitting, and cleans bar glasses and implements used to make drinks for those customers, is performing tip-producing work because she is performing service to customers for which the bartender receives tips. If the bartender performs these same tasks before or after the restaurant is open, these same tasks would be directly supporting work because they are not performed as part of service to customers for which the tipped employee receives tips.

In response to comments asking how to categorize a tipped employee's down time, when the employee has started their shift and is waiting for customer service to commence but is otherwise not performing any customer service work or work in support of customer service work, the Department notes that this question is answered by the revised definitions in the final rule. In this circumstance, where the employee is not providing service to customers for which the tipped employee receives tips, that time cannot be categorized as tip-producing work under the revised definition. Because the tipped employee is available to immediately provide customer service when the customer arrives, however, the time is being spent in preparation of the customer service, and is therefore properly categorized as directly supporting work.

Also in response to comments, the final rule adds examples of directly supporting work, including for additional occupations, to illustrate the scope and application of this regulatory term. The examples illustrate tasks performed by a tipped employee that are *directly supporting work* when they are performed in preparation of or to otherwise assist the tip-producing customer service work and when they do not provide service to customers. This list is illustrative but not exhaustive.

The final rule explains, for example, that when performed in preparation of or to otherwise assist tip-producing customer service work, a server's directly supporting work includes dining room prep work, such as refilling salt and pepper shakers and ketchup bottles, rolling silverware, folding napkins, sweeping or vacuuming under tables in the dining area, and setting and bussing tables. The final rule also clarifies that a bartender's directly supporting work, when performed in preparation of or to otherwise assist tip-producing customer service work, includes work such as slicing and pitting fruit for drinks, wiping down the bar or tables in the bar area, cleaning bar glasses, arranging bottles in the bar, fetching liquor and supplies, and vacuuming under tables in the bar area. A bartender's directly supporting work, when performed in preparation of or to otherwise assist tip-producing customer service work, would also include, for example, cleaning ice coolers and bar mats, and making drink mixes and filling up dispensers with drink mixes. If a bartender works at a bar that includes food service to customers seated in the bar area, the bartender's directly supporting work would include, for example, work that is done in preparation of or otherwise assists the bartender's tip-producing work of providing table service, including the basic food preparation work identified for servers, above. A nail technician's directly supporting work includes, for example, cleaning pedicure baths between customers, cleaning and sterilizing private salon rooms between customers, and cleaning tools and the floor of the salon. The directly supporting work for a parking attendant includes, for example, cleaning the valet stand and parking area, and moving cars around the parking lot or garage to facilitate the parking of patrons' cars. The directly supporting work of a service bartender includes, for example, slicing and pitting fruit for drinks, cleaning bar glasses, arranging bottles, and fetching liquor or supplies before or after the bar is open to customers. The directly supporting work of a hotel housekeeper includes, for example, stocking the housekeeping cart. The directly supporting work of a busser includes, for example, pre- and post-table service prep work such as folding napkins and rolling silverware, stocking the busser station, and vacuuming the dining room, as well as wiping down soda machines, ice dispensers, food warmers, and other equipment in the service alley. The directly supporting work of a hotel bellhop includes, for example, rearranging the luggage storage area and maintaining clean lobbies and entrance areas of the hotel.

For these reasons, the final rule makes slight modifications to the definition of *Directly supporting work* and renumbers that provision as § 531.56(f)(3).

c. Work That Is Not Part of the Tipped Occupation—§ 531.56(f)(5) [32]

The NRPM proposed to define *work that is not part of the tipped occupation* as ''any work that does not generate tips and does not directly support tip-producing work.'' Consistent with the other revisions to the definitional section, § 531.56(f)(5) of the final rule slightly modifies the proposed rule's definition of work that is not part of the tipped occupation to also reflect its relationship to customer service. The Department also slightly modifies the definition of work that is not part of the tipped occupation to reflect the changes to the definitions of tip-producing work and directly supporting work. As finalized, the rule explains that work that is not part of the tipped occupation is any work that does not provide service to customers for which tipped employees receive tips, and does not directly support tip-producing work. The final rule also adds examples of work from additional occupations that fall within this definitional category to illustrate the scope and application of this regulatory term. As in the proposal, and consistent with longstanding Department enforcement, an employer may not take a tip credit for any time spent on work that is not part of the tipped occupation.

i. Comments

Employees and groups representing employees generally supported the NPRM, including its definition of work that is not part of the tipped occupation. As discussed above, some commenters representing employers commented that the proposed rule's definition of work that is not part of the tipped occupation was flawed because the Department lacked statutory authority to limit an employer's ability to take a tip credit for employees who are engaged in a tipped occupation irrespective of the type of work those employees are performing. Relatedly, some commenters representing employers argued that the NPRM's examples of work that is not part of the tipped occupation improperly included work that should be categorized as work that is part of the tipped occupation.

Commenters representing employers also proposed that certain tasks highlighted by the Department as work that is not part of the tipped occupation were more nuanced than the Department realized. For example, the NPRM stated that food preparation is not part of a server's tipped occupation because it is not tip-producing work and

[32] Proposed § 531.56(f)(2).

does not directly support the tip-producing work, but that garnishing a plate is directly supporting work for the tipped occupation of server. As explained above, commenters identified a number of other basic, non-cooking tasks regularly performed by servers in the kitchen as part of their customer service, such as toasting bread to accompany prepared eggs, and asked whether those tasks are sufficiently similar to garnishing plates such that they can be considered directly supporting work.

A few employer-side commenters also asked the Department to distinguish bathroom cleaning, which WPI identified as work that is *not* part of a server's tipped occupation, from the work that those commenters identified as regularly performed by servers: Monitoring bathrooms to ensure that they are tidy and stocked with supplies, and/or to consider such work to be *de minimis.* RLC/NRA objected to the Department's statement that the task of cleaning bathrooms is not related to the tipped occupation of a server, stating that ''[t]ipped employees, including servers and hosts, can and do spend time cleaning bathrooms. This does not typically mean conducting a deep clean or scrubbing toilets during a meal service, but . . . monitoring the cleanliness and readiness of the bathrooms while the restaurant is open. This can include wiping up water on the counters, picking up paper on the floors, quick mopping of the floors to address spills, or making sure that there is an adequate supply of toilet paper, paper towels, and hand soap.'' WPI opined that while it is completely reasonable that cleaning bathrooms should be compensated at the full minimum wage, the final rule should create a *de minimis* exception for servers who might clean up a spill in the restroom or pick up a piece of paper off the floor. Groups representing employees, on the other hand, commented that the proposed rule properly concluded that cleaning bathrooms is not part of a server's tip-producing work.

ii. Discussion of Comments and Final Rule Modifications

Consistent with the revisions to the definitions of tip-producing work and directly supporting work, § 531.56(f)(5) of the final rule slightly modifies the proposed rule's definition of *work that is not part of the tipped occupation* to also reflect its relationship to customer service and to reflect the changes in the final rule to a few of the other definitions. As finalized, the rule explains that work that is not part of the tipped occupation is any work that does not provide service to customers for which tipped employees receive tips, and does not directly support tip-producing work.

In response to comments, the final rule also expands upon its existing examples of work that is not part of the tipped occupation and includes additional occupations. This list is illustrative only and is not exclusive. As explained in more detail above, while the final rule states that food preparation is not part of the tipped occupation of a server, it also provides that certain types of work performed by a server in the kitchen, such as toasting bread to accompany prepared eggs, is sufficiently similar to garnishing plates such that it can be considered part of the server's tip-producing table service rather than food preparation. As revised, the final rule also explains, for example, that preparing food, including salads, and cleaning the kitchen and bathrooms, is not part of the tipped occupation of a server because that work does not provide service to customers for which those tipped employees receive tips, and does not directly support tip-producing work. The final rule's conclusion that salad preparation is food preparation and is therefore not part of the tipped occupation of a server is consistent with the Department's opinion letters providing that an employer cannot take a tip credit for any time servers spend preparing salads, a position that the Department reaffirms here. The Department appreciates the comments explaining that restaurant employers typically ask servers to monitor bathrooms for cleanliness. However, the Department's position for many years was that cleaning bathrooms is not part of the tipped occupation of a server, and it reaffirms that position here.[33] Because cleaning bathrooms is work for which the employer cannot take a tip credit against its minimum wage obligations, the Department also declines to adopt the suggestion that it create a *de minimis* exception for this limited amount of work because of concerns that such an exception would be ripe for abuse.

The final rule also provides the following examples illustrating *work that is not part of the tipped occupation* because the work does not provide service to customers for which tipped employees receive tips, and does not directly support tip-producing work. Preparing food, including salads, and cleaning bathrooms, is not part of the tipped occupation of a server. Cleaning the dining room or bathroom is not part of the tipped occupation of a bartender. Ordering supplies for the salon is not part of the tipped occupation of a nail technician. Servicing vehicles is not part of the tipped occupation of a parking attendant. Cleaning the dining room and bathrooms is not part of the tipped occupation of a service bartender. Cleaning non-residential parts of a hotel, such as the exercise room, restaurant, and meeting rooms, is not part of the tipped occupation of a hotel housekeeper. Cleaning the kitchen or bathrooms is not part of the tipped occupation of a busser. Retrieving room service trays from guest rooms is not part of the tipped occupation of a hotel bellhop.

For these reasons, the Department finalizes the definition of *Work that is not part of the tipped occupation* with slight modifications and renumbers that provision as § 531.56(f)(5).

E. Substantial Amount of Time—§ 531.56(f)(4)[34]

In the NPRM, the Department proposed to limit directly supporting work that is part of a tipped occupation to less than a substantial amount of time. The Department proposed to define *substantial amount of time* to include two categories of time. The Department proposed that an employee has performed directly supporting work for a substantial amount of time if the tipped employee's directly supporting work either (1) exceeded 20 percent of the hours worked during the employee's workweek or (2) was performed for a continuous period of time exceeding 30 minutes. Under the first prong, the Department proposed to provide a tolerance of 20 percent of an employee's workweek, such that an employer could not take a tip credit for any time spent performing directly supporting work that exceeded 20 percent of the workweek. Under the second prong, the Department proposed to establish a threshold of 30 continuous minutes of directly supporting work, such that, if an employee performed directly supporting work for a continuous, or uninterrupted period that exceeded 30 minutes, the employer could not take a tip credit for that entire continuous period of time that was spent performing the directly supporting work. As discussed in greater detail below, the Department finalizes its definition of substantial amount of time as proposed with modifications.

[33] *See, e.g.,* Br. for Department of Labor as Amicus, at 18 n.6, *Fast* v. *Applebee's Int'l, Inc.,* 638 F.3d 872 (8th Cir. 2011).

[34] Proposed § 531.56(f)(1)(iii).

1. Comments

Commenters representing employees were generally supportive of including specific time limits in the definition of substantial amount of time and supported this approach over that taken in the 2020 Tip final rule. Commenters including NELP, Fish Potter Bolaños, Community Legal Services of Philadelphia, and ROC United argued that ''bright-line rules'' such as 20 percent of a workweek or 30 continuous minutes, would make it easier to comply with and enforce limits on directly supporting work. And they emphasized that such bright lines were an improvement over the ''reasonable time'' standard in the 2020 Tip final rule, which, they argued, gave ''unscrupulous employers'' too much latitude to abuse the tip credit because the term ''reasonable time'' was not specifically defined.

In contrast, several commenters representing employers expressed opposition to specific time limits on directly supporting work, urging ''the Department to eschew the 80/20 rule (or any other mathematical formula) for determining tip credit eligibility for side work.'' *See, e.g.,* MRA. Many employers and commenters representing employers expressed concern that it would be too difficult to monitor workers' directly supporting duties to ensure they do not exceed the 20 percent tolerance or the 30-minute limit or distinguish such duties from duties outside the occupation. *See* AHLA; CWC; Landry's; Chamber. Although the NPRM did not propose a new recordkeeping requirement, these commenters maintained that employers would need to track employees' time performing various tasks in order to comply with the regulation and also to defend themselves against claims that the employer improperly took a tip credit when employees performed a substantial amount of directly supporting work. *See, e.g.,* WPI; RLC/NRA. The CWC warned that the Department's new test would require ''perpetual surveillance'' of tipped workers to determine what type of work they were performing and to track the amount of time spent performing work in each definitional category. The SBA Office of Advocacy also stated that, according to the feedback it had received from small businesses, the proposal would require employers to ''track their workers' tasks minute to minute to utilize the tip credit wage,'' which would be burdensome for small employers.[35]

In particular, many commenters representing employers and individual employers expressed concern about the difficulty of tracking time when employees perform what the commenters understood to be directly supporting activities when the employee is also providing service to customers. *See, e.g.,* WPI (commenting on the ''impracticalities'' of tracking and recording time when employees ''quickly pivot'' between tip-producing and directly supporting work, or perform such work ''contemporaneously''); RLC/NRA (stating that during a shift, a tipped employee might ''toggle[ ] dozens or hundreds of times back and forth'' between tip-producing and directly supporting activity); Landry's (stating that it is ''nearly impossible to track'' tasks when employees ''switch between them quickly throughout a shift,'' or ''possibly even perform some of the tasks simultaneously''). RLC/NRA stated, for example, that ''[i]n a span of just five minutes, a waitress may take customer orders at a table, clear dishes from a second table, bring beverages to a third table, run a tub of dirty dishes back to the kitchen, pick up and deliver the entrées to the first table, and put on a fresh pot of coffee at the beverage station, before heading back to the second table to take customer orders.'' RLC/NRA; *see also* MRA (stating that servers frequently perform ''one or more'' directly supporting tasks ''between seating customers and waiting on tables.'').

For such tasks, which ''must be performed on an immediate, time-sensitive basis,'' Seyfarth Shaw disagreed with the Department's statement in the NPRM that employers could ''adjust their business practices and staffing to reassign such duties from tipped employees to employees in non-tipped occupations,'' *see* 86 FR 32833. The NRF/NCCR asserted that because employees can complete many tasks that are interspersed with customer service in very little time—including sometimes only a ''few seconds''—it will take employers ''longer to track, quantify, and record many tasks than it would to actually do them.'' The Chamber of Commerce and other commenters representing employers asserted that employees would need to ''constantly enter their time spent on specific activities into the payroll system,'' in order to track tasks performed when the tipped employee is providing service to customers, which would disrupt workflow and productivity.

Because of these stated difficulties in tracking tasks performed during customer service, some commenters representing employers argued that the Department's proposal would compel employers to stop taking advantage of the FLSA's tip credit provision. *See e.g.,* CWC; AHLA. AHLA and other employer commenters claimed that the proposal would make it so difficult to use the tip credit as to effectively disallow it, contrary to Congressional intent. *See* AHLA (stating that the proposal ''seems to ultimately eliminate the tip credit by regulatory fiat''); Chamber (''The DOL cannot substitute its [will] for that of Congress.''); NRF (claiming that the Department's intention was to eliminate the tip credit ''through the promulgation of a regulation with which even the best intentioned employer could not possibly comply''). CWC requested that if the Department maintains time limits on directly supporting work it include ''regulatory language or specific examples showing how employers could comply in a more practical way that would not create a significant disincentive toward use of the tip credit.'' CWC also suggested that the Department ''consider borrowing concepts from other regulations interpreting the FLSA focusing on the importance of various job duties rather than focusing on the time spent performing specific tasks.''

Given concerns about tracking directly supporting work performed when the tipped employee is providing service to customers, Seyfarth Shaw urged the Department to adopt a ''safe harbor'' provision shielding employers from liability for a tip credit violation when an employee fails to promptly inform the employer that they spent a substantial amount of time on directly supporting work.

Several commenters also urged the Department to consider retaining the related duties test from the 2020 Tip final rule, which did not include bright-line quantitative limits on directly supporting work and which they asserted would be more workable for employers than the proposal. *See* AHLA; CWC; Landry's; Chamber; *see also* CFCBA (arguing that ''the average person'' would find the NPRM proposal ''more confusing'' than the 2020 Tip final rule). As noted above, under the 2020 Tip final rule, an employer could continue to take a tip credit for ''any hours'' that an employee performed

[35] As discussed below, SBA Office of Advocacy also argued that the Department underestimated the impact of its proposal on small entities and encouraged the Department to produce an Initial Regulatory Flexibility Analysis with Regulatory Alternatives.

related, non-tipped duties either ''contemporaneously'' with their tipped duties,'' or for ''a reasonable time'' immediately before or after performing the tipped duties.'' *See* 85 FR 86790. In the NPRM to this final rule, the Department explained its concern that the 2020 Tip final rule failed to provide clear definitions of either ''contemporaneously'' or ''for a reasonable time,'' leaving unresolved the boundaries on non-tipped work that is part of an employee's tipped occupation, and employers uncertain and employees unprotected as a result. 86 FR 32825. The Chamber of Commerce, however, asserted that ''[w]hile some may question whether a 'reasonableness' standard would create greater predictability, a reasonableness standard at least allows for a less microscopic analysis of records.'' WPI expressed a preference for the 2020 Tip final rule because it provided that a tipped employee could perform ''any tasks that are usually and customarily part of the tipped occupation'' and thus, ''dispensed with the need to determine which duties count as 'tip-producing' or 'related duties'.''

2. Discussion of Comments and Explanation of Final Rule Modifications

The Department has evaluated the comments it received and has decided to retain the proposed time limits on directly supporting work in its definition of substantial amount of time, with modifications. Under § 531.56(f)(4), as finalized, an employee has performed directly supporting work for a substantial amount of time if the tipped employee's directly supporting work either (1) exceeds 20 percent of the hours worked during the employee's workweek or (2) is performed for a continuous period of time exceeding 30 minutes.

The Department agrees with commenters representing employees that it is important to maintain bright-line limits on the amount of time an employer can pay an employee a cash wage of $2.13 per hour during which the employee does not have an opportunity to earn tips. The Department believes, moreover, that the modifications to this final rule resolve employers' practical concerns about complying with quantitative limits on directly supporting work. In particular, the Department clarifies in this final rule that some of the tasks that commenters representing employers may have understood as ''directly supporting'' tasks—which count toward the time limits—are tip-producing tasks when a tipped employee performs the task to serve their own customer—and do not count toward the time limits. As explained above, the final rule provides that tip-producing work encompasses all aspects of the service performed by a tipped employee for their customers, for which the tipped employee receives tips. Directly-supporting work, in contrast, is performed either in preparation of or to otherwise assist the tip-producing customer service work. As explained above, the tip-producing work of some tipped employees may also include tasks that are identified as examples of directly supporting work when those tasks are performed as part of service that the tipped employee is providing to a customer.

For example, if a server takes customer orders at a table, sets the table she is serving, brings beverages to a third table, picks up a slice of pie, adds ice cream, and delivers it to the first table, and puts on a fresh pot of coffee at the beverage station for all of her tables, before heading back to the second table to take customer orders, the server is performing tip-producing work for the entire time. Accordingly, there is no need for the server's employer to count any of this work toward the 20 percent or 30-minute limits. Likewise, if a bartender takes a customer's order and prepares them a drink, takes a second customer's order and leaves the bar area to retrieve a particular wine for the customer, returns to the bar area and wipes down the bar where customers are seated, the bartender is performing tip-producing work for the entire time and there is no need to count any of this work toward the 20 percent limit or 30-minute limit.

On the other hand, if a server folds napkins for the dinner rush after her lunch customers leave, or rolls silverware for 15 minutes at the end of the night while waiting for their last table to pay their bill, or if a bartender is assigned to stock the bar generally between serving customers (as opposed to more specifically retrieving a particular bottle of alcohol to fulfill a customer's order), such side work would be categorized as directly supporting work because this work is not being performed as part of the tipped employee's service to customers for which they receive tips. Similarly, if a server is assigned to a general task such as filling condiment containers to be completed during the breakfast shift during lulls in customer service, that would be directly supporting work since it is preparatory work and is not part of providing service to a customer for which the employee receives tips. As a result, these tasks would count against the 20 percent and 30-minute limits.

But employees do not perform such tasks on an ''immediate, time-sensitive basis,'' as they might perform tasks for their customers and for which they receive tips. *See* Seyfarth. Nor do employees need to ''quickly pivot'' or ''switch'' between such tasks while serving customers. *See* WPI; Landry's. To the contrary, as mentioned above in Section D.1, many of the commenters who are tipped workers stated that they regularly performed such tasks in scheduled blocks of time. The Department believes, therefore, that employers can assign directly supporting work so that employees do not perform this work for more than a substantial amount of time. Alternatively, employers can monitor (or even track, if the employer so chooses) such tasks with relative ease, and without needing to account for employees' duties minute-by-minute. Thus, by clarifying its definitions of tip-producing and directly supporting work, the Department believes that it has substantially alleviated employers' concerns about complying with quantitative limits on directly supporting duties.

The Department declines to eliminate the time limits on directly supporting work and retain the qualitative limits on related duties test in the 2020 Tip final rule, as several commenters representing employers suggested. As the Department noted in the proposal, and as the AG Coalition and numerous employee advocates noted in their comments, the 2020 Tip final rule failed to define the key terms ''contemporaneously'' and ''for a reasonable time immediately before or after.'' *See* 86 FR 32855. This led to confusion and also failed to provide sufficient guidelines to determine when an employee ceased to be engaged in a tipped occupation. For instance, although the Department did not specifically define the term ''reasonable time'' in the 2020 Tip final rule, it stated that the standard still provides a ''sufficiently intelligible'' basis for distinguishing between duties for which an employer could and could take a tip credit; the Department also attempted to illustrate the reasonable time principle with an example. *See* 85 FR 86768 (comparing a hotel bellhop who spends 2 hours performing related non-tipped duties after spending their first 8 hours of their shift continuously performing tipped duties with one who spends 12 minutes of every hour over a 10-hour shift performing related duties). However, commenters representing employers and employees alike interpreted the 2020 Tip final rule's

''reasonable time'' language not as a means for determining when an employee has performed so much related non-tipped duties that they may no longer be paid with a tip credit but as an authorization to employers to take a tip credit for essentially *any* related non-tipped duties. *See, e.g.,* WPI (''The December 2020 Rule dispensed with the need to determine which duties count as 'tip-producing' or 'related duties,' and provided that a tipped employee could perform any tasks that are usually and customarily part of the tipped occupation.''); NWLC (arguing that the '' 'reasonable time' language'' in the 2020 Tip final rule ''removed any meaningful temporal restriction on the non-tipped duties for which an employer may claim a tip credit.'').

The Department did not intend the 2020 Tip final rule to provide no limits at all on the amount of non-tipped duties that a tipped employee can perform and for which an employer can a tip credit. However, given that the 2020 Tip final rule did not specifically define its key terms and did not have any of the quantitative limitations on non-tipped work that the Department is adopting in this final rule, the Department believes that, under the 2020 Tip final rule, employers would have been able to require tipped employees to perform a substantial amount of non-tipped work, preventing those employees from either earning tips or in the alternative, earning the full minimum wage as the cash wage. Such an outcome is contrary to the Department's longstanding interpretation of the section 3(t) of the FLSA, affirmed by multiple circuit courts, pursuant to which an employee is no longer engaged in a tipped occupation when they perform so much non-tipped work that the employee is unable to earn tips for a substantial portion of their time. *See Rafferty,* 2021 WL 4189698 at *18; *Marsh,* 905 F.3d at 633; *Fast,* 638 F.3d at 881. The Eleventh Circuit has also suggested that, by removing quantitative limits on non-tipped duties that a tipped employee can perform, the 2020 Tip final rule is in tension with the fundamental protective purpose of the FLSA. *See Rafferty,* 2021 WL 4189698 at *16 (concluding that the 2018–2019 guidance, which the 2020 Tip final rule largely codified, ''tramples the reasons for the dual-jobs regulation's existence and is inconsistent with the FLSA's policy of promoting fair conditions for workers'' because, as the Department acknowledged in the NPRM for the 2020 Tip final rule, it could lead to a loss of earnings for tipped workers).

By replacing inadequately-defined, qualitative limits on non-tipped work (''contemporaneous'' and ''reasonable time'') with bright-line quantitative limits, this rule will ensure that employees compensated with the tip credit do not perform a substantial amount of non-tipped, directly supporting work. This rule thus accords with the Department's longstanding interpretation of section 3(t) and better effectuates the purpose of the statute. The Department agrees with commenters such as NELP, WLP, and ROC that clear, bright-line limits on the amount of directly supporting work that can be performed by a tipped employee facilitate compliance by helping make employees aware of their rights and helping make employers aware of their responsibilities. The Department also believes that bright-line limits on employers' use of the tip credit are important to protect both protect vulnerable tipped employees and well-meaning employers from unscrupulous employers that might abuse the tip credit by shifting significant amounts of non-tipped work onto tipped workers.

The Department also declines to specifically adopt the proposal by two commenters that the Department lift any ''temporal limit or cap'' on directly supporting work that is performed ''contemporaneously with customer service.'' The Department believes that clarifying its definitions of tip-producing and directly supporting work in the final rule will address the concerns animating this request.

The Department does not agree with commenters that argued that its proposal would have effectively eliminated the tip credit. The Department cannot amend the FLSA, but is tasked with enforcing it. As the Department stated in the NPRM, because employers can pay as little as $2.13 in direct cash wages, it is important to ensure that this reduced direct cash wage is only available to employers when their employees are actually engaged in a tipped occupation. However, to the extent that commenters argued that overly burdensome tracking and task-by-task monitoring would have effectively disallowed the tip credit, the Department believes that the modifications in the final rule that more clearly explain and distinguish between tip-producing and directly supporting work resolve those concerns.[36]

Likewise, the Department declines to adopt a ''safe harbor'' provision requiring employees to promptly notify their employers that they have spent a substantial amount of time on directly supporting work or forfeit their right to be paid a cash wage equal to the full minimum when they are no longer engaged in a tipped occupation. Such a policy would improperly place the burden for compliance with employer's minimum wage obligations on employees, and is inconsistent with the FLSA. *See, e.g., Barrentine* v. *Arkansas-Best Freight Sys.,* 450 U.S. 728, 740 (1981) (quoting *Brooklyn Savings Bank* v. *O'Neil,* 324 U.S. 697, 707 (1945)) (''FLSA rights cannot be . . . waived because this would 'nullify the purposes' of the statute and thwart the legislative policies it was designed to effectuate.''). Moreover, the Department believes that the concerns motivating this request from commenters representing employers—namely, the difficulty of tracking tasks performed while tipped employees are serving customers—are ameliorated by the modifications the Department made described above.

a. 20 Percent of the Workweek—§ 531.56(f)(4)(i)

Multiple commenters representing employees supported the Department's proposal to apply a 20 percent workweek tolerance to non-tipped, directly supporting work. *See, e.g.,* IWPR; ROC; WLP (describing it as a ''crucial limit'' when employers are paid a direct cash wage as low as $2.13 an hour). In addition, the Scott letter stated that 20 percent of the workweek was ''a reasonable standard for restricting the use of the tip credit.'' Other commenters representing employees, however, urged the Department to reduce the tolerance to five or 10 percent, arguing that the FLSA permits ''a more stringent threshold for the tasks for which an employer can pay a worker just $2.13 an hour.'' *See, e.g.,* Network; CLASP. NWLC asked the Department to consider the relative share of tipped and non-tipped duties ''on a per-shift, rather than per-workweek, basis'' or to prohibit an employer from taking a tip credit on any day in which the employee spends more than 20 percent of their time in a non-tipped occupation. On the other hand, the RLC/NRA and some individual restaurant employers argued

[36] The Department also disagrees with those commenters representing employers who suggested that the proposal is in tension with *Encino Motorcars, LLC* v. *Navarro,* which provides that the FLSA's exemptions should be given a fair, rather than narrow, reading. 138 S.Ct. 1134, 1142 (2018). *See* AHLA; WPI. The tip credit is not an exemption to the minimum wage and *Encino* does not disturb circuit court precedent affirming that it is within the Department's broad delegated authority to define when an employee is engaged in a tipped occupation based on an analysis of the employee's duties, as it has done here. *See Applebee's,* 638 F.3d at 876, 879; *Marsh,* 905 F.3d at 623.

that ''circumstances may dictate that tipped employees spend more than 20'' percent of the workweek on directly supporting work because ''[c]ustomer flow is often unpredictable in full-service restaurants.'' The Chamber of Commerce urged the Department to increase the tolerance for directly supporting work beyond 20 percent, arguing that this would reduce litigation and costs by ''avoiding arguments over the specifics of tasks that were performed during extremely small amounts of time.''

In addition, some commenters asked for further clarification about how to calculate when directly supporting work has exceeded 20 percent of the workweek. *See* CFCBA. WPI asked the Department to clarify whether the ''hours worked during the workweek'' refers ''only to the hours worked as a tipped employee,'' or whether it would include, for example, ''any hours worked as a cook or in another non-tipped position.''

After considering the comments, the Department finalizes the 20 percent workweek tolerance for identifying a substantial amount of directly supporting work. The Department continues to believe that a 20 percent tolerance appropriately approximates the point in a given workweek at which an employee's aggregate non-tipped, directly supporting work is no longer incidental to the employee's tip producing work, and thus, the employee is no longer engaged in a tipped occupation. The 20 percent tolerance is consistent with the Department's longstanding guidance prior to 2018, the reasonableness of which both the Ninth and Eighth Circuit Courts of Appeal have upheld. *See Marsh* v. *J. Alexander's,* 905 F.3d 610, 625 (9th Cir. 2018) (en banc) (''The DOL's interpretation is consistent with nearly four decades of interpretive guidance and with the statute and the regulation itself.''); *Fast* v. *Applebee's Int'l,* 638 F.3d 872, 881 (8th Cir. 2011) (describing the 20 percent tolerance as ''reasonable.'') In addition, even after the Department rescinded the 80/20 guidance in 2018, multiple Federal courts have independently determined that a 20 percent tolerance is reasonable, and applied a 20 percent tolerance to the case before them. *See, e.g., Rafferty,* 2021 WL 4189698 at *18. A 20 percent limitation is also consistent with various other FLSA provisions, interpretations, and enforcement positions setting a 20 percent tolerance for work that is incidental to but distinct from the type of work to which an exemption applies.[37]

For these reasons, the Department declines to increase the limit on directly supporting work beyond 20 percent as requested by some commenters representing employers. First, the Department believes that by clarifying its definitions of tip-producing and directly supporting work, it has substantially alleviated employers' concerns about complying with quantitative limits on directly supporting duties. Furthermore, 20 percent of an employee's workweek is already a significant amount of time: Equal to a full 8-hour workday in a 5-day, 40-hour workweek. At the same time, although the Department does not disagree with commenters representing employees that the FLSA would permit the Department to adopt a lower tolerance, the Department declines to do so because the 20 percent workweek tolerance, particularly when combined with the 30-minute limit, protects workers from abuse. The Department also declines to apply the 20 percent limit on daily or per-shift basis as suggested by NWLC, because the proposal is more consistent with longstanding FLSA enforcement.

Once an employee spends more than 20 percent of the workweek on directly supporting work, the employer cannot take a tip credit for any additional time spent on directly supporting work in that workweek and must pay a direct cash wage equal to the full minimum wage for that time. As the Department noted in the NPRM, work paid at the full minimum wage would not count towards the 20 percent workweek tolerance. *See* 86 FR 32830. The final rule now states this expressly.

In response to commenters' requests for guidance on how to determine the workweek for the purposes of calculating the 20 percent tolerance, the final rule clarifies that the 20 percent workweek tolerance is calculated by determining 20 percent of the hours in the workweek for which the employer has taken a tip credit. Thus, when an employee is employed in dual jobs pursuant to § 531.56(e), such as being employed as both a hotel janitor—for which she receives a direct cash wage equal to the full minimum wage—and a bellhop—for which her employer takes a tip credit for all hours—the employee's hours as a hotel janitor would not be included in calculating the 20 percent tolerance for non-tipped directly supporting work. If the employee works in each role for 20 hours a week, for example, the employee could perform up to 4 hours (20 hours × 0.20 = 4 hours) of directly supporting work as a bellhop without exceeding the 20 percent tolerance. Likewise, as explained further below, any time paid at the full minimum wage because it exceeds the 30-minute tolerance would also be excluded from the workweek before calculating the 20 percent tolerance for non-tipped directly supporting work.

Calculation of 20 percent is made by subtracting the hours in that workweek for which an employer does not take a tip credit, either because the employee is engaged in a non-tipped occupation, the employer decides not to take the tip credit for those hours, or because, as explained below, those hours exceed the 30-minute threshold. Any time that is compensated at the full minimum wage because it exceeds the 20 percent limit, however, is not excluded from the workweek in calculating the 20 percent tolerance. The employer only has to calculate the 20 percent tolerance once during the workweek.

To further illustrate these concepts, the Department provides the following examples:

Example 1. A server is employed for 40 hours a week and performs 5 hours of work that is not part of the tipped occupation, such as cleaning the kitchen, for which the server is paid a direct cash wage at the full minimum wage. The server also performs 18 minutes of non-tipped directly supporting work twice a day, for a total of three hours a week. The employer may take a tip credit for all of the time the employee spends performing directly supporting work, because this time does not exceed 20 percent of the workweek. Because this employee has been paid the full minimum wage for a total of five hours a week, the employee could perform up to seven hours of directly supporting work (35 hours × 20 percent = 7 hours) without exceeding the 20 percent tolerance.

Example 2. A server is employed for 40 hours a week and performs 5 hours of work that is not part of the tipped occupation, such as cleaning the kitchen, for which the server is paid a

[37] *See, e.g.,* 29 U.S.C. 213(c)(6) (permitting 17-year-olds to drive under certain conditions, including that the driving be ''occasional and incidental,'' and defining ''occasional and incidental'' to, inter alia, mean ''no more than 20 percent of an employee's worktime in any workweek''); 29 CFR 786.100, 786.150, 786.1, 786.200 (nonexempt work for switchboard operators, rail or air carriers, and drivers in the taxicab business will be considered ''substantial if it occupies more than 20 percent of the time worked by the employee during the workweek''); 29 CFR 552.6(b) (defining ''companionship services'' that are exempt from FLSA requirements to include ''care'' only if such ''care . . . does not exceed 20 percent of the total hours worked per person and per workweek'').

direct cash wage at the full minimum wage. The server also performs 10 hours a week of non-tipped directly supporting work, in increments of time that do not exceed 30 minutes. The 5 hours of work paid at the minimum wage is excluded from the workweek for purposes of the 20 percent calculation. Therefore, the employer may take a tip credit for 7 hours of the directly supporting work (35 hours × 20 percent = 7 hours), but must pay the server a direct cash wage equal to the minimum wage for the remaining three hours.

Accordingly, § 531.56(f)(4)(i) of the final rule provides that an employer can only take a tip credit for directly supporting work for up to 20 percent of the hours in an employee's tipped workweek. When an employee performs non-tipped directly supporting work for more than 20 percent of those workweek hours, the employee has performed that work for a substantial amount of time, and is no longer performing work that is part of their tipped occupation. If a tipped employee spends more than 20 percent of those workweek hours on directly supporting work, the employer cannot take a tip credit for any time that exceeds 20 percent of the hours.

b. 30 Minutes—§ 531.56(f)(4)(ii)

In addition to the 20 percent limitation, the Department proposed to define a ''substantial amount of time'' to include any continuous, or uninterrupted, period of time exceeding 30 minutes. The Department explained that the 30-minute limitation on non-tipped, directly supporting work ''is premised on the concept that the work is being performed for such a significant, continuous period of time that the tipped employee's work is no longer being done in support of their tip-producing work,'' and therefore the employee is no longer performing work that is part of the tipped occupation. *See* 82 FR 32830.

Under the proposal, if an employee spent a continuous, or uninterrupted, period of time performing directly supporting work that exceeds 30 minutes, the employer could not take a tip credit for that entire period of time. The Department finalizes its proposal to treat a period of continuous non-tipped work exceeding 30 minutes as ''substantial,'' with one modification. Under the final rule, an employer may no longer take a tip credit once an employee has performed more than 30 minutes of continuous non-tipped work. However, the final rule provides a tolerance for the first 30 minutes of non-tipped, directly supporting work, and the employer may take a tip credit for this time that does not exceed 30 minutes, subject also to the 20 percent workweek limit.

The Department received several comments on its proposal to add a 30-minute limit on the amount of uninterrupted, non-tipped directly supporting work that an employee can perform in a continuous block of time and still be paid with a tip credit. Many commenters supported this definition of a ''substantial amount of time.'' Commenters representing employees' interests supported the proposal because ''bright-line rules'' such as the 30-minute limit ''enhance clarity and compliance with minimum wage and overtime rules.'' *See, e.g.,* NELP, ROC, Network, CLS of Philadelphia, CLASP, NELA. Chairman Bobby Scott and other members of the House Committee on Education and Labor stated that the 30-minute limitation is needed ''to ensure employers are not paying employees the tipped subminimum wage for an hour of work in which the employee has limited or no opportunity to actually earn tips.''

NWLC stated that performing 30 continuous minutes of non-tipped, directly supporting work is a ''reasonable'' indication that a tipped employee is no longer engaged in a tipped occupation. NWLC also stated that it ''appropriately closes [the] loophole'' under which a restaurant server could ''spend three hours of a six-hour shift cleaning tables, rolling silver, and performing other such side work for just $2.13 an hour, so long as their remaining shifts in the week included enough tipped duties to fall below the 20 percent threshold.'' EPI stated that a 30-minute limit would provide ''protections for tipped workers' earnings.'' Some commenters who supported the proposal, however, also suggested that the Department consider a shorter threshold for non-tipped, directly supporting work, such as 20 minutes. *See* NELP, NWLC.

Many individual commenters who worked as tipped employees stated that their employers frequently scheduled them to perform long continuous blocks of uninterrupted non-tipped work. These tipped workers noted that their employers often scheduled them to perform directly supporting work for periods of an hour or longer both before and after their establishment was open to customers. For example, one commenter stated, ''I have spent years working in restaurants and bars where my 'side work' amounted to hours every shift of scheduled labor when the restaurant or bar was closed. This means I might spend 3 hours of a 6 hour shift cutting fruit, juicing, setting up the bar, deep cleaning, sweeping, all while the bar is closed and doors are locked, meaning I have zero potential to make tips.'' Another commenter described spending ''hours doing tasks . . . that were not customer-facing. There have been so many times where I was doing tasks that workers who do make a full wage should have been doing, but instead it was cheaper to have the tipped workers such as myself do.''

Other commenters opposed the proposal. RLC/NRA argued that ''there is no factual basis'' for the Department's proposal, and that ''there is no industry norm suggesting that . . . 30 minutes is a hard cap . . . such that side work performed beyond those levels is outside the standards for tipped occupations.'' The MRA stated that the Department had ''provide[d] no justification'' for the 30-minute limitation, but nevertheless acknowledged that ''[i]t is common in the restaurant industry for servers to assist in 'opening' the store before customers arrive; which often involves 30 minutes or more of non-tip-generating work.''

Several commenters representing employers argued that it would be burdensome for employers to implement a 30-minute threshold. *See* Seyfarth Shaw (30-minute limitation ''would impose immense compliance challenges''); CFCBA (stating that [t]his new concern of monitoring 30-minute blocks of time for multiple servers is a burden''); MRA (describing the threshold as ''a new and exceptionally burdensome limitation'' that will require employers to ''police'' employees); Landry's. These employers expressed particular concern about the Department's proposal to prohibit employers from paying a reduced direct cash wage for an entire block of work once the block of work exceeds 30 minutes. Landry's, for example, noted that if an employee ''performs non-tipped work for 29 minutes . . . the employer has not violated the law, however, if for some reason the tasks take 31 minutes, now the pay rate must change for the prior half-an-hour,'' or else the employer will be liable, even if it was unaware that the employee had worked the extra 2 minutes. Seyfarth Shaw asserted that ''[o]ver time, and multiplied by hundreds of employees,'' such ''inadvertent violations'' of the 30-minute tolerance ''by just a minute or two'' might ''yield substantial liability.''

After considering all the comments, the Department finalizes the proposal for a 30-minute limit on periods of continuous non-tipped directly supporting work, with the modification described above. When an employer assigns an employee to perform non-tipped duties continuously for a

substantial period of time, such as more than 30 minutes, the employee's non-tipped duties are not being performed in support of the tipped work, and the employee is no longer earning tips during that time. The employee thus ceases to be performing the work of a tipped occupation, and their employer therefore must pay a direct cash wage equal to the full Federal minimum wage for the time that exceeds 30 minutes. This will both prevent employers from using tipped employees, whom the employer pays as little as $2.13 an hour, to perform substantial periods of non-tipped work, and the displacement of employees who normally perform this non-tipped work as part of their non-tipped occupation and who must be paid a higher direct cash wage, as the individual commenters above described. This also addresses concerns, which the Department identified in the 2020 Tip final rule, and reiterated in the NPRM, that the 20 percent limit alone does not adequately address the scenario where an employee performs non-tipped, directly supporting work for an extended period of time, but this work does not exceed 20 percent of their workweek. *See* 85 FR 86769; 86 FR 32830. Without some limitation on continuous blocks of non-tipped work, an employer could require a tipped employee to spend an entire 8-hour shift—20 percent of a 40-hour workweek—performing non-tipped, directly supporting tasks and no tip-producing work, and still pay the employee a reduced direct cash wage for the entire shift. The 2020 Tip final rule provided an example of a bellhop who performed tipped duties for 8 hours, and worked for an additional 2 hours ''cleaning, organizing, and maintaining bag carts.'' The Department noted that under the 80/20 guidance, the employer could potentially take a tip credit for the entire 2-hour block of time, even though the bellhop was ''engaged in a tipped occupation (bellhop) for 8 hours and a non-tipped occupation (cleaner) for 2 hours.'' *Id.* The final rule addresses this concern by requiring employers to pay employees the full cash minimum wage whenever they perform non-tipped directly supporting work for a continuous block of time that exceeds 30 minutes.

The Department believes that 30 minutes is a reasonable limitation to set, and agrees with the commenters that stated that bright-line rules such as this help both employers and employees with compliance. Many individual commenters who worked as tipped employees, as well as the MRA, acknowledged that tipped employees are frequently required to perform non-tipped work for blocks of time 30 minutes or longer. Thirty minutes is a substantial period of time for a tipped employee to spend exclusively performing non-tipped, directly supporting work. In the context of bona fide meal periods, *see* 29 CFR 785.19(a), the Department has previously recognized that 30 minutes is a discrete and significant block of time that can be set apart from the work around it. Similarly to a meal period, moreover, a 30-minute uninterrupted block of time during which an employee continuously performs non-tipped work can be readily distinguished from the work that surrounds it. Because the Department believes that 30 minutes is reasonable, substantial, and provides an important protection for tipped employees, the Department declines to remove the limitation, as some commenters representing employers requested. The Department also declines to shorten the limit to 20 minutes, as some commenters representing employees requested.

At the same time, the Department acknowledges commenter's concerns that employers may find it challenging to comply with the Department's proposal to prohibit them from taking a tip credit for the entire block of time spent on non-tipped, directly supporting work, once that block of time reaches 31 minutes. In light of these concerns, the Department has decided to provide for a tolerance for the first 30 minutes of non-tipped, directly supporting work. When an employee performs non-tipped, directly supporting work for up to 30 minutes, the employer can take a tip credit for that time, subject to the 20 percent workweek limit. This modification aligns the 30-minute limit with the 20 percent limit, which similarly provides a tolerance allowing an employer to pay a reduced direct cash wage for non-tipped, directly supporting work, up to 20 percent of the workweek. This uniform application will make it easier for employers to comply with both limits, and providing a tolerance for the first 30 minutes of directly supporting work should alleviate any need employers might feel to ''police'' their employees' work on a minute-by-minute basis. *See* MRA.

Under the final rule, employers must begin to pay a direct cash wage equal to the full minimum wage whenever an employee performs more than 30 minutes of uninterrupted non-tipped work, or whenever periods of continuous non-tipped work, along with other non-tipped directly supporting work in the aggregate, exceed 20 percent of the tipped workweek. The employer may, however, take a tip credit for the first 30 continuous minutes of work, although that work would count toward the 20 percent workweek tolerance. For example, if a tipped employee is required to perform directly supporting work continuously for two hours after the establishment is closed to customers, the employer may take a tip credit for the first 30 minutes, but must pay the full Federal minimum wage for the remaining hour and a half. The first 30 minutes of directly supporting work, for which the employer took a tip credit, would count toward the 20 percent workweek limit.

Although there is no recordkeeping requirement, some employers may choose to track periods of uninterrupted non-tipped work to ensure compliance. The Department believes that such tracking will be manageable, especially in light of the tolerance provided in the final rule, and given that the Department has clarified in the final rule that tip producing work is defined broadly to include all aspects of the work that a tipped employee performs that provides service to customers and for which the employee receives tips. Indeed, uninterrupted blocks of time of 30 minutes or more during which employees perform non-tipped directly supporting work are likely to be scheduled or foreseeable to employers, such as when tipped employees are asked to arrive early to set up, stay late to close up after customers have left, as described by many individual commenters, or during slow periods with no or few customers. *See* Landry's (noting that 30 minutes of directly supporting work performed during ''pre or post shift . . . could be tracked more readily and paid minimum wage'').

The AG Coalition asked the Department to ''clarify that 'continuous period of time' means more than 30 minutes per hour rather than 30 consecutive minutes.'' The Department also declines to do so. The final rule is clear that the 30-minute limit for non-tipped, directly supporting work only applies to continuous blocks of uninterrupted time spent performing those duties, during which time the employee has no ability to earn tips. Directly supporting work performed for shorter amounts of time is counted toward the 20 percent tolerance.

In response to commenters' requests for further explanation about the interaction between the 30-minute limitation and the 20 percent tolerance, the final rule expressly states that time for which an employer does not take a tip credit because the employee has performed non-tipped work for more

than 30 minutes is excluded from the workweek used to calculate the 20 percent tolerance. To illustrate, the Department provides an example of a tipped employee who works five eight-hour shifts (40 hours a week) and who is required to perform one continuous hour of directly supporting work at the beginning and end of each shift. The employee must be paid a direct cash wage of the full minimum wage after the first 30 minutes of each hour. A total of five hours a week (30 minutes * 2 blocks * 5 shifts) is excluded from the total hours worked for the purposes of calculating 20 percent, because the employee has been paid the full minimum wage for that time. Therefore, the employee may perform 7 hours of directly supporting work (35 hours * 20 percent = 7 hours) without exceeding the 20 percent tolerance. Because in this scenario the employee has already performed 5 hours of directly supporting work for which the employer has taken a tip credit (the first 30 minutes of each one-hour block), this employee may perform an additional two hours of directly supporting work (in increments of 30 minutes or less) before she exceeds the 20 percent tolerance.[38]

While TRLA raised concerns that the 30-minute limit ''may incentivize restaurant employers to schedule tipped servers for a . . . half-hour period of cleaning the restaurant at the end of their shift,'' as the Department noted in the NPRM, *see* 82 FR 32830, employers were already able to do so under both the 2018–19 guidance and the previous 80/20 guidance. The 30-minute limit instead provides a new protection for tipped employees, meaning they cannot be required to perform such non-tipped, directly supporting work for more than 30 consecutive minutes while only earning as little as $2.13 an hour.

Therefore, when tipped employees are required to perform non-tipped work for a substantial amount of time, such as 30 or more consecutive minutes, such work is no longer supporting the employee's tip-producing work, and they are no longer engaged in a tipped occupation. Accordingly, § 531.56(f)(4)(ii) of the final rule provides that an employee has performed directly supporting work for a substantial amount of time when the directly supporting work exceeds 30 minutes for any continuous period of time. If a tipped employee performs directly supporting work for a continuous period of time that exceeds 30 minutes, the employer must begin to pay the employee a direct cash wage equal to the full Federal minimum wage. The final rule also clarifies, as noted above, that time in excess of 30 minutes, which is paid at the full minimum wage, is excluded from the hours worked in the workweek before calculating the 20 percent tolerance.

F. § 10.28(b)

The Department also proposed to amend the provisions of the Executive Order 13658 regulations, which address the hourly minimum wage paid by contractors to workers performing work on or in connection with covered Federal contracts. *See* E.O. 13658, 79 FR 9851 (Feb. 12, 2014). The Executive Order also established a tip credit for workers covered by the Order who are tipped employees pursuant to section 3(t) of the FLSA. The Department proposed to amend § 10.28(b) consistent with its proposed revisions to § 531.56(e) and (f). The Department received no comments specifically addressing proposed § 10.28(b) and therefore finalizes it with amendments consistent to those made to § 531.56(e) and (f).

G. Withdrawal of the Dual Jobs Provisions of the 2020 Final Rule

In proposing to revise §§ 531.56(e) and 10.28(b) and add a new § 531.56(f), the Department also proposed to withdraw the dual jobs portion of the 2020 Tip final rule, the effective date of which the Department has delayed until December 31, 2021. 86 FR 32818. The Chamber of Commerce alleged that the Department's ''withdrawal of the dual jobs provision in the 2020 Tip Final Rule is procedurally flawed.'' According to the Chamber of Commerce, the Department ''arbitrarily halted the effective date of'' the dual jobs portion of the 2020 Tip final rule ''simply because the administration has different policy preferences'' and the Department should have ''let the rule go into effect and then gather data on its impact and effectiveness'' rather than undertaking further rulemaking ''without any evidence of a problem.'' As noted above, several commenters representing employers also urged the Department to retain the dual jobs portion of the 2020 Tip final rule rather than finalizing the proposed revisions to §§ 531.56(e) and (f) and 10.28. *See* AHLA; CWC; Landry's; Chamber of Commerce; NRA.

Given its concern with the Department's decision to delay the effective date of the dual jobs portion of the 2020 Tip final rule, it is unclear if the Chamber of Commerce's comment is directed towards the Department's final rule delaying the effective date of the 2020 Tip final rule's dual jobs revisions to December 31, 2021, 86 FR 22597 (April 30, 2021), or its proposal to withdraw these revisions. To the extent the Chamber's comment is regarding the delay, it is outside of the scope of this rulemaking. With respect to the proposed withdrawal of the 2020 dual jobs revisions, the Department has determined, for the reasons stated above, that revisions to § 531.56(e) and (f) (and § 10.28) are necessary in order to ensure that there are protections for tipped employees and limitations on the amount of non-tipped work that employers can shift to tipped workers while still relying on tips to cover their minimum wage obligations. And, as explained above, the Department has made revisions to its proposal to take into consideration the practical concerns raised by employers in their comments. Withdrawal of the 2020 Tip final rule's revisions to § 531.56(e) and § 10.28(b) is necessary in order to finalize this rule's changes to §§ 531.56(e) and (f) and 10.28. Accordingly, the Department finalizes its withdrawal of the dual jobs portion of the 2020 Tip final rule.

H. Effective Date

Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act or CRA) requires agencies to publish major rules[39] in the **Federal Register** 60 days before they take effect. *See* 5 U.S.C. 801(a)(3)(A); *see also* 5 U.S.C. 553(d) (Administrative Procedure Act requires a 30-day delay between publication and the effective date of a substantive rule). Some commenters representing employers stated that given the impact of the COVID–19 pandemic on industries with large numbers of tipped workers, the Department should consider further delaying the effective date of any new regulations or postponing its rulemaking. *See* AHLA; Seyfarth; Chamber. The Chamber of Commerce recommended that the Department ''[r]efrain from issuing a Final Rule until the pandemic has passed'' or to ''[p]rovide a six-month to twelve-month window between the publication date and the effective date

[38] If this employee ultimately performs more than two additional hours on directly supporting work (in increments of time that do not exceed 30 minutes), those additional hours are not excluded in calculating the 20 percent tolerance. This is because, as explained above in section E.2.a, any time that is compensated at the full minimum wage solely because it exceeds the 20 percent limit is not excluded from the workweek for the purposes of calculating the 20 percent tolerance.

[39] Under the CRA, a major rule includes any rule that the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget finds is likely to have an annual impact on the economy of $100 million or more. 5 U.S.C. 804(2). OIRA has found that this rule is a major rule.

of any Final Rule.'' [40] Seyfarth Shaw recommended that the Department delay implementation of the proposal ''until at least 180 days after the declared end of the COVID–19 pandemic.'' AHLA urged the Department to ''reconsider its Proposed Rule'' after the end of the pandemic ''or otherwise return to'' the 2020 Tip final rule.

These commenters asserted that due to pandemic-related struggles and uncertainty in the restaurant and hospitality industry, employers would have difficulty bearing any additional management associated with this rule or any increased labor costs due to limits on their ability to take a tip credit for work that does not generate tips. *See, e.g.,* Chamber. Commenters also alleged that industries with many tipped employees are experiencing a labor shortage, which would make compliance with the proposal difficult. *See* Seyfarth (alleging that due to a labor shortage, it would be impossible for employers ''to hire additional workers to ensure compliance with a more stringent tip credit''); *see also* AHLA; Chamber. Additionally, some commenters stated that the Department should take more time to consider the pandemic's impact on tipping patterns in the restaurant industry before promulgating a revised dual jobs test. *See* AHLA; WPI.

Commenters such as EPI and most organizations representing employees, on the other hand, argued that the COVID–19 pandemic only made it more urgent that the Department withdraw the dual jobs portion of the 2020 Tip final rule and provide clearer limitations on the amount of non-tipped work that employers can shift to tipped workers while still relying on tips to bring their workers up to the minimum wage. *See, e.g.,* NELP; ROC; Network; WLP. EPI noted that it had estimated that implementation of the dual jobs portion of the 2020 Tip final rule could lead to a loss of income of $700 million for employees and stated that ''the impact of the 2020 Final Tip Rule could be much worse for tipped workers during the COVID–19 pandemic'' due to changes in the restaurant industry's business model. It added that any further loss in income ''would be especially harmful for women and people of color,'' noting that women and people of color are ''disproportionately represented in the tipped workforce'' and arguing that they have borne the brunt of the pandemic's devastating impacts.'' As discussed above, commenters such as NELP, ROC, and WLP similarly noted that tipped workers, especially women and people of color, were far more likely to be below the poverty line than other workers ''[e]ven before the pandemic,'' and stated that such workers ''had borne the brunt of the pandemic's devastating impacts'' to this point. They thus argued that ''[s]trengthening and clarifying protections for people working in tipped jobs should . . . be a priority for the Department[.]''

Additionally, OFW disputed whether clearer limits on employers' ability to take tip credit for work that does not produce tips would in fact be harmful for employers in the current economic conditions. Rather, OFW suggested that clearer limits on the payment of a direct cash wage of no less than $2.13 an hour for such work could in fact be helpful. Citing a May 2021 study, OFW stated, ''[t]he evidence is clear that the so-called worker shortage is in fact a wage shortage: those employers paying a full, fair wage, hire workers without issue and workers themselves state they would stay in jobs that pay a livable wage.'' [41]

Consistent with the requirements of the CRA, this final rule will be effective 60 days after publication in the **Federal Register**, on December 31, 2021. Strengthening protections for tipped workers by providing clearer limitations on the amount of non-tipped work that employers can shift to tipped workers while still relying on tips to cover their minimum wage obligations is an urgent priority for the Department. Accordingly, the Department declines to further delay the effectiveness of the rule or postpone its rulemaking. In addition to satisfying the requirements of the CRA, the time between this rule's publication and effective date exceeds the 30-day minimum required under the Administrative Procedure Act (APA), 5 U.S.C. 553(d), which is designed to provide regulated entities time to adjust to new rules, *see Riverbend Farms, Inc.* v. *Madigan,* 958 F.2d 1479, 1485 (9th Cir. 1992).

The Department is sensitive to the concerns of the restaurant, hotel, and other service industries regarding the impact of the COVID–19 pandemic. Although employment in the leisure and hospitality industries recovered rapidly in the spring and early summer of 2021, and employment in this sector is still below its January 2020 level.[42] However, the Department also shares the concerns of commenters representing employees, who noted the impact of pandemic-related job losses on tipped workers—already a very vulnerable group—and argued that protections for tipped workers are especially important at this time. As noted above, the Department has taken into account the practical concerns of employers by making several adjustments to its proposal, which will provide greater clarity and predictability to employers. The Department acknowledges that this final rule will lead to some costs to employers, as discussed in greater detail in the economic analysis below; however, the Department predicts that such costs will be a minimal share of total revenues for businesses of all sizes, and we believe that the protections afforded to workers outweigh these costs. The dual jobs test set out in the final rule is a functional test to determine when a tipped employee is engaged in their tipped occupation because they are performing work that is part of their tipped occupation, and the Department has provided numerous additional examples of how to apply the test. As discussed above, the Department believes that its proposed test is both clear and sufficiently flexible to be applied to changing conditions. Finally, to the extent that employers in the restaurant and other industries are experiencing a worker shortage, the Department agrees with OFW that clearer limits on employer's ability to pay a direct cash wage of as little as $2.13 per hour for work that does not generate tips could help employers attract and retain qualified employees.

IV. 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, the impact of paperwork and other information collection burdens imposed on the public, and how to minimize those burdens.

The Department noted in the NPRM (86 FR 32818) that the proposed rule did not contain a collection of information or any new paperwork burdens on the

[40] The Chamber of Commerce also recommended that the Department ''make the effective date the first day of a new calendar year (*i.e.,* on January 1)'' so that it aligns with ''the date when most adjustments to State tip credit and minimum wage levels become effective.''

[41] A citation to the May 2021 study can be found here: UC Berkeley Food Labor Research Center & One Fair Wage, *It's A Wage Shortage, Not a Worker Shortage: Why Restaurant Workers, Particularly Mothers, Are Leaving the Industry, and What Would Make Them Stay* (May 2021), *https://onefairwage.site/wp-content/uploads/2021/05/OFW_WageShortage_F.pdf.*

[42] *See* Employment Situation Summary August 2021, Bureau of Labor Statistics *https://www.bls.gov/news.release/empsit.nr0.htm.*

public. The already existing information collection requirements are approved under Office of Management and Budget (OMB) control number 1235–0018. Although a few commenters mistakenly understood the NPRM to propose new recordkeeping requirements, and expressed concern about such requirements, the Department did not propose new records requirements and the final rule does not contain a revision to current recordkeeping requirements nor does it enact new recordkeeping requirements. As a result, this final rule does not contain a collection of information subject to OMB approval under the PRA.

V. Executive Order 12866, Regulatory Planning and Review; and Executive Order 13563, Improved Regulation and Regulatory Review

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.[43] Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as a regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as economically significant); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. OIRA has determined that this 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 rule and was prepared pursuant to the above-mentioned executive orders.

A. Background

In 2018 and 2019, the Department issued new guidance providing that the Department would no longer prohibit an employer from taking a tip credit for the time an employee performs related, non-tipped duties—as long as those duties are performed contemporaneously with, or for a reasonable time immediately before or after, tipped duties. See WHD Opinion Letter FLSA2018–27 (Nov. 8, 2018); FAB 2019–2 (Feb. 15, 2019); WHD FOH 30d00(f). This guidance thus removed the 20 percent limitation on related, non-tipped duties that existed under the Department's prior 80/20 guidance. On December 30, 2020, the Department published the 2020 Tip final rule to largely incorporate this 2018–2019 guidance into its regulations. The Department uses the 2018–2019 guidance as a baseline for this analysis because this is what WHD has been enforcing since the 2018–2019 guidance was issued and is similar to the policy codified in the 2020 Tip final rule.

In this rule, the Department withdraws the dual jobs portion of the 2020 Tip final rule and inserts new regulatory language that it believes will better protect employees, and will provide more clarity and certainty for employers. Specifically, the Department amends its regulations to clarify that an employer may not take a tip credit for its tipped employees unless the employees are performing work that is part of their tipped occupation. This includes work that produces tips, as well as work that directly supports the tip-producing work, provided that the directly supporting work is not performed for a substantial amount of time. In this final rule, the Department clarifies that its definition of *tip-producing work* was intended to be broadly construed to encompass any work performed by a tipped employee that provides service to customers for which the tipped employee receives tips and provides more examples illustrating the scope of this term. The final rule also amends the definition of *directly supporting work* to explain that this category includes work that is performed by the tipped employee in preparation of or otherwise assists the provision of tip-producing customer service work, and also provides more examples illustrating the scope of this term. The final rule also modifies the definition of *work that is not part of the tipped occupation* to reflect the changes to these two definitional categories. Additionally, the final rule modifies the application of the tip credit to the 30-minute limitation in order to treat it uniformly with the 20 percent tolerance.

In order to analyze this regulatory change, the Department has quantified costs, provided an analysis of transfers, and provided a qualitative discussion of benefits. These impacts depend on the interaction between the policy laid out in this rule and any underlying market failure—perhaps most notably in this case, the monopsony power created for employers if their workers receive a substantial portion of their compensation in the form of tips.[44]

As discussed in more detail below, some commenters supported the Department's analysis generally, while others noted that the Department's transfer estimates could be an underestimate. Employer-representative commenters asserted that the Department underestimated the managerial and adjustment costs employers would incur to comply with the proposed rule. Because of the modifications and clarifications made in this final rule, the Department has not made changes to the cost analysis, as discussed below.

B. Costs

The Department believes that this rule may result in three types of costs to employers: Rule familiarization costs, adjustment costs, and management costs. Rule familiarization and adjustment costs would be one-time costs following the promulgation of the final rule. Management costs would likely be ongoing costs associated with complying with the rule.

1. Potentially Affected Entities

The Department has calculated the number of establishments that could be affected by this rule using 2019 data from the Bureau of Labor Statistics (BLS) Quarterly Census of Employment and Wages (QCEW). Because this rule relates to the situations in which an employer is able to take a tip credit under the FLSA, it is unlikely that employers in states without a tipped minimum wage or employers in states with a direct cash wage of over $7.25

[43] *See* 58 FR 51735, 51741 (Oct. 4, 1993).

[44] Jones, Maggie R. (2016), ''Measuring the Effects of the Tipped Minimum Wage Using W–2 Data,'' CARRA Working Paper Series, U.S., Census Bureau, Working Paper 2016–03, *https://www.census.gov/content/dam/Census/library/working-papers/2016/adrm/carra-wp-2016-03.pdf.*

would be affected by this change, because they are already paying their staff the full FLSA minimum wage for all hours worked. Therefore, the Department has dropped the following states from the pool of affected establishments: Alaska, Arizona, California, Colorado, Connecticut (Drinking Places (Alcoholic Beverages) only), Hawaii, Minnesota, Montana, Nevada, New York, Oregon, and Washington.[45]

Because the QCEW data only provides data on establishments, the Department has used the number of establishments for calculating all types of costs. The Department acknowledges that for some employers, the costs associated with this rule could instead be incurred at a firm level, leading to an overestimate of costs.[46] Presumably, the headquarters of a firm could conduct the regulatory review for businesses with multiple locations, but could also require businesses to familiarize themselves with the rule at the establishment level.

The Department limited this analysis to the industries that were acknowledged to have tipped workers in the 2020 Tip final rule, along with a couple of other industries that have tipped workers, which is consistent with using the 2018–2019 guidance as the baseline. These industries are classified under the North American Industry Classification System (NAICS) as 713210 (Casinos (except Casino Hotels)), 721110 (Hotels and Motels), 721120 (Casino Hotels), 722410 (Drinking Places (Alcoholic Beverages)), 722511 (Full-Service Restaurants), 722513 (Limited Service Restaurants), 722515 (Snack and Nonalcoholic Beverage Bars), and 812113 (Nail Salons). See Table 1 for a list of the number of establishments in each of these industries. The Department understands that there may be entities in other industries with tipped workers who may review this rule. The Central Florida Compensation and Benefits Association (CFCBA) noted that the Department should include the following industries in the analysis: 711110 (Theaters Companies and Dinner Theaters), 713110 (Amusement and Theme Parks), 713910 (Golf Courses and Country Clubs), 712110 (Museums), 711212 (Racetracks), 48811 (Airports), and 622110 (Hospitals) because many have tipped servers, bartenders, valet and guides. The Department agrees that there may be a small number of tipped workers in these industries, but the majority of employees are unlikely to be receiving tips, and for those that do receive some tips, it is unlikely that their employers are taking a tip credit. In attempt to determine how many employers in these industries are taking a tip credit, the Department used data from the Current Population Survey (CPS) to determine how many workers in these industries are earning less than $7.25. The Department found that less than one percent (0.59 percent) of workers in the industries cited by CFCBA are earning less than $7.25, meaning that almost no employers in these industries are taking a tip credit. Employers who do not take a tip credit will not need to familiarize themselves with this rule. Therefore, the Department does not feel that it is appropriate to include the establishments in these industries in the analysis.

The Department has calculated that in states that allow employers to pay a lower direct cash wage to tipped workers and in the industries mentioned above, there are 470,894 potentially affected establishments.

Table 1. Number of Establishments in Affected Industries

Industry	Establishments
NAICS 713210 (Casinos (except Casino Hotels))	211
NAICS 721110 (Hotels and Motels)	41,768
NAICS 721120 (Casino Hotels)	175
NAICS 722410 (Drinking Places (Alcoholic Beverages))	30,313
NAICS 722511 (Full-Service Restaurants)	171,296
NAICS 722513 (Limited Service Restaurants)	173,509
NAICS 722515 (Snack and Nonalcoholic Beverage Bars)	39,698
NAICS 812113 (Nail Salons)	13,924
Total	**470,894**

Source: BLS Quarterly Census of Employment and Wages, 2019

2. Rule Familiarization Costs

Regulatory familiarization costs represent direct costs to businesses associated with reviewing the new regulation. The Department believes 1 hour per entity, on average, to be an appropriate review time for this rule. This estimate does not include any time employers spend adjusting their business or pay practices; that is discussed in the adjustment cost section below. Many employers are familiar with a 20 percent tolerance, which is part of what is being put forth in this rule, since the Department enforced a 20 percent tolerance for 30 years prior to the 2018–2019 guidance, albeit in a different way. The Department believes that some employers in the industries listed above do not have any tipped employees, or do not take a tip credit, and would therefore not review the rule at all. This review time therefore represents an average of employers who would spend less than 1 hour or no time reviewing, and others who would spend more time.

The Department's analysis assumes that the rule would be reviewed by Compensation, Benefits, and Job

[45] Department of Labor, Wage and Hour Division, ''Minimum Wages for Tipped Employees,'' Updated January 1, 2021. *https://www.dol.gov/agencies/whd/state/minimum-wage/tipped.*

[46] An establishment is a single physical location where one predominant activity occurs. A firm is an establishment or a combination of establishments, and can operate in one industry or multiple industries. *See* BLS, ''Quarterly Census of Employment and Wages: Concepts,'' *https://www.bls.gov/opub/hom/cew/concepts.htm.*

Analysis Specialists (Standard Occupational Classification (SOC) 13–1141) or employees of similar status and comparable pay. The median hourly wage for these workers was $31.04 per hour in 2019.[47] The Department also assumes that benefits are paid at a rate of 46 percent and overhead costs are paid at a rate of 17 percent of the base wage, resulting in a fully loaded hourly rate of $50.60.[48] The Department estimates that regulatory familiarization costs would be $23,827,236 (470,894 establishments × $50.60 × 1 hour). The Department estimates that all regulatory familiarization costs would occur in Year 1.

In their comment, SBA Advocacy stated that they believe that DOL underestimated the rule familiarization costs of this rule. They noted that during their roundtable on this rule, small business owners said that they would need more than an hour to read and become familiarized with this rule. However, the Department did not receive any other comments from employers regarding rule familiarization. No commenters provided data or information on exactly how many hours they would spend on rule familiarization. If some business owners do spend more time on rule familiarization, that is not inconsistent with the Department's estimate of 1 hour, which is assumed to be an average of those who will spend more time and those who will spend no time because they do not have tipped workers or do not take a tip credit. Furthermore, in this final rule, the Department has made changes and clarifications in response to comments, which could limit the time necessary for rule familiarization. Lastly, many employers will not review the entire rule, because the Wage and Hour Division will provide compliance assistance through materials such as a fact sheet and information on the website.

3. Adjustment Costs

The Department expects that employers may incur adjustment costs associated with this rule. They may adjust their business practices and staffing to ensure that workers do not spend more than 20 percent of their time on directly supporting work, and that directly supporting work does not exceed more than 30 minutes continuously. Additionally, as a result of this rule, some duties that were considered related, non-tipped duties of a tipped employee, for which employers could take a tip credit under certain conditions, under the Department's 2018–2019 guidance, may now be considered duties that are not part of a tipped occupation, for which employers cannot take a tip credit. Accordingly, some employers may also adjust their business practices and staffing to reassign such duties from tipped employees to employees in non-tipped occupations. Some employers may also adjust their payroll software to account for these changes, and may also provide training for managers and staff to learn about the changes.

The Department uses the same number of establishments (470,894) as discussed in the rule familiarization section above, and also assumes that the adjustments would be performed by Compensation, Benefits, and Job Analysis Specialists (SOC 13–1141) or an employee of similar position and comparable pay, with a fully loaded wage of $50.60 per hour. The Department estimates that these adjustments would take an average of 1 hour per entity. For employers that would need to make adjustments, the Department expects that these adjustments could take more than 1 hour. However, the Department believes that many employers likely would not need to make any adjustments at all, because either they do not have any tipped employees, do not take a tip credit, or the work that their tipped employees perform complies with the requirements set forth in this rule. Therefore, the hour of adjustment costs represents the average of the employers who would spend more than 1 hour on adjustments, and the many employers who would spend no time on adjustments. The Department estimates that adjustment costs would be $23,827,236 (470,894 establishments × $50.60 × 1 hour). The Department estimates that all adjustment costs would occur in Year 1.

4. Management Costs

The Department also believes that some employers may incur ongoing management costs, because in order to make sure that they can continue to take a tip credit for all hours of an employee's shift, they will have to ensure that tipped employees are not spending more than 20 percent of their time on directly supporting work per workweek, or more than 30 minutes continuously performing such duties. The Department does not believe that these costs will be substantial, because if employers are able to make the upfront adjustments to scheduling, there is less of a need for ongoing monitoring. For example, if employers stop assigning work to tipped employees that will no longer be considered part of the tipped occupation under this rule, this will be a one-time change that does not necessitate ongoing monitoring. Additionally, employers may have also incurred similar management costs under the 2018–2019 guidance, because in order to take a tip credit for all hours, they would have had to ensure that tipped employees did not perform duties not related to their tipped occupation, and that employees' related, non-tipped work was contemporaneous with or for a reasonable time before or after the tipped work.

The Department estimates that employers would spend, on average, 10 minutes per week on management costs in order to comply with this rule. The Department expects that many employers will not spend any time on management tasks associated with this rule, because they do not claim a tip credit for any of their employees, or their business is already set up in a way where the work their tipped employees perform complies with the requirements set forth in this rule (such as a situation where the tipped employees perform minimal directly supporting work). Therefore, this estimate of 10 minutes is an average of those employers who would spend more time on management tasks, and the many employers who would spend no time on management tasks. The Department therefore calculates that the average annual time spent will be 8.68 hours (0.167 hours × 52 weeks).

The Department's analysis assumes that the management tasks would be performed by Food Service Managers (SOC 11–9051) or employees of similar status and comparable pay. The median hourly wage for these workers was $26.60 per hour in 2019.[49] The Department also assumes that benefits are paid at a rate of 46 percent and overhead costs are paid at a rate of 17 percent of the base wage, resulting in a fully loaded hourly rate of $43.36 ($26.60 + $12.24 + $4.52). The Department estimates that management costs would be $177,227,926 (470,894

[47] BLS Occupational Employment and Wage Statistics (OEWS), May 2019 National Occupational Employment and Wage Estimates, *https://www.bls.gov/oes/2019/may/oes_nat.htm.* Data for 2020 are now available, but the Department believes that it is more appropriate to use 2019 data for the analysis, because wages could have been affected by structural changes associated with the COVID–19 pandemic. The Department has aligned the year of the cost data with the pre-pandemic data used in the transfer analysis discussed later.

[48] The benefits-earnings ratio is derived from the Bureau of Labor Statistics' Employer Costs for Employee Compensation data using variables CMU1020000000000D and CMU1030000000000D.

[49] BLS Occupational Employment and Wage Statistics (OEWS), May 2019 National Occupational Employment and Wage Estimates, *https://www.bls.gov/oes/2019/may/oes_nat.htm.*

establishments × $43.36 × 8.68 hours). The Department estimates that these management costs would occur each year.

5. Cost Summary

The Department estimates that costs for Year 1 will consist of rule familiarization costs, adjustment costs, and management costs, and would be $224,882,399 ($23,827,236 + $23,827,236 + $177,227,926). For the following years, the Department estimates that costs will only consist of management costs and would be $177,227,926. Additionally, the Department estimated average annualized costs of this rule over 10 years. Over 10 years, it will have an average annual cost of $183.6 million calculated at a 7 percent discount rate ($151.1 million calculated at a 3 percent discount rate). All costs are in 2019 dollars.

6. Comments on Adjustment and Managerial Costs

The Department received comments from employer representatives saying that the rule would be very costly for them to implement, and that adjustment and managerial costs would be higher than the Department's estimate. For example, NRF–NCCR claimed that the final rule would require all tipped employees to track and categorize every minute of their time at work. They said that employees would need to be equipped with time keeping devices and significant time and effort would have to be devoted to meeting the rule's extensive recordkeeping requirements. Additionally, the Chamber of Commerce mentioned that compliance with this rule would require employers to implement new timekeeping systems in which employees would need to be trained to code in and out every time they switch between tip producing work and directly supporting work. SBA Advocacy explained that small businesses say that employees perform tipped work and directly supporting work simultaneously. They state, ''Working out the differences between current systems of work classifications and DOL's proposed classifications, as well as resolving ambiguities and inconsistencies in the rule and guidance from DOL, will cost well in excess of the estimate provided by DOL.'' They requested that DOL revise its estimate of adjustment and managerial costs, stating ''minute-to-minute tracking is onerous and not realistic in such businesses as restaurants, bars, hair salons and nail salons.'' Although some commenters noted that the Department's cost estimates were not high enough, none of the commenters provided information or analysis on exactly how much time should be used to calculate adjustment and managerial costs. The Department also received comments in support of its cost and transfer estimates, such as the comment from the Coalition of State Attorneys General, which said, ''[T]he Dual Jobs NPRM provides a thoughtful estimate of its economic effects on employees and employers.''

In formulating this final rule, the Department considered comments like these and the practical realities of work in tipped occupations. In response, as noted above, the Department has clarified in this final rule that its definition of *tip-producing work* was intended to be broadly construed to encompass any work performed by a tipped employee that provides service to customers for which the tipped employee receives tips and provided more examples illustrating the scope of this term. The final rule also amends the definition of *directly supporting work* to explain that this category includes work that is performed by the tipped employee in preparation of or otherwise assists the provision of tip-producing customer service work, and also provides more examples illustrating the scope of this term. The final rule also modifies the definition of *work that is not part of the tipped occupation* to reflect the changes to these two definitional categories. Additionally, the final rule modifies the application of the tip credit to the 30-minute limitation in order to treat it uniformly with the 20 percent tolerance, which will make it easier for employers to comply with both limits.

7. Comments Regarding the Labor Market

Some employer-representative commenters asserted that there is currently a labor shortage, which will make it difficult for employers to comply with this rule. For example, Seyfarth noted that restaurants and hotels were hit particularly hard by a national labor shortage and that because of this shortage, employers who ''seek to hire additional workers to ensure compliance with a more stringent tip credit regulation'' will not be able to hire these workers. The Chamber of Commerce also noted, ''Employers in service industries already are combatting labor shortages, which means that businesses have extremely limited ability to shift this work to other non-tipped hourly employees.'' One Fair Wage (OFW) disputed this, saying, ''The evidence is clear that the so-called worker shortage is in fact a wage shortage: those employers paying a full, fair wage, hire workers without issue and workers themselves state they would stay in jobs that pay a livable wage.'' To the extent that employers in the restaurant and other industries are experiencing a worker shortage, there is additional uncertainty in the analysis of impacts; however, over the majority of the time horizon of this regulatory impact analysis, the Department believes that quantification using non-pandemic data allows for reasonable approximations.

C. Transfers

1. Introduction

As previously discussed, the Department recognizes the concerns that it did not adequately assess the impact of the dual jobs provision of the 2020 Tip final rule. Therefore, for this rule, the Department provides the following analysis of the transfers associated with the changes to its dual jobs regulations, pursuant to which employers can only take a tip credit for work performed by a tipped employee that is part of the employee's tipped occupation. The rule says tip-producing work encompasses any work performed by a tipped employee that provides service to customers for which the tipped employee receives tips. The rule also says that an employer can take a tip credit for a non-substantial amount of directly supporting work, which is work that is performed by the tipped employee in preparation of or in assistance to the provision of tip-producing customer service work. The rule defines substantial as 20 percent of a tipped employee's workweek or a continuous period of more than 30 minutes.

The Department has performed two different transfer analyses for this rule. The first analysis refines a methodological approach similar to the one described by the Economic Policy Institute (EPI) in response to the Department's NPRM for the 2020 Tip final rule, which proposed to codify the Department's 2018–2019 guidance, which replaced the 80/20 approach with a different related duties test. *See* 84 FR 53956.[50] This analysis helps demonstrate the range of potential transfers that may result from this rule. The second analysis is a retrospective analysis that looks at changes to total hourly wages following the 2018–2019 guidance to help inform whether

[50] Shierholz, H. and D. Cooper. 2019. ''Workers will lose more than $700 million annually under proposed DOL rule.'' Available at *https://www.epi.org/blog/workers-will-lose-more-than-700-million-dollars-annually-under-proposed-dol-rule/.*

changes would occur in the other direction following this rule.

Both of the Department's analyses discuss the transfers from employees to employers that may have occurred from the removal of the 80/20 approach, and assumes that the direction of these transfers would be reversed under this rule, which, similar to the 80/20 guidance, includes a 20 percent tolerance on directly supporting work. The rule would also preclude employers from taking a tip credit for a continuous period of more than 30 minutes of directly supporting work.

2. Potential Transfer Analysis

Under the approach outlined in the 2020 Tip final rule, and as originally put forth in the 2018–2019 guidance, employers can take a tip credit for related, non-tipped duties so long as they are performed ''contemporaneously with'' or for ''a reasonable time immediately before or after tipped duties.'' Additionally, the 2018–2019 guidance uses the Occupational Information Network (O*NET) to determine whether a tipped employee's non-tipped duties are related to the employee's tipped occupation.[51] As explained above, the Department believes that the terms ''contemporaneously with'' and ''a reasonable time immediately before or after tipped duties'' do not provide clear limits on the amount of time workers can spend on non-tipped tasks for which an employer is permitted to take a tip credit. Under the 2018–2019 guidance, transfers would have arisen if employers required tipped employees for whom they take a tip credit, such as servers and bartenders, to perform more related, non-tipped duties, such as cleaning and setting up tables, washing glasses, or preparing garnishes for plates or drinks, than they would have under the prior 80/20 guidance. Because employers would be taking a tip credit for these additional related, non-tipped duties instead of paying a direct cash wage of at least the full minimum wage for these duties, tipped employees would earn less pay because they would be spending less time on tip-producing duties, such as serving customers.

However, to retain the tipped workers that they need, employers would have needed to pay these workers as much as their ''outside option,'' that is, the hourly wage that they could receive in their best alternative non-tipped job with a similar skill level requirement to their current position. For each tipped employee, the Department assumed that by assigning non-tipped work, an employer could have only lowered the tipped employee's total hourly pay rate including tips if the employee's current pay rate was greater than the predicted outside-option wage from a non-tipped job.[52] As a measure of the upper bound of the amount of tips that employers could have reallocated to pay for additional hours of work, the Department estimated the difference between a tipped worker's current hourly wage and the worker's outside-option wage. The Department acknowledges that an employee may not want to or be able to leave for an outside-option job right away, meaning that this outside-option analysis applies only in the long run.

The Department is specifically contemplating an example in which, prior to 2018, a restaurant employed multiple dishwashers and multiple bartenders. The dishwashers earned a direct cash wage of $7.25 per hour and spent all of their time washing dishes and doing other kitchen duties. The bartenders earned a direct cash wage of $2.13 per hour and spent all of their time tending bar. Following the removal of the 80/20 approach in the 2018–2019 guidance, the restaurant decided to employ fewer dishwashers, and instead hire one additional bartender and have the bartenders all take turns washing bar glasses throughout their shifts, adding up to more than 20 percent of their time. In this situation, the bartenders are each earning fewer tips because they are spending less time on tip-producing duties, such as preparing drinks, and more time on non-tip-producing duties, such as washing bar glasses. The employers' wage costs have also decreased, as they are paying more workers a direct cash wage of $2.13 instead of $7.25. This results in a transfer from employees to employers. This transfer would be reversed following the reinstatement of a time limit on directly supporting work in this rule. Employees who could have had a share of their tips reduced following the removal of the 80/20 approach could see an increase in their tipped income following this rule. The amount that employers were able to transfer away from employees by having them perform more non-tip-producing work is the amount that is likely to be restored following the requirements of this rule. For example, consider a bartender who is currently spending more time on directly supporting work that does not produce tips, such as washing bar glasses between customers (and less time on tip-producing work), than they did prior to the removal of the 80/20 approach. Under this rule, they may spend less time performing such directly supporting work due to the 20 percent and 30 minute limits, and thus may be able to spend more time on tip-producing work.

Consider another case in which an employee is currently paid $2.13 for hours of directly supporting work. Under this rule, their employer may decide that it is necessary to have this employee perform this work, so they will now have to pay them $7.25 for time spent performing this work beyond the 20 percent limit or for periods longer than 30 minutes. For these hours, the employee's earnings will increase from $2.13 to $7.25, resulting in transfers from employers to employees. However, the Department lacks data on to what extent this dynamic currently exists, and to what extent it will change following this rule. In order to quantify this change, the Department would need to know the number of employees who are currently performing non-tip producing work in excess of 20 percent of their workweek or in excess of 30 minutes, and for whom their employer is taking a tip credit for this time. Data does not exist on employees' schedules and duties to be able to estimate this number. The Department would also need to know the number of hours that each employee is currently performing this work and how it would change following the rule. Most importantly, the analysis requires knowledge of employers' behavior following this rule—*e.g.,* they could choose to pay the full minimum wage for all of these hours, shift this work away to existing non-tipped workers, or spread the work around tipped workers so that it conforms to the requirements of the rule. With this uncertainty, the Department is unable to quantify this potential transfer estimate under a forward-looking framework. Nonetheless, the Department anticipates that there will be some employees who see an increase in their wage rates for some of their hours following this rule. In absence of a forward-looking quantitative framework, the Department believes that one way to quantify the transfers from employers to employees as a result of this Final Rule, which reinstates the 80/20 rule among other protections, is to quantify by how much

[51] As explained above, the 2020 Tip final rule—which is not yet in effect—provided that a non-tipped duty is merely presumed to be related to a tip-producing occupation if it is listed as a task of the tip-producing occupation in O*NET.

[52] This methodology of estimating an outside wage option was used in the Department's 2020 Tip Regulations under the Fair Labor Standards Act (FLSA) final rule to determine potential transfer of tips with the expansion of tip pooling.

employers could have reduced earnings in the absence of the 80/20 rule.

a. Defining Tipped Workers

The Department used individual-level microdata from the 2018 Current Population Survey (CPS), a monthly survey of about 60,000 households that is jointly sponsored by the U.S. Census Bureau and BLS. Households are surveyed for four months, excluded from the survey for eight months, surveyed for an additional four months, and then permanently dropped from the sample. During the last month of each rotation in the sample (month 4 and month 16), employed respondents complete a supplementary questionnaire in addition to the regular survey. These households and questions form the CPS Outgoing Rotation Group (CPS–ORG) and provide more detailed information about those surveyed.[53] The Department used 2018 CPS–ORG data to avoid any unintentional impacts from the issuance of the 2018–2019 guidance. Because this analysis first looks at transfers that could have occurred following the 2018–2019 guidance, and uses that estimate to inform what the transfers would be following this rule, all data tables in this analysis include estimates for the year 2018, with dollar amounts inflated to $2019 using the GDP deflator and further refinements as discussed below.

The Department included workers in two industries and in two occupations within those industries. The two industries are classified under the North American Industry Classification System (NAICS) as 722410 (Drinking Places (Alcoholic Beverages)) and 722511 (Full-Service Restaurants); referred to in this analysis as ''restaurants and drinking places.'' The two occupations are classified under BLS Standard Occupational Classification (SOC) codes SOC 35–3031 (Waiters and Waitresses) and SOC 35–3011 (Bartenders).[54] The Department considered these two occupations because a large percentage of the workers in these occupations receive tips (see Table 2 for shares of workers in these occupations who may receive tips). The Department understands that there are other occupations in these industries beyond servers and bartenders with tipped workers, such as SOC 35–9011 (Dining Room and Cafeteria Attendants and Bartender Helpers) and SOC 35–9031 (Hosts and Hostesses, Restaurant, Lounge, and Coffee Shop). Additionally, there may also be some tipped workers in other industries who may be affected such as nail technicians, parking attendants, and hotel housekeepers.[55]

Table 2 presents the total number of bartenders and wait staff in restaurants and drinking places. The number of workers is then limited to those potentially affected by the changes in this rule. This excludes workers in states that do not allow a tip credit, workers in states that requires a direct cash wage of at least $7.25, and workers in other states who are paid a direct cash wage of at least the full FLSA minimum wage of $7.25 (*i.e.,* employees whose employers are not taking a tip credit under the FLSA).[56] As alluded to above, because this rule relates to the situations in which an employer takes a tip credit, it is unlikely that employees of employers that cannot or otherwise do not take a tip credit would be affected. Both of these populations were also excluded from the analysis of potential transfers. The Department also assumed that nonhourly workers are not tipped employees and excluded these workers from the potentially affected population.[57] Lastly, workers earning a direct wage below $2.13 per hour were dropped from the analysis.[58] This results in 630,000 potentially affected workers in these industries and occupations.

The CPS asks respondents whether they usually receive overtime pay, tips, and commissions (OTTC), which allows the Department to estimate the number of bartenders and wait staff in restaurants and drinking places who receive tips. CPS data are not available separately for overtime pay, tips, and commissions, but the Department assumes very few bartenders and wait staff receive commissions, and the number who receive overtime pay but not tips is also assumed to be minimal.[59] Therefore, the Department assumed bartenders and wait staff who responded affirmatively to this question receive tips. Table 2 presents the share of potentially affected bartenders and wait staff in restaurants and drinking places who reported that they usually earned OTTC in 2018: approximately 86 percent of bartenders and 78 percent of wait staff.

TABLE 2—BARTENDERS AND WAIT STAFF IN RESTAURANTS AND DRINKING PLACES

Occupation	Total workers (millions)	Potentially affected workers (millions) [a]	Potentially affected workers who report earning OTTC	
			Workers (millions)	Percent
Total	2.28	0.63	0.50	79.4
Bartenders	0.37	0.09	0.07	85.5

[53] *See* Current Population Survey, U.S. Census Bureau, *https://www.census.gov/programs-surveys/cps.html* (last visited April 28, 2021); The Department used the Center for Economic and Policy Research. 2020. CPS ORG Uniform Extracts, Version 2.5. Washington, DC, *http://ceprdata.org/cps-uniform-data-extracts/cps-outgoing-rotation-group/cps-org-data/* (last visited April 27, 2021).

[54] In the CPS, these occupations correspond to Bartenders (Census Code 4040) and Waiters and Waitresses (Census Code 4110). The industries correspond to Restaurants and Other Food Services (Census Code 8680) and Drinking Places, Alcoholic Beverages (Census Code 8690).

[55] The Department considered the additional set of occupations: SOC 39–5090 (Miscellaneous Personal Appearance Workers), SOC 39–5012 (Hairdressers, hairstylists, and cosmetologists), SOC 39–5011 (Barbers), SOC 53–6021 (Parking Attendants), SOC 37–2012 (Maids and Housekeeping Cleaners), and SOC 31–9011 (Massage Therapists). Workers in these occupations reported usually earning overtime pay, tips, and commissions (OTTC) less often than in the tipped occupations that the Department included in its analysis (15.2 percent compared to 56.1 percent). Additionally, a considerably lower proportion of workers in this additional set of occupations reported earning a direct wage below the Federal minimum wage per hour (1.2 percent compared to 27.8 percent).

[56] Workers considered not affected by the 20 percent limitation were those in the following states that either do not allow a tip credit or require a direct cash wage of at least $7.25 as of 2019: Alaska, Arizona, California, Colorado, Connecticut (Bartenders only), Hawaii, Minnesota, Montana, Nevada, New York, Oregon, and Washington.

[57] The Department made this assumption because tipped employees are generally paid hourly and because the CPS does not include information on tips received for nonhourly workers. Without knowing the prevalence of tipped income among nonhourly workers, the Department cannot accurately estimate potential transfers from these workers. However, the Department believes the transfer from nonhourly workers will be small because only 10 percent of wait staff and bartenders in restaurants and drinking places are nonhourly and the Department believes nonhourly workers have a lower probability of receiving tips.

[58] The Department was unable to determine whether these workers were earning a direct cash wage below $2.13 because their employers were not complying with the minimum wage requirements of the FLSA, or whether the data was incorrect.

[59] According to BLS Current Population Survey data, in 2018, workers in service occupations worked an average of 35.2 hours per week. *See https://www.bls.gov/cps/aa2018/cpsaat23.htm.*

TABLE 2—BARTENDERS AND WAIT STAFF IN RESTAURANTS AND DRINKING PLACES—Continued

Occupation	Total workers (millions)	Potentially affected workers (millions) [a]	Potentially affected workers who report earning OTTC	
			Workers (millions)	Percent
Waiters/Waitresses	1.91	0.54	0.42	78.4

Source: CEPR, 2018 CPS–ORG.
[a] Excludes workers in states that do not allow a tip credit, workers in states that require a direct cash wage of at least $7.25, and workers in other states who are paid a direct cash wage of at least the full FLSA minimum wage of $7.25 (i.e., employers whose employers are not using a tip credit). Also excludes nonhourly workers.
Occupations: Bartenders (Census Code 4040) and Waiters and Waitresses (Census Code 4110).
Industries: Restaurants and other food services (Census Code 8680) and Drinking places, alcoholic beverages (Census Code 8690).

Of the 500,000 bartenders and wait staff who receive OTTC, only 310,000 reported the amount received in OTTC. Therefore, the Department imputed OTTC for those workers who did not report the amount received in OTTC. As shown in Table 3, 69 percent of bartenders' earnings (an average of $339 per week) and 68 percent of wait staff's earnings (an average of $251 per week) were from overtime pay, tips, and commissions in 2018. For workers who reported receiving tips but did not report the amount, the ratio of OTTC to total earnings for the sample who reported their OTTC amounts (69 or 68 percent) was applied to their weekly total income to estimate weekly tips.

TABLE 3—PORTION OF INCOME FROM OVERTIME PAY, TIPS, AND COMMISSIONS FOR BARTENDERS AND WAIT STAFF IN RESTAURANTS AND DRINKING PLACES

Occupation	Those who report the amount earned in OTTC			
	Workers	Average weekly earnings	Average weekly OTTC	Percent of earnings attributable to OTTC
Total	309,690	$386.44	$262.56	68
Bartenders	40,354	491.03	338.67	69
Waiters and waitresses	269,335	370.77	251.16	68

Source: CEPR, 2018 CPS–ORG, inflated to $2019 using the GDP deflator.
Occupations: Bartenders (Census Code 4040) and Waiters and Waitresses (Census Code 4110).
Industries: Restaurants and other food services (Census Code 8680) and Drinking places, alcoholic beverages (Census Code 8690).

b. Outside-Option Wage

The Department assumed that employers only reduce the hourly wage rate of tipped employees for whom they are taking a tip credit if the tipped employee's total hourly wage, including the tips the employee retains, are greater than the ''outside-option wage'' that the employee could earn in a non-tipped job. To model a worker's outside-option wage, the Department used a quartile regression analysis to predict the wage that these workers would earn in a non-tipped job. Hourly wage was regressed on age, age squared, age cubed, education, gender, race, ethnicity, citizenship, marital status, veteran status, metro area status, and state for a sample of non-tipped workers.[60] The Department restricted the regression sample to non-tipped workers earning at least the applicable State minimum wage (inclusive of OTTC), and those who are employed. This analysis excludes workers in states where the law prohibits employers from taking a tip credit or that require a direct cash wage of at least $7.25.[61]

In calculating the outside-option wage for tipped workers, the Department defined the comparison sample as non-tipped workers in a set of occupations that are likely to represent outside options. The Department determined the list of relevant occupations by exploring the similarity between the knowledge, activities, skills, and abilities required by the occupation to that of servers and bartenders. The Department searched the O*NET system for occupations that share important similarities with wait staff and bartenders—the occupations had to require ''customer and personal service'' knowledge and ''service orientation'' skills.[62] The list was further reduced by eliminating occupations that are not comparable to the wait staff and bartender occupations in terms of education and training, as wait staff and bartender occupations do not require formal education or training. *See* Appendix Table 1 for a list of these occupations.

The regression analysis calculates a distribution of outside-option wages for each worker. The Department used the same percentile for each worker as they currently earn in the distribution of wages for wait staff and bartenders in restaurants and drinking places in the State where they live.[63] This method assumes that a worker's position in the wage distribution for wait staff and bartenders reflects their position in the wage distribution for the outside-option occupations.

[60] For workers who had missing values for one or more of these explanatory variables we imputed the missing value as the average value for tipped/non-tipped workers.

[61] These states are Alaska, Arizona, California, Connecticut (bartenders only), Hawaii, Minnesota, Montana, Nevada, New York, Oregon, and Washington.

[62] For a full list of all occupations on O*NET, *see https://www.onetcenter.org/reports/Taxonomy2010.html.*

[63] Because of the uncertainty in the estimate of the percentile ranking of the worker's current wage, the Department used the midpoint percentile for workers in each decile. For example, workers whose current wage was estimated to be in the zero to tenth percentile range were assigned the predicted fifth percentile outside-option wage, those with wages estimated to be in the eleventh to twentieth percentile were assigned the predicted fifteenth percentile outside-option wage, etc.

c. Potential Transfer Calculation

After determining each tipped worker's outside-option wage, the Department calculated the potential reduction in pay as the lesser of the following two numbers:

1. The positive differential between a worker's current earnings (wage plus tips) and their predicted outside-option wage, and

2. the positive differential between a worker's current earnings and the State minimum wage.

The second number is included for cases where the long-run outside-option wage predicted by the analysis is below the State minimum wage, because the worker cannot earn less than their applicable State minimum wage in non-tipped occupations.[64] Total tips for each worker were calculated from the OTTC variable in the CPS data. The Department subtracted predicted overtime pay to better estimate total tips.[65] For workers who reported receiving OTTC, but did not report the amount they earned, the Department applied the ratio of tipped earnings to total earnings for wait staff or bartenders (see Table).

To determine the aggregate annual potential total pay transfer, the Department multiplied the weighted sum of weekly transfers by 45.2 weeks—the average weeks worked in a year for wait staff and bartenders in the 2018 CPS Annual Social and Economic Supplement. The resulting annual estimate of the upper bound of potential transfers from tipped employees to employers is $733 million). This estimate is an upper bound, because following the 2018–2019 guidance, an employer could have, at most, had a tipped worker do more related non-tipped work until their overall earnings reached their outside option wage. In order to further refine this estimate, and adjust down this upper bound, the Department requested data on how much related non-tipped work tipped employees were performing prior to the 2018–2019 guidance and how that changed with the removal of the 80/20 approach, but the Department did not receive any comments with data on this. The Department also requested information on whether employers increased the number of employees for which they took a tip credit, and decreased the number of employees for which they paid a direct cash wage of at least $7.25, but did not receive any data.

The above analysis looks only at how the hourly earnings would change. It may also be informative to see how weekly earnings would change. Lowering the total hourly earnings of employees will either:

1. Lower the weekly earnings of these employees if their weekly hours worked remain the same; or

2. Require that these employees work more hours per week to earn the same amount per week.

The workers for whom potential pay reductions could have occurred had average weekly earnings of $473; on average, their weekly earnings could have been reduced by as much as $105, assuming their hours worked per week remained the same.

As noted above, this transfer estimate is based on the Department's 2019 proposal to codify the 2018–2019 guidance, which removed the 20 percent limitation on related, non-tipped duties, into the Department's regulations. The Department believes that this transfer analysis both underestimates and overestimates potential transfers. This estimate may be an underestimate because it does not include all possible occupations and industries for which there may be transfers. Additionally, it does not include workers with tipped jobs that are not listed as their main job in the CPS–ORG data. Additionally, the Department believes that transfers that would result from this rule may exceed the transfers that would occur from reinstating the previous 80/20 guidance. As noted above, under this rule, employers are prohibited from taking a tip credit for a substantial amount of directly supporting work, defined as 20 percent of the tipped employee's workweek *or* a continuous period of more than 30 minutes.

Some commenters noted that there are additional factors that could weigh in favor of the Department's transfer estimate being an underestimate. For example, EPI noted that tips are underestimated in the CPS data, making underestimation of the amount of pay that could be transferred likely. EPI also noted that the transfer estimate assumes that eliminating the 80/20 rule in the 2020 Final Rule would only have an effect if the employer were already taking a tip credit. They explained that the transfer calculation does not account for the possibility that some employers may have been incentivized to start using the tip credit following the removal of the 80/20 limitation. The NWLC also commented that the transfer estimate could be an underestimate because of because of the ''degree to which non-tipped work has grown during the pandemic in industries that employ large numbers of tipped workers.'' They cited the shift from dine-in to carryout service in restaurants as an incentive for employers to take a tip credit for greater amounts of non-tipped work. The requirements put in place in this final rule could help protect against this, and prevent a decrease in wages for these workers. Other commenters, such as the State AGs, provided broad support of the estimates in this analysis.

The Department believes that these estimates are also an overestimate, because they assume that every employer that takes a tip credit and for whom it was economically beneficial would lower the hourly rate (including tips) of tipped employees to their outside-option wage. In reality, even when it is seemingly economically beneficial from this narrow perspective, many employers may not have changed their non-tipped task requirements with the removal of the 20 percent limitation, because it would have required changes to the current practice to which their employees were accustomed. There are reasons it is not appropriate to assume that all employers are able to extract all the earnings above the outside-option wage of their employees for whom they take a tip credit. For example, decreasing workers' hourly earnings might reduce morale, leading to lower levels of efficiency or customer service. The reduction in workers' earnings may also lead to higher turnover, which can be costly to a company. Part of this turnover may be due to workers' wages falling below their reservation wage and causing them to exit the labor force.[66] In support of this, researchers have found evidence of downward nominal wage stickiness, meaning that employees rarely experience nominal wage decreases with the same employer.[67]

[64] In the NPRM, the Department also included a third number in these categories: The total tips earned by the worker. However, the Department realized at the final rule stage that this last category should be removed. No workers should have all of their tips reduced because, by definition, these workers' employers are taking a tip credit, and hence the workers must receive some tips in order to receive the full minimum wage. Removing this restriction changed the total tip transfer slightly from $714 million in the NPRM to $733 million in this final rule.

[65] Predicted overtime pay is calculated as (1.5 × base wage) × weekly hours worked over 40.

[66] A worker's reservation wage is the minimum wage that the worker requires to participate in the labor market. It roughly represents the worker's monetary value of an hour of leisure. If the worker's reservation wage is greater than their outside option wage, the worker may exit the labor market if tips are reduced.

[67] *See, e.g.,* Kahn, S. 1997. ''Evidence of Nominal Wage Stickiness from Microdata.'' *The American Economic Review.* 87(5): 993–1008. Hanes, C. 1993. ''The Development of Nominal Wage Rigidity in the Late 19th Century.'' *The American Economic Review* 83(4): 732–756. Kawaguchi, D. and F.

Continued

Although in this case the direct wage paid by the employer would not change, these tipped employees' total hourly pay including tips would decrease due to the employer requiring more work on non-tipped tasks leading to earning fewer tips per hour. While some empirical evidence, such as the Kahn paper cited above, indicates that employers are unlikely to make changes in work requirements that would lower employees' nominal hourly earnings, this evidence may not hold in low-wage industries such as food service and in times of structural changes to the economy, such as during the COVID–19 pandemic.[68] Additionally, even if employers may be constrained from having current employees take on more non-tipped work, they could institute these changes for any newly hired employees, so the reduction in average earnings would be over a longer-term time horizon.

The Department believes that another potential reason these transfer estimates may be an overestimate is because of the interaction with the tip pooling provisions of the 2020 Final Rule. The 2020 Tip final rule codified the Consolidated Appropriations Act (CAA) amendments from 2018, which allowed employers to institute mandatory ''nontraditional'' tip pools to include both front-of-the-house and back-of-the-house workers, as long as they paid all employees a direct cash wage of at least $7.25. *See* 85 FR 86765. The portions of the 2020 Tip final rule addressing tip pooling went into effect on April 30, 2021. *See* 86 FR 22598. Following this change, some employers may have been incentivized to no longer take a tip credit, and pay all of their employees the full minimum wage. For these employees, the dual jobs analysis is no longer relevant, because they are already earning at least $7.25 for all hours worked. To the extent that employers responded to the CAA amendments by electing to stop taking a tip credit in order to institute a nontraditional tip pool, the Department believes that the transfers predicted in this analysis may be an overestimate.

However, the Department does not know to what extent this overestimate has occurred, because data is lacking on how many employers stopped taking a tip credit to expand their tip pools following the CAA amendments. Employers may not have acted on new incentives to shift away from their current tip credit arrangements. Additionally, some states and local areas may not allow employer-mandated tip pooling, so employers in these areas would not have made adjustments following the change in tip pooling provisions. Moreover, there is uncertainty about the future trajectory of State employment regulations; if State-level prohibitions on mandatory tip pooling were to become more widespread, the scope of the tip pooling provisions' impacts could decrease and, in turn, the scope for this rule's impacts could increase (thus potentially making the $733 million estimate less of an overstatement farther in the future than in the near-term). Lastly, the CAA amendments were enacted in March 2018, so although the Department expects that it may have taken employers time to implement changes to their pay practices, any employers that stopped taking a tip credit in order to institute a nontraditional tip pool directly following the CAA amendments could have already been excluded from the transfer calculation. The Department does not know if employers would have changed their usage of the tip credit following the CAA amendments, or waited to make the change until the codification of the CAA in the 2020 Tip final rule. As noted above, the tip pooling provisions of the 2020 Tip final rule went into effect on April 30, 2021.

The Department also looked at the share of workers in the occupations discussed above (''Waiters and Waitresses'' and ''Bartenders'') earning a direct wage of less than $7.25 in 2018 and 2019, and found no statistically significant difference between those two years. Because of this, and for all of the reasons discussed above, the Department has not quantified the reduction in transfers associated with the fact that the CAA allowed employers to institute nontraditional tip pools that include back-of-the-house workers.

The transfer estimate may also be an overestimate because it assumes that the 2018–2019 guidance, and the 2020 Tip final rule, completely lacked a limitation on non-tipped work. As discussed above, there was a limit put forth in this approach, but it was not clearly defined.

The Department was unable to determine what proportion of the total tips estimated to have been potentially transferred from these workers were realistically transferred following the replacement of its prior 80/20 guidance with the 2018–2019 guidance. The Department assumes that the likely potential transfers were somewhere between a lower bound of zero and an upper bound of $733 million, depending on interactions between Federal and State-level policies. The Department believes that the reasons the estimate is an overestimate outweigh the reasons the estimate is an underestimate. Therefore, the Department believes that this rule would result in transfers from employers to employees, but at a fraction of the upper bound of transfers. The Department does not have data to determine what percentage of the maximum possible transfers is likely to result from this rule.

If the rule results in transfers to tipped workers, it could also lead to increased earnings for underserved populations. Using data from the American Community Survey, the National Women's Law Center found that about 70 percent of tipped workers are women and 26 percent of tipped workers are women of color.[69] Tipped workers also have a poverty rate of over twice that of non-tipped workers.[70]

3. Retrospective Transfer Analysis (Extrapolated Forward)

Because the 80/20 guidance was withdrawn through guidance published in November 2018 and February 2019, the Department also looked at whether employees' wages and tips changed following the 2018–2019 guidance to help inform the analysis of transfers associated with this rule. If there was a significant drop in tips, it could mean that employers were having employees do more non-tipped work in response to the guidance.

The Department used the 2018 and 2019 CPS–ORG data to estimate earnings of tipped workers for whom their employers are taking a tip credit. Comparisons were restricted to observations in the months of February–November in each year to compare before and after the guidance. The Department looked at the difference in tips per hour, total hourly wages (direct wages plus tips), and weekly earnings in 2018 and 2019. None of the differences in values between these two periods was statistically significant. The Department also ran linear regressions on these three variables using the set of controls used in the outside-option wage regressions discussed above (state, age, education, gender, race/ethnicity,

Ohtake. 2007. ''Testing the Morale Theory of Nominal Wage Rigidity.'' *ILR Review* 61(1): 59–74. Kaur, S. 2019. ''Nominal Wage Rigidity in Village Labor Markets.'' *American Economic Review* 109(10): 3585–3616.

[68] *See* Section V.E. for a more detailed discussion of the effects of the COVID–19 pandemic.

[69] National Women's Law Center, ''Women in Tipped Occupations, State by State,'' May 2019. *https://nwlc.org/wp-content/uploads/2019/06/Tipped-workers-state-by-state-2019.pdf.*

[70] Sylvia A. Allegretto and David Cooper, ''Twenty-three Years and Still Waiting for Change: Why It's Time to Give Tipped Workers the Regular Minimum Wage,'' July 10, 2014. *https://files.epi.org/2014/EPI-CWED-BP379.pdf.*

citizenship, marital status, veteran, metro area) and also found that none of the differences were statistically significant.

This lack of a significant decline in tips and total wages could imply that employers had not directed employees to do more non-tipped work following the guidance, and that there will also be little to no transfers associated with the requirement put forth in the rule. However, it is also possible that employers had made no changes in response to the guidance, but would have shifted employees' duties following the 2020 Tip final rule. As noted above, Federal courts largely declined to defer to the Department's 2018–2019 guidance, and this may have influenced employer's decisions as well.[71] Additionally, it may be that the time period is too short to really observe a meaningful difference. The Department chose not to examine data from 2020, as average hourly wages during that year increased as low-wage workers in the leisure and hospitality industry were out of work due to the COVID–19 pandemic, making meaningful comparisons difficult. Furthermore, as noted elsewhere in this regulatory impact analysis, other tip-related policy changes occurred in 2018, thus creating challenges in estimating impacts attributable to each such policy.

4. The Department's Response to Comments Regarding a Negative Impact on Employees

Some commenters alleged that this rule could have a negative economic impact on employees. For example, the Chamber of Commerce noted, ''Many employers currently utilizing the tip credit may choose to pay the full minimum wage because of the excessive costs and risks associated with compliance and defending against allegations of non-compliance. As a result, tipped employees may ultimately end up making less money than they do currently.'' They also state, ''On average, tip-eligible employees make significantly more money per hour than the proposed minimum wage of $15 and many good-paying hourly jobs. Experience demonstrates that many tipped workers prefer a job in which they can earn extra income through gratuities rather than being paid the minimum wage.'' Franchise Business Services also similarly stated, ''Currently, servers earn in excess of $25 to $30 per hour, including tips; under DOL's proposal, they would make an hourly wage, and likely earn considerably less than they do currently.'' Although there may be servers who earn more than $15 per hour, this is not true for the occupation overall. According to BLS Occupational Employment and Wage Statistics, waiters and waitresses earned a median hourly wage of $11.42 in 2020. The Department believes that median earnings data is most appropriate because mean data is more likely to be skewed towards high earners.

The assertion made by these commenters hinges on the assumption that if employers stop taking a tip credit for their employees, these employees will no longer receive tips. The Department does not believe that the amount of tips that employees receive will greatly diminish if their employers are no longer taking a tip credit. Customers would likely not be aware of how servers and other tipped occupations are compensated, so they would be unlikely to reduce the amount that they tip. Even if they were aware that these workers were earning the full minimum wage, they still may not reduce the amount they tip.

In order to see if customers do tip less when they know that workers are receiving the full minimum wage, the Department performed an analysis on tips in states that do allow the use of a tip credit and for those that don't allow the use of a tip credit. The analysis looked for evidence of a difference in the hourly tips earned by tipped workers in states in which employers can take a tip credit versus the hourly tips earned by tipped workers in states in which employers cannot take a tip credit, and found no evidence of lower tips for workers in states that do not allow a tip credit.[72]

Using pooled CPS data from 2017–2019, for bartenders and waiters and waitresses in the restaurants and drinking places industries, the Department regressed tips earned per hour[73] on a dummy variable indicating the worker lives in a State that requires a cash wage of at least $7.25. Only tipped workers reporting non-zero tips were included. The results were that workers earned more in tips per hour in states that do not allow a tip credit.[74] The Department recognized that some differences in tips per hour earned may be due to differences in local economic conditions, so additional regressions were run with two variables to try to control for differences in tip amounts due to economic conditions. The Department theorized that states without a tip credit tend to be higher-wage and higher cost of living states (*e.g.,* CA, OR, WA), which could be driving the higher tip amount. To attempt to control for differences in food prices, a variable was added with the average mean expenditure for food away from home from the Consumer Expenditure Survey.[75] A variable was also included to reflect the MIT living wage estimate for each State (hourly rate for one adult with zero children) as a way to control for different costs of living that may impact the amount of tips received.[76] In both cases, the coefficient on living in a State that does not allow a tip credit was no longer statistically significant. From these basic analyses, the Department found no statistically significant difference between the amount of tips earned in states that do or do not allow a tip credit. Therefore, the Department does not believe that workers' earnings would decrease if employers choose not to take a tip credit following this rulemaking.

D. Benefits and Cost Savings

The Department believes that one benefit of this rule is increased clarity for both employers and workers. In the 2020 Tip final rule, the Department said that it would not prohibit an employer from taking a tip credit for the time a tipped employee performs related, non-tipped duties, as long as those duties are performed contemporaneously with, or for a reasonable time immediately before or after, tipped duties. However, the Department did not define ''contemporaneously'' or a ''reasonable time immediately before or after.'' If the 2020 Tip final rule's revisions to the dual jobs regulations had gone into effect, the Department believes that the lack of clear definitions of these terms

[71] *See supra* note 3 (identifying cases in which courts declined to defer to the 2018–19 guidance).

[72] The states that do not allow a tip credit or require a cash wage of at least $7.25 are California, Minnesota, Nevada, Washington, Oregon, Alaska, Montana, Arizona, Colorado, Hawaii, New York, and Connecticut bartenders.

[73] The Department calculated tips per hour earned by each tipped worker who reported an amount of usual overtime, tips, and commissions. The estimates amount of overtime was deducted from the total for workers who usually worked overtime.

[74] Without any additional controls, the coefficient on working in a State that does not allow a tip credit is 1.4 and is statistically significant at a 0.05 level (*i.e.,* workers earn more in tips in states without a tip credit). The same regression was run removing workers from California as a sensitivity check. The results were similar (coefficient of 2.2, statistically significant at the 0.01 level). A regression was also run that excluded workers in the states that had a tipped minimum wage greater than $2.13 but less than $7.25 as another sensitivity check. Again, the results were similar (coefficient of 1.7, statistically significant at a 0.05 level).

[75] Bureau of Labor Statistics, Consumer Expenditure Surveys, *https://www.bls.gov/cex/.*

[76] Living Wage Calculator, Massachusetts Institute of Technology, *https://livingwage.mit.edu/.*

could have made it more difficult for employers to comply with the regulations and more difficult for WHD to enforce them. The reinstatement of the historically used 20 percent workweek tolerance of work that does not produce tips but is part of the tipped occupation, together with the 30 continuous minute limit on directly supporting work, along with examples and explanations, will make it easier for employers to understand their obligations under the Fair Labor Standards Act, and will ensure that workers are paid the wages that they are owed.

Under this rule, employers will also no longer need to refer to O*NET to determine whether a tipped employee's non-tipped duties are related to their tipped occupation. This rule's functional test allows for better flexibility and adaptability in categorizing workers' duties than a fixed list such as O*NET. As the economy evolves and duties change, there could be a delay in updating sources like O*NET and employers would have to regularly review the site to ensure that they are in compliance. Under the Department's test, however, employers and employees would be able to more easily adapt the definitions to changing industry conditions. Therefore, this rule could result in cost savings related to employers' time referencing O*NET.

As noted previously in this regulatory impact analysis, the phenomenon of tipping can create monopsony power in the labor market. As a result, the relationship between minimum wages for tipped employees and employment of such workers has been estimated by some to be quadratic—with employment increasing over some range of minimum wage increases and decreasing over a further range.[77] Although this rule does not change the minimum direct cash wage that must be paid when an employer claims a tip credit, one way that an employer could comply with the requirements in this rule is to pay tipped workers a direct cash wage of at least $7.25 for all hours worked. An employer could discontinue taking a tip credit if they found it more beneficial not to limit the amount of directly supporting work performed by a tipped employee. Some employers commented that the rule would be too onerous to comply with, and they would therefore end up paying the minimum wage for all hours worked. For example, the Chamber of Commerce noted, ''Under the Proposed Rule, many employers currently utilizing the tip credit may choose to pay the full minimum wage because of the excessive costs and risks associated with compliance and defending against allegations of non-compliance.'' The Department believes that the clarifications provided in the final rule will help address employers' concerns about compliance costs, but there may still be some employers who choose to pay the full minimum wage following this rule.

E. Note on the Effects of the COVID–19 Pandemic

The Department notes that this analysis relies on data from 2018 and 2019, which is prior to the COVID–19 pandemic. Because many businesses were shut down during 2020 or had to change their business model, especially restaurants, the economic situation for tipped workers likely changed due to the pandemic. For example, a survey from One Fair Wage found that 83 percent of respondents reported that their tips had decreased since COVID–19, with 66 percent reporting that their tips decreased by at least 50 percent.[78] This reduction in tips received could result in a decrease in the amount of transfers calculated above.

The labor market has likely changed for tipped workers during the pandemic, and could continue to change following the recovery from the pandemic, especially in the restaurant business. The full-service restaurant industry lost over 1 million jobs since the beginning of the pandemic,[79] and by the end of 2020, over 110,000 restaurants had closed permanently.[80] Although employment in the leisure and hospitality industries recovered rapidly in the spring and early summer of 2021, employment in this sector is still below its February 2020 level.[81] These industry changes could impact workers' wages, as well as their ability and willingness to change jobs. There may also be other factors such as safety influencing workers' choice of workplace, which could distort labor market assumptions and behavior. Workers that value the security and safety of their job could be less willing to leave for another job, even if their net earnings decreased, and this could have an impact on the outside-option analysis.

VI. Regulatory Flexibility Act (RFA) Analysis

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (1996), requires Federal agencies engaged in rulemaking to consider the impact of their proposals on small entities, consider alternatives to minimize that impact, and solicit public comment on their analyses. The RFA requires the assessment of the impact of a regulation on a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions. Accordingly, the Department examined this rule to determine whether it would have a significant economic impact on a substantial number of small entities. The most recent data on private sector entities at the time this rule was drafted are from the 2017 Statistics of U.S. Businesses (SUSB).[82] The Department limited this analysis to the industries that were acknowledged to have tipped workers in the 2020 Tip final rule. These industries are classified under the North American Industry Classification System (NAICS) as 713210 (Casinos (except Casino Hotels), 721110 (Hotels and Motels), 721120 (Casino Hotels), 722410 (Drinking Places (Alcoholic Beverages)), 722511 (Full-Service Restaurants), 722513 (Limited Service Restaurants), 722515 (Snack and Nonalcoholic Beverage Bars), and 812113 (Nail Salons). As discussed in Section V.B.1, there are 470,894 potentially affected establishments. The QCEW does not provide size class data for these detailed industries and states, but the Department calculates that for all industries nationwide, 99.8 percent of establishments have fewer than 500 employees. If we assume that this proportion holds true for the affected states and industries in our analysis, then there are 469,952 potentially affected establishments with fewer than 500 employees.

The Year 1 per-entity cost for small business employers is $477.56, which is

[77] Jones, Maggie R. (2016), ''Measuring the Effects of the Tipped Minimum Wage Using W–2 Data,'' CARRA Working Paper Series, U.S., Census Bureau, Working Paper 2016–03, *https://www.census.gov/content/dam/Census/library/working-papers/2016/adrm/carra-wp-2016-03.pdf;* Wessels, Walter John (1997), ''Minimum Wages and Tipped Servers,'' *Economic Inquiry* 35: 334–349, April 1997.

[78] One Fair Wage, ''Service Workers' Experience of Health & Harassment During COVID–19'', November 2020. *https://onefairwage.site/wp-content/uploads/2020/11/OFW_COVID_WorkerExp_Emb-1.pdf.*

[79] BLS Current Employment Statistics, *https://www.bls.gov/ces/.* Series ID CES7072251101.

[80] Carolina Gonzales, ''Restaurant Closings Top 110,000 With Industry in 'Free Fall,' '' December 7, 2020. *https://www.bloomberg.com/news/articles/2020-12-07/over-110-000-restaurants-have-closed-with-sector-in-free-fall.*

[81] *See* Employment Situation Summary August 2021, Bureau of Labor Statistics, *https://www.bls.gov/news.release/empsit.nr0.htm.*

[82] Statistics of U.S. Businesses 2017, *https://www.census.gov/data/tables/2017/econ/susb/2017-susb-annual.html,* 2016 SUSB Annual Data Tables by Establishment Industry.

the regulatory familiarization cost of $50.60, plus the adjustment cost of $50.60, plus the management cost of $376.36. For each subsequent year, costs consist only of the management cost. See Section V.B for a description of how the Department calculated these costs. The Department has provided tables with data on the impact on small businesses, by size class, for each industry included in the analysis.

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Table 4.

NAICS 713210 - Casinos (Except Casino Hotels)							
	Number of Firms	Number of Firms as Percent of Small Firms in Industry	Total Number of Employees	Annual Receipts	Average Receipts per Firm	First Year Cost per Firm	First Year Cost per Firm as Percent of Receipts
Firms with 0-4 employees	10	18.9%	18	$5,209,000	$520,900	$478	0.09%
Firms with 5-9 employees	0	0.0%	0	$0	$0	$478	0.00%
Firms with 10-19 employees	0	0.0%	0	$0	$0	$478	0.00%
Firms with <20 employees	12	22.6%	29	$5,419,000	$451,583	$478	0.11%
Firms with 20-99 employees	0	0.0%	0	$0	$0	$478	0.00%
Firms with 100-499 employees	26	49.1%	6,264	$761,372,000	$29,283,538	$478	0.00%
Firms with <500 employees	53	100.0%	6,743	$817,192,000	$15,418,717	$478	0.00%
Firms with >500 employees	24	45.3%	20,148	$4,914,882,000	$204,786,750	$478	0.00%

Source: U.S. Census Bureau Statistics of U.S. Businesses, 2017 SUSB Annual Data Tables by Establishment Industry

Table 5

NAICS 721110 - Hotels and Motels							
	Number of Firms	Number of Firms as Percent of Small Firms in Industry	Total Number of Employees	Annual Receipts	Average Receipts per Firm	First Year Cost per Firm	First Year Cost per Firm as Percent of Receipts
Firms with 0-4 employees	10,947	35.1%	17,143	$4,371,463,000	$399,330	$478	0.12%
Firms with 5-9 employees	4,818	15.5%	32,968	$8,336,706,000	$1,730,325	$478	0.03%
Firms with 10-19 employees	7,167	23.0%	100,872	$8,336,706,000	$1,163,207	$478	0.04%
Firms with <20 employees	22,934	73.6%	150,997	$15,921,106,000	$694,214	$478	0.07%
Firms with 20-99 employees	7,160	23.0%	240,673	$20,671,674,000	$2,887,105	$478	0.02%
Firms with 100-499 employees	1,081	3.5%	150,879	$14,128,738,000	$13,070,063	$478	0.00%
Firms with <500 employees	31,175	100.0%	542,549	$50,721,518,000	$1,626,993	$478	0.03%
Firms with >500 employees	1,630	5.2%	512,075	$62,705,672,000	$38,469,737	$478	0.00%

Source: U.S. Census Bureau Statistics of U.S. Businesses, 2017 SUSB Annual Data Tables by Establishment Industry

Table 6

NAICS 721120 - Casino Hotels							
	Number of Firms	Number of Firms as Percent of Small Firms in Industry	Total Number of Employees	Annual Receipts	Average Receipts per Firm	First Year Cost per Firm	First Year Cost per Firm as Percent of Receipts
Firms with 0-4 employees	3	6.5%	0	$0	$0	$478	0.00%
Firms with 5-9 employees	0	0.0%	0	$0	$0	$478	0.00%
Firms with 10-19 employees	0	0.0%	0	$0	$0	$478	0.00%
Firms with <20 employees	8	17.4%	14	$8,215,000	$1,026,875	$478	0.05%
Firms with 20-99 employees	3	6.5%	195	$14,229,000	$4,743,000	$478	0.01%
Firms with 100-499 employees	27	58.7%	7,177	$860,044,000	$31,853,481	$478	0.00%
Firms with <500 employees	46	100.0%	8,217	$1,007,450,000	$21,901,087	$478	0.00%
Firms with >500 employees	84	182.6%	118,524	$18,217,851,000	$216,879,179	$478	0.00%

Source: U.S. Census Bureau Statistics of U.S. Businesses, 2017 SUSB Annual Data Tables by Establishment Industry

Table 7

NAICS 722410 - Drinking Places (Alcoholic Beverages)							
	Number of Firms	Number of Firms as Percent of Small Firms in Industry	Total Number of Employees	Annual Receipts	Average Receipts per Firm	First Year Cost per Firm	First Year Cost per Firm as Percent of Receipts
Firms with 0-4 employees	13,749	50.8%	26,626	$2,881,174,000	$209,555	$478	0.23%
Firms with 5-9 employees	6,707	24.8%	44,050	$2,715,239,000	$404,837	$478	0.12%
Firms with 10-19 employees	3,729	13.8%	49,361	$2,715,239,000	$728,141	$478	0.07%
Firms with <20 employees	24,187	89.3%	120,064	$8,241,853,000	$340,755	$478	0.14%
Firms with 20-99 employees	2,741	10.1%	96,465	$5,063,067,000	$1,847,161	$478	0.03%
Firms with 100-499 employees	138	0.5%	14,534	$859,303,000	$6,226,833	$478	0.01%
Firms with <500 employees	27,088	100.0%	232,886	$14,249,073,000	$526,029	$478	0.09%
Firms with >500 employees	64	0.2%	4,151	$372,813,000	$5,825,203	$478	0.01%

Source: U.S. Census Bureau Statistics of U.S. Businesses, 2017 SUSB Annual Data Tables by Establishment Industry

Table 8

NAICS 722511 - Full-Service Restaurants							
	Number of Firms	Number of Firms as Percent of Small Firms in Industry	Total Number of Employees	Annual Receipts	Average Receipts per Firm	First Year Cost per Firm	First Year Cost per Firm as Percent of Receipts
Firms with 0-4 employees	43,191	30.0%	69,719	$12,037,880,000	$278,713	$478	0.17%
Firms with 5-9 employees	26,370	18.3%	179,617	$23,155,092,000	$878,085	$478	0.05%
Firms with 10-19 employees	30,904	21.4%	429,712	$23,155,092,000	$749,259	$478	0.06%
Firms with <20 employees	100,465	69.7%	679,048	$47,196,499,000	$469,781	$478	0.10%
Firms with 20-99 employees	41,179	28.6%	1,549,506	$72,425,782,000	$1,758,804	$478	0.03%
Firms with 100-499 employees	2,504	1.7%	330,685	$16,855,317,000	$6,731,357	$478	0.01%
Firms with <500 employees	144,148	100.0%	2,559,239	$136,477,598,000	$946,788	$478	0.05%
Firms with >500 employees	2,441	1.7%	1,276,925	$61,492,598,000	$25,191,560	$478	0.00%

Source: U.S. Census Bureau Statistics of U.S. Businesses, 2017 SUSB Annual Data Tables by Establishment Industry

Table 9

NAICS 722513 - Limited Service Restaurants							
	Number of Firms	Number of Firms as Percent of Small Firms in Industry	Total Number of Employees	Annual Receipts	Average Receipts per Firm	First Year Cost per Firm	First Year Cost per Firm as Percent of Receipts
Firms with 0-4 employees	39,481	37.1%	69,109	$9,918,230,000	$251,215	$478	0.19%
Firms with 5-9 employees	20,041	18.8%	133,363	$14,262,156,000	$711,649	$478	0.07%
Firms with 10-19 employees	20,256	19.0%	276,233	$14,262,156,000	$704,095	$478	0.07%
Firms with <20 employees	79,778	74.9%	478,705	$32,962,211,000	$413,174	$478	0.12%
Firms with 20-99 employees	22,427	21.1%	826,711	$40,270,656,000	$1,795,633	$478	0.03%
Firms with 100-499 employees	4,243	4.0%	659,080	$33,702,776,000	$7,943,148	$478	0.01%
Firms with <500 employees	106,448	100.0%	1,964,496	$106,935,643,000	$1,004,581	$478	0.05%
Firms with >500 employees	2,591	2.4%	1,283,835	$66,321,227,000	$25,596,768	$478	0.00%

Source: U.S. Census Bureau Statistics of U.S. Businesses, 2017 SUSB Annual Data Tables by Establishment Industry

Table 10

NAICS 722515 - Snack and Nonalcoholic Beverage Bars							
	Number of Firms	Number of Firms as Percent of Small Firms in Industry	Total Number of Employees	Annual Receipts	Average Receipts per Firm	First Year Cost per Firm	First Year Cost per Firm as Percent of Receipts
Firms with 0-4 employees	12,657	43.6%	16,075	$2,029,785,000	$160,369	$478	0.30%
Firms with 5-9 employees	6,176	21.3%	42,046	$3,772,007,000	$610,752	$478	0.08%
Firms with 10-19 employees	6,291	21.7%	83,512	$3,772,007,000	$599,588	$478	0.08%
Firms with <20 employees	25,124	86.6%	141,633	$7,833,377,000	$311,789	$478	0.15%
Firms with 20-99 employees	3,528	12.2%	107,810	$5,072,661,000	$1,437,829	$478	0.03%
Firms with 100-499 employees	362	1.2%	37,996	$2,070,085,000	$5,718,467	$478	0.01%
Firms with <500 employees	29,021	100.0%	287,716	$14,984,672,000	$516,339	$478	0.09%
Firms with >500 employees	343	1.2%	164,169	$10,774,588,000	$31,412,793	$478	0.00%

Source: U.S. Census Bureau Statistics of U.S. Businesses, 2017 SUSB Annual Data Tables by Establishment Industry

Table 11

NAICS 812113 - Nail Salons							
	Number of Firms	Number of Firms as Percent of Small Firms in Industry	Total Number of Employees	Annual Receipts	Average Receipts per Firm	First Year Cost per Firm	First Year Cost per Firm as Percent of Receipts
Firms with 0-4 employees	9,688	74.7%	16,512	$2,059,539,000	$212,587	$478	0.22%
Firms with 5-9 employees	2,455	18.9%	15,647	$448,685,000	$182,764	$478	0.26%
Firms with 10-19 employees	701	5.4%	8,883	$448,685,000	$640,064	$478	0.07%
Firms with <20 employees	12,858	99.1%	41,188	$3,395,814,000	$264,101	$478	0.18%
Firms with 20-99 employees	95	0.7%	2,367	$119,640,000	$1,259,368	$478	0.04%
Firms with 100-499 employees	0	0.0%	0	$0	$0	$478	0.00%
Firms with <500 employees	12,970	100.0%	44,111	$3,532,063,000	$272,326	$478	0.18%
Firms with >500 employees	0	0.0%	0	$0	$0	$478	0.00%

Source: U.S. Census Bureau Statistics of U.S. Businesses, 2017 SUSB Annual Data Tables by Establishment Industry

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As shown in the tables above, costs for small business entities in these industries are never more than 0.3 percent of annual receipts. Therefore, this rule will not have a significant economic impact on a substantial number of small entities.

In their comment, SBA Advocacy noted that it was concerned about DOL's certification that the rule will not have a significant economic impact on a substantial number of small entities, saying, ''DOL improperly certified this proposed rule because it omitted some and underestimated other compliance costs of this rule for small employers.'' As discussed in the regulatory impact analysis above, the Department believes that the change and clarifications put forth in this final rule will help mitigate commenters' concerns about compliance costs. Additionally, the minute-to-minute tracking discussed by commenters is not required by the rule, and will also not be necessary to comply with the rule. Lastly, employers would already have been monitoring employees' work to some extent under the prior guidance, so the management cost calculation should only take into account the change from that guidance to the current rule. For these reasons, the Department has not adjusted its cost estimates in this final rule.

SBA Advocacy also requested that the Department include increased wage costs to employers in the Regulatory Flexibility Analysis (RFA). As noted in Section C.2.c., the Department estimated that transfers associated with increased wages for employees could be anything up to $733 million, but there is too much uncertainty to further refine the estimate to determine exactly how much employees' wages would change. The Department lacks data to determine how many employers changed employees' wages following the 2018–2019 guidance and the publication of the 2020 Final Rule, and so therefore cannot determine how wages would change with the publication of this rule. The Department has not calculated a definitive estimate of transfers, and does not believe that it is appropriate to include increased wage costs in the cost calculations for the RFA. However, as an illustrative example, the Department has provided the following rough analysis using the upper bound of transfers. It is difficult to determine how the transfers discussed in this rule would be spread across establishments, because not all establishments have tipped workers or use the tip credit. However, for purposes of this example, assuming all transfers are spread equally across establishments, dividing the upper bound of transfers ($733,000,000) by the total number of affected establishments used in the transfer analysis (470,894) yields a per-establishment wage cost of $1,557. For small businesses, even for the industry size class with the lowest average receipts per firm ($160,369), total costs ($2,035) consisting of increased wages, rule familiarization, adjustment, and management costs are only 1.3 percent of revenues.[83] [84] For all other industries and size classes, total costs are a smaller share of small business revenues. Therefore, as presented in the tables above, and even when including an example estimate of increased wage costs, the rule will not have a significant economic impact on a substantial number of small entities.

VII. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (UMRA)[85] requires agencies to prepare a written statement for rules with a Federal mandate that may result in increased expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $165 million ($100 million in 1995 dollars adjusted for inflation) or more in at least 1 year.[86] 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 final rule is issued pursuant to the Fair Labor Standards Act, 29 U.S.C. 201, *et seq.*

1. Assessment of Costs and Benefits

For purposes of the UMRA, this rule includes a Federal mandate that would result in increased expenditures by the private sector of more than $156 million in at least 1 year, but will not result in any increased expenditures by State, local, and Tribal governments.

The Department determined that the rule could result in Year 1 total costs for the private sector of $224.9 million, for regulatory familiarization, adjustment costs, and management costs. The Department determined that the rule could result in management costs of $177.2 million in subsequent years. Furthermore, the Department estimates that there may substantial transfers experienced as UMRA-relevant expenditures by employers.

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.[87] 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 $53.6 billion to $107.2 billion (using 2019 GDP).[88] 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 $224.9 million. 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.

VIII. Executive Order 13132, Federalism

The Department has (1) reviewed this rule in accordance with Executive Order 13132 regarding federalism and (2) determined that it does not have federalism implications. The rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

IX. Executive Order 13175, Indian Tribal Governments

This rule will 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.

Appendix Table 1—List of Occupations Included in the Outside-Option Regression Sample

Amusement and Recreation Attendants
Bus Drivers, School or Special Client
Bus Drivers, Transit and Intercity
Cashiers
Childcare Workers
Concierges
Door-To-Door Sales Workers, News and Street Vendors, and Related Workers
Driver/Sales Workers
Flight Attendants
Funeral Attendants
Hairdressers, Hairstylists, and Cosmetologists
Home Health Aides
Hotel, Motel, and Resort Desk Clerks
Insurance Sales Agents
Library Assistants, Clerical
Maids and Housekeeping Cleaners
Manicurists and Pedicurists
Massage Therapists
Nursing Assistants
Occupational Therapy Aides
Office Clerks, General
Orderlies
Parking Lot Attendants
Parts Salespersons
Personal Care Aides
Pharmacy Aides
Pharmacy Technicians
Postal Service Clerks
Real Estate Sales Agents
Receptionists and Information Clerks
Recreation Workers
Residential Advisors

[83] The industry size class with the lowest average receipts per firm are firms with 0–4 employees in the Snack and Alcoholic Beverage Bars industry. *See* Table 10.

[84] Total costs include the illustrative example wage costs discussed here ($1,516), as well as the per-establishment costs shown in tables 4–11 ($478). $1,557 + $478 = $2,035.

[85] *See* 2 U.S.C. 1501.

[86] Calculated using growth in the Gross Domestic Product deflator from 1995 to 2019. Bureau of Economic Analysis. Table 1.1.9. Implicit Price Deflators for Gross Domestic Product.

[87] *See* 2 U.S.C. 1532(a)(4).

[88] According to the Bureau of Economic Analysis, 2019 GDP was $21.43 trillion. *https://www.bea.gov/system/files/2020-02/gdp4q19_2nd_0.pdf.*

Retail Salespersons
Sales Agents, Financial Services
Sales Representatives, Wholesale and Manufacturing, Except Technical and Scientific Products
Secretaries and Administrative Assistants, Except Legal, Medical, and Executive
Social and Human Service Assistants
Statement Clerks
Stock Clerks, Sales Floor
Subway and Streetcar Operators
Taxi Drivers and Chauffeurs
Telemarketers
Telephone Operators
Tellers
Tour Guides and Escorts
Travel Agents
Travel Guides

List of Subjects

29 CFR Part 10

Administrative practice and procedure, Construction industry, Government procurement, Law enforcement, Reporting and recordkeeping requirements, Wages.

29 CFR Part 531

Wages.

PART 10—ESTABLISHING A MINIMUM WAGE FOR CONTRACTORS

■ 1. The authority citation for part 10 continues to read as follows:

Authority: 4 U.S.C. 301; section 4, E.O 13658, 79 FR 9851; Secretary of Labor's Order No. 01–2014 (Dec. 19, 2014), 79 FR 77527 (Dec. 24, 2014).

■ 2. Amend § 10.28 by revising paragraph (b)(2) and adding paragraph (b)(3) to read as follows:

§ 10.28 Tipped employees.

* * * * *

(b) * * *

(2) *Dual jobs.* In some situations an employee is employed in dual jobs, as, for example, where a maintenance person in a hotel also works as a server. In such a situation the employee, if the employee customarily and regularly receives at least $30 a month in tips for the work as a server, is engaged in a tipped occupation only when employed as a server. The employee is employed in two occupations, and no tip credit can be taken for the employee's hours of employment in the occupation of maintenance person.

(3) *Engaged in a tipped occupation.* An employee is engaged in a tipped occupation when the employee performs work that is part of the tipped occupation. An employer may only take a tip credit for work performed by a tipped employee that is part of the employee's tipped occupation.

(i) *Work that is part of the tipped occupation.* Work that is part of the tipped occupation is:

(A) Work that produces tips; and

(B) Work that directly supports the tip-producing work, if the directly supporting work is not performed for a substantial amount of time.

(ii) *Tip-producing work.* (A) Tip-producing work is any work performed by a tipped employee that provides service to customers for which the tipped employee receives tips.

(B) Examples: The following examples illustrate *tip-producing work* performed by a tipped employee that provides service to customers for which the tipped employee receives tips. A tipped employee's tip-producing work includes all aspects of the service to customers for which the tipped employee receives tips; this list is illustrative and is not exhaustive. A server's tip-producing work includes providing table service, such as taking orders, making recommendations, and serving food and drink. A bartender's tip-producing work includes making and serving drinks, talking to customers at the bar and, if the bar includes food service, serving food to customers. A nail technician's tip-producing work includes performing manicures and pedicures and assisting the patron to select the type of service. A busser's tip-producing work includes assisting servers with their tip-producing work for customers, such as table service, including filling water glasses, clearing dishes from tables, fetching and delivering items to and from tables, and bussing tables, including changing linens and setting tables. A parking attendant's tip-producing work includes parking and retrieving cars and moving cars in order to retrieve a car at the request of customer. A service bartender's tip-producing work includes preparing drinks for table service. A hotel housekeeper's tip-producing work includes cleaning hotel rooms. A hotel bellhop's tip-producing work includes assisting customers with their luggage. The tip-producing work of a tipped employee who both prepares and serves food to customers, such as a counterperson, includes preparing and serving food.

(iii) *Directly supporting work.* (A) Directly supporting work is work performed by a tipped employee in preparation of or to otherwise assist tip-producing customer service work.

(B) *Examples:* The following examples illustrate tasks that are *directly supporting work* when they are performed in preparation of or to otherwise assist tip-producing customer service work and when they do not provide service to customers. This list is illustrative and is not exhaustive: A server's directly supporting work includes dining room prep work, such as refilling salt and pepper shakers and ketchup bottles, rolling silverware, folding napkins, sweeping or vacuuming under tables in the dining area, and setting and bussing tables. A busser's directly supporting work includes pre- and post-table service prep work such as folding napkins and rolling silverware, stocking the busser station, and vacuuming the dining room, as well as wiping down soda machines, ice dispensers, food warmers, and other equipment in the service alley. A bartender's directly supporting work includes work such as slicing and pitting fruit for drinks, wiping down the bar or tables in the bar area, cleaning bar glasses, arranging bottles in the bar, fetching liquor and supplies, vacuuming under tables in the bar area, cleaning ice coolers and bar mats, making drink mixes, and filling up dispensers with drink mixes. A nail technician's directly supporting work includes cleaning pedicure baths between customers, cleaning and sterilizing private salon rooms between customers, and cleaning tools and the floor of the salon. A parking attendant's directly supporting work includes cleaning the valet stand and parking area, and moving cars around the parking lot or garage to facilitate the parking of patrons' cars. A service bartender's directly supporting work includes slicing and pitting fruit for drinks, cleaning bar glasses, arranging bottles, and fetching liquor or supplies. A hotel housekeeper's directly supporting work includes stocking the housekeeping cart. A hotel bellhop's directly supporting work includes rearranging the luggage storage area and maintaining clean lobbies and entrance areas of the hotel.

(iv) *Substantial amount of time.* An employer can take a tip credit for the time a tipped employee spends performing work that is not tip-producing, but directly supports tip-producing work, provided that the employee does not perform that work for a substantial amount of time. For the purposes of this section, an employee has performed directly supporting work for a substantial amount of time if:

(A) The directly supporting work exceeds a 20 percent workweek tolerance, which is calculated by determining 20 percent of the hours in the workweek for which the employer has taken a tip credit. The employer cannot take a tip credit for any time spent on directly supporting work that exceeds the 20 percent tolerance. Time for which an employer does not take a tip credit is excluded in calculating the 20 percent tolerance; or

(B) For any continuous period of time, the directly supporting work exceeds 30 minutes. If a tipped employee performs directly supporting work for a continuous period of time that exceeds 30 minutes, the employer cannot take a tip credit for any time that exceeds 30 minutes. Time in excess of the 30 minutes, for which an employer may not take a tip credit, is excluded in calculating the 20 percent tolerance in paragraph (b)(3)(iv)(A) of this section.

(v) *Work that is not part of the tipped occupation.* (A) Work that is not part of the tipped occupation is any work that does not provide service to customers for which tipped employees receive tips, and does not directly support tip-producing work. If a tipped employee is required to perform work that is not part of the employee's tipped occupation, the employer may not take a tip credit for that time.

(B) *Examples:* The following examples illustrate *work that is not part of the tipped occupation* because the work does not provide service to customers for which tipped employees receive tips, and does not directly support tip-producing work. This list is illustrative and is not exhaustive. Preparing food, including salads, and cleaning the kitchen or bathrooms, is not part of the tipped occupation of a server. Cleaning the dining room or bathroom is not part of the tipped occupation of a bartender. Ordering supplies for the salon is not part of the tipped occupation of a nail technician. Servicing vehicles is not part of the tipped occupation of a parking attendant. Cleaning the dining room and bathrooms is not part of the tipped occupation of a service bartender. Cleaning non-residential parts of a hotel, such as the exercise room, restaurant, and meeting rooms, is not part of the tipped occupation of a hotel housekeeper. Cleaning the kitchen or bathrooms is not part of the tipped occupation of a busser. Retrieving room service trays from guest rooms is not part of the tipped occupation of a hotel bellhop.

* * * * *

PART 531—WAGE PAYMENTS UNDER THE FAIR LABOR STANDARDS ACT OF 1938

■ 3. The authority citation for part 531 continues to read as follows:

Authority: 29 U.S.C. 203(m) and (t), as amended by sec. 3(m), Pub. L. 75–718, 52 Stat. 1060; sec. 2, Pub. L. 87–30, 75 Stat. 65; sec. 101, sec. 602, Pub. L. 89–601, 80 Stat. 830; sec. 29(B), Pub. L. 93–259, 88 Stat. 55 sec. 3, sec. 15(c), Pub. L. 95–151, 91 Stat 1245; sec. 2105(b), Pub. L. 104–188, 110 Stat 1755; sec. 8102, Pub. L. 110–28, 121 Stat. 112; and sec. 1201, Div. S., Tit. XII, Pub. L. 115–141, 132 Stat. 348.

■ 4. Amend § 531.56 by revising paragraph (e) and adding paragraph (f) to read as follows:

§ 531.56 "More than $30 a month in tips."

* * * * *

(e) *Dual jobs.* In some situations an employee is employed in dual jobs, as, for example, where a maintenance person in a hotel also works as a server. In such a situation if the employee customarily and regularly receives at least $30 a month in tips for the employee's work as a server, the employee is engaged in a tipped occupation only when employed as a server. The employee is employed in two occupations, and no tip credit can be taken for the employee's hours of employment in the occupation of maintenance person.

(f) *Engaged in a tipped occupation.* An employee is engaged in a tipped occupation when the employee performs work that is part of the tipped occupation. An employer may only take a tip credit for work performed by a tipped employee that is part of the employee's tipped occupation.

(1) *Work that is part of the tipped occupation.* Work that is part of the tipped occupation is:

(i) Work that produces tips; and

(ii) Work that directly supports the tip-producing work, if the directly supporting work is not performed for a substantial amount of time.

(2) *Tip-producing work.* (i) Tip-producing work is any work performed by a tipped employee that provides service to customers for which the tipped employee receives tips.

(ii) *Examples:* The following examples illustrate *tip-producing work* performed by a tipped employee that provides service to customers for which the tipped employee receives tips. A tipped employee's tip-producing work includes all aspects of the service to customers for which the tipped employee receives tips; this list is illustrative and is not exhaustive. A server's tip-producing work includes providing table service, such as taking orders, making recommendations, and serving food and drink. A bartender's tip-producing work includes making and serving drinks, talking to customers at the bar and, if the bar includes food service, serving food to customers. A nail technician's tip-producing work includes performing manicures and pedicures and assisting the patron to select the type of service. A busser's tip-producing work includes assisting servers with their tip-producing work for customers, such as table service, including filling water glasses, clearing dishes from tables, fetching and delivering items to and from tables, and bussing tables, including changing linens and setting tables. A parking attendant's tip-producing work includes parking and retrieving cars and moving cars in order to retrieve a car at the request of customer. A service bartender's tip-producing work includes preparing drinks for table service. A hotel housekeeper's tip-producing work includes cleaning hotel rooms. A hotel bellhop's tip-producing work includes assisting customers with their luggage. The tip-producing work of a tipped employee who both prepares and serves food to customers, such as a counterperson, includes preparing and serving food.

(3) *Directly supporting work.* (i) Directly supporting work is work performed by a tipped employee in preparation of or to otherwise assist tip-producing customer service work.

(ii) *Examples:* The following examples illustrate tasks that are *directly supporting work* when they are performed in preparation of or to otherwise assist tip-producing customer service work and when they do not provide service to customers. This list is illustrative and is not exhaustive: A server's directly supporting work includes dining room prep work, such as refilling salt and pepper shakers and ketchup bottles, rolling silverware, folding napkins, sweeping or vacuuming under tables in the dining area, and setting and bussing tables. A busser's directly supporting work includes pre- and post-table service prep work such as folding napkins and rolling silverware, stocking the busser station, and vacuuming the dining room, as well as wiping down soda machines, ice dispensers, food warmers, and other equipment in the service alley. A bartender's directly supporting work includes work such as slicing and pitting fruit for drinks, wiping down the bar or tables in the bar area, cleaning bar glasses, arranging bottles in the bar, fetching liquor and supplies, vacuuming under tables in the bar area, cleaning ice coolers and bar mats, making drink mixes, and filling up dispensers with drink mixes. A nail technician's directly supporting work includes cleaning pedicure baths between customers, cleaning and sterilizing private salon rooms between customers, and cleaning tools and the floor of the salon. A parking attendant's directly supporting work includes cleaning the valet stand and parking area, and moving cars around the parking lot or garage to facilitate the parking of patrons' cars. A

service bartender's directly supporting work includes slicing and pitting fruit for drinks, cleaning bar glasses, arranging bottles, and fetching liquor or supplies. A hotel housekeeper's directly supporting work includes stocking the housekeeping cart. A hotel bellhop's directly supporting work includes rearranging the luggage storage area and maintaining clean lobbies and entrance areas of the hotel.

(4) *Substantial amount of time.* An employer can take a tip credit for the time a tipped employee spends performing work that is not tip-producing, but directly supports tip-producing work, provided that the employee does not perform that work for a substantial amount of time. For the purposes of this section, an employee has performed work for a substantial amount of time if:

(i) The directly supporting work exceeds a 20 percent workweek tolerance, which is calculated by determining 20 percent of the hours in the workweek for which the employer has taken a tip credit. The employer cannot take a tip credit for any time spent on directly supporting work that exceeds the 20 percent tolerance. Time for which an employer does not take a tip credit is excluded in calculating the 20 percent tolerance; or

(ii) For any continuous period of time, the directly supporting work exceeds 30 minutes. If a tipped employee performs directly supporting work for a continuous period of time that exceeds 30 minutes, the employer cannot take a tip credit for any time that exceeds 30 minutes. Time in excess of the 30 minutes, for which an employer may not take a tip credit, is excluded in calculating the 20 percent tolerance in paragraph (f)(4)(i) of this section.

(5) *Work that is not part of the tipped occupation.* (i) Work that is not part of the tipped occupation is any work that does not provide service to customers for which tipped employees receive tips, and does not directly support tip-producing work. If a tipped employee is required to perform work that is not part of the employee's tipped occupation, the employer may not take a tip credit for that time.

(ii) *Examples:* The following examples illustrate *work that is not part of the tipped occupation* because the work does not provide service to customers for which tipped employees receive tips, and does not directly support tip-producing work. This list is illustrative and is not exhaustive. Preparing food, including salads, and cleaning the kitchen or bathrooms, is not part of the tipped occupation of a server. Cleaning the dining room or bathroom is not part of the tipped occupation of a bartender. Ordering supplies for the salon is not part of the tipped occupation of a nail technician. Servicing vehicles is not part of the tipped occupation of a parking attendant. Cleaning the dining room and bathrooms is not part of the tipped occupation of a service bartender. Cleaning non-residential parts of a hotel, such as the exercise room, restaurant, and meeting rooms, is not part of the tipped occupation of a hotel housekeeper. Cleaning the kitchen or bathrooms is not part of the tipped occupation of a busser. Retrieving room service trays from guest rooms is not part of the tipped occupation of a hotel bellhop.

Signed this 23rd day of October, 2021.

Jessica Looman,

Acting Administrator, Wage and Hour Division.

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